

Primary Areas of Change in Chapter 15, As Compared to UNCITRAL Model Law

	Model Law	Chapter 15	Comments / Rationale
Preamble	Preamble and Article I, “Scope of Application” separate	Preamble and Scope of Application combined into § 1501.	
Art. 1 v. § 1501	<p>Article 1. Scope of application * * *</p> <p>(2): The present Law does not apply to a proceeding concerning [designate any types of entities, such as banks or insurance companies, that are subject to a special insolvency regime in this State and that this State wishes to exclude from the present Law].</p>	<p>§ 1501 Purpose and scope of application. * * *</p> <p><i>[§ 1501(c) expands the category of debtors excluded from application:]</i> “This chapter does not apply to-- <i>(1) a proceeding concerning an entity, other than a foreign insurance company, identified by exclusion in section 109(b);</i> <i>(2) an individual, or to an individual and such individual's spouse, who have debts within the limits specified in section 109(e) and who are citizens of the United States or aliens lawfully admitted for permanent residence in the United States; or</i> <i>(3) an entity subject to a proceeding under the Securities Investor Protection Act of 1970, a stockbroker subject to subchapter III of chapter 7 of this title, or a commodity broker subject to subchapter IV of chapter 7 of this title.</i></p> <p><i>[§1501(d) added:]</i> <i>(d) The court may not grant relief under this chapter with respect to any deposit, escrow, trust fund, or other security required or permitted under any applicable State insurance law or regulation for the benefit of claim holders in the United States.</i></p>	<p>There are certain additions in Chapter 15, which exclude the following:</p> <ul style="list-style-type: none"> • Railroads, regulated financial institutions and domestic insurance companies, following § 109(b). • Individuals who are within the § 109(e) debt limits for chapter 13 so long as they are U.S. citizens or permanent residents • Entities subject to proceedings under the Securities Investor Protection Act • Stockbrokers or commodity brokers subject to, respectively, subchapters III and IV of chapter 7.
Art. 2 v. § 1502	Article 2. Definitions	<p>§ 1502. Definitions</p> <p>[The key definitions of “foreign proceeding” and “foreign representative” are not located in Chapter 15. Consistent with pre-Amendment practice, these definitions are located in Bankruptcy Code §§ 101(23) and (24).]</p>	<p>Many of the definitions in § 1502 utilize the key concepts of “foreign proceeding” and “foreign representative”. The prior use of these phrases under former § 304 (ancillary proceedings) has been replaced to conform to concepts derived from the Model Law.</p>

		[§ 1502 adds definitions of “Debtor,” “Recognition,” “Trustee,” and “within the territorial jurisdiction of the United States.”]	<ul style="list-style-type: none"> • Defining “Debtor” as the entity that is the subject of a foreign proceeding, which eliminates the need to repeat the “subject to” reference throughout the Chapter. • “Recognition” is defined as the entry of an order granting recognition of a foreign proceeding while a chapter-specific definition of “Trustee” makes clear that the term includes debtors in possession. • The definition “within the territorial jurisdiction of the United States” limits other sections of the Bankruptcy which are not intended to invoke the otherwise universal grant of jurisdiction to the bankruptcy court “of all property of the debtor wherever located.”
		[§ 1502 changes spelling and wording of other definitions.]	To accommodate American spelling and vernacular.
Art. 4 v. § 1504	<p>Article 4 .[Competent court or authority]</p> <p>The functions referred to in the present Law relating to recognition of foreign proceedings and cooperation with foreign courts shall be performed by [specify the court, courts, authority or authorities competent to perform those functions in the enacting State].</p>	<p>§ 1504. Commencement of ancillary case</p> <p><i>A case under this chapter is commenced by the filing of a petition for recognition of a foreign proceeding under section 1515.</i></p>	<p>Article 4 of the Model Law, which identifies the courts or authorities that would administer the Model Law, was modified to account for the existing U.S. bankruptcy court structure. Thus it was only necessary to specify the steps necessary to commence a “case” (i.e., filing a petition under § 1515). Furthermore, § 1504 makes it clear that the filing of a petition for recognition under § 1515 commences a “case” under Chapter 15 (just as § 304 provided for commencement of “[a] case ancillary to a foreign proceeding ...”). Finally, a “case” under Chapter 15 is also a case under Title 11 of the United States Code for the purposes of the many references in the Bankruptcy Code to “cases under this title.” Also note that a new subsection (P) was added to 28 U.S.C. § 157(b)(2) to make it clear that cases under Chapter 15 are a part of the core jurisdiction of bankruptcy courts if referred by the district courts.</p>

<p>Art. 5 v. § 1505</p>	<p>Article 5. Authorization of [insert the title of the person or body administering a reorganization or liquidation under the law of the enacting State] to act in a foreign State</p> <p>A [insert the title of the person or body administering a reorganization or liquidation under the law of the enacting State] is authorized to act in a foreign State on behalf of a proceeding under [identify laws of the enacting State relating to insolvency], as permitted by the applicable foreign law.</p>	<p>§ 1505. Authorization to act in a foreign country</p> <p>A trustee or another entity (including an examiner) <i>may be</i> authorized <i>by the court</i> to act in a foreign <i>country</i> on behalf of <i>an estate created under section 541</i>. <i>An entity authorized to act under this section may act in any way</i> permitted by the applicable foreign law.</p>	<p>Model Law Article 5 empowers an estate representative to act in a foreign country (subject to the laws of that country), which is necessary because some countries’ insolvency laws are territorial in nature, while others are silent on the authority of an administrator to act abroad. Section 1505 eliminates the Model Law’s <i>automatic</i> authorization to act. Instead, the bankruptcy court is given discretion to authorize a trustee or other entity, including an examiner, to act for the estate in another country. The main purpose of this change is to ensure that the court has knowledge and control of possibly expensive activities, but it will have the collateral benefit of providing further assurance to foreign courts that the U.S. debtor or representative is under judicial authority and supervision. Commentators recognize that requiring judicial approval should not be an overly restrictive process.</p> <p>Section 1505 is one of several sections where the words “authorized by the court” were used, in contrast to the Model Law’s use of the word “designated”. The distinction reflects the technical division of authority between the bankruptcy judge, who can “authorize” the appointment or empowerment of a fiduciary, and the United States Trustee, who usually “designates” an individual/entity.</p>
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<p>Art. 7 v. § 1507</p>	<p>Article 7. Additional assistance under other laws</p> <p>Nothing in the present Law limits the power of a court or a [insert the title of the person or body administering a reorganization or liquidation under the law of the enacting State] to provide additional assistance to a foreign representative under other laws of this State.</p>	<p>§ 1507. Additional assistance</p> <p><i>(a) Subject to the specific limitations stated elsewhere in this chapter the court, if recognition is granted, may provide additional assistance to a foreign representative under this title or under other laws of the United States.</i></p> <p><i>(b) In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure--</i></p> <p><i>(1) just treatment of all holders of claims against or interests in the debtor's property;</i></p> <p><i>(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;</i></p> <p><i>(3) prevention of preferential or fraudulent dispositions of property of the debtor;</i></p> <p><i>(4) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title; and</i></p> <p><i>(5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.</i></p>	<p>Because the Model Law does not anticipate all of the types of relief needed by a foreign representative and that might otherwise be available under the laws of a particular country, Article 7 provided that nothing in the Model Law limited the power of the court to provide such additional assistance.</p> <p>In the U.S., this section was viewed, on the one hand, as a way to salvage and incorporate the case law under Section 304 despite its replacement by Chapter 15. On the other hand, Article 7 was viewed as a broad way to circumvent strictly specified requirements for relief contained in Chapter 15.</p> <p>Section 1507 reflects a compromise of positions. Additional assistance (i) is “subject to the specific limitations stated elsewhere in this chapter” and can only follow recognition of the foreign proceeding, but (ii) the section incorporates the elements of former section 304(c) factors – including comity (which, unlike former section 304(c) has been elevated to the introduction, leaving the other comity-like standards to be set forth specifically) as part of the court’s analysis.</p> <p>In short, with modification, section 1507(b) preserves the well-established precedent under section 304(c) that court’s applied when determining the propriety of relief in ancillary proceedings.</p>
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<p>Art. 9 v. § 1509</p>	<p>Article 9. Right of direct access</p> <p>A foreign representative is entitled to apply directly to a court in this State.</p>	<p>1509. Right of direct access</p> <p><i>(a) A foreign representative may commence a case under section 1504 by filing directly with the court a petition for recognition of a foreign proceeding under section 1515.</i></p> <p><i>(b) If the court grants recognition under section 1517, and subject to any limitations that the court may impose consistent with the policy of this chapter--</i></p> <p><i>(1) the foreign representative has the capacity to sue and be sued in a court in the United States;</i></p> <p><i>(2) the foreign representative may apply directly to a court in the United States for appropriate relief in that court; and</i></p> <p><i>(3) a court in the United States shall grant comity or cooperation to the foreign representative.</i></p> <p><i>(c) A request for comity or cooperation by a foreign representative in a court in the United States other than the court which granted recognition shall be accompanied by a certified copy of an order granting recognition under section 1517.</i></p> <p><i>(d) If the court denies recognition under this chapter, the court may issue any appropriate order necessary to prevent the foreign representative from obtaining comity or cooperation from courts in the United States.</i></p> <p><i>(e) Whether or not the court grants recognition, and subject to sections 306 and 1510, a foreign representative is subject to applicable nonbankruptcy law.</i></p> <p><i>(f) Notwithstanding any other provision of this section, the failure of a foreign representative to commence a case or to obtain recognition under this chapter does not affect any right the foreign representative may have to sue in a court in the United States to collect or recover a claim which is the property of the debtor.</i></p>	<p>Section 1509 represents another significant departure from the literal words of the Model Law. Whereas Model Law Article 9 states succinctly that a foreign representative could go “directly” to court in a country that enacted the Model Law, Section 1509 sets forth more detailed requirements and limitations.</p> <p>The inability of a foreign representative to get prompt access to a proper court can be an impediment to the effective administration of the estate, thereby hindering the policy underlying the Model Law. To avoid a protracted process that could result in a diminution of asset values, section 1509 preserves the concept of direct access but limits that access in the first instance to the bankruptcy court. The goal is to concentrate control of bankruptcy-related litigation in one court—an important goal in a complex federal system, with many different courts that may have pending actions involving the debtor or the debtor’s property.</p> <p>The foreign representative can directly commence a case under Chapter 15 by filing a petition for recognition in the bankruptcy court, and only after recognition can the representative seek other state or federal court assistance, if needed. After recognition and subject to the special appearance status granted by Section 1510, the foreign representative can sue or be sued and will be subject to laws of general application.</p> <p>Subsections (d) and (e) of Section 1509 direct into bankruptcy court nearly all cases involving requests for comity by a foreign representative. An exception was created in subsection (f) for simple claim account receivable collections by a foreign representative. These provisions were designed to reduce or eliminate separate development of inconsistent law under prior comity principles and preclude forum shopping by a foreign representative who has been denied recognition or relief by a bankruptcy court.</p>
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<p>Art. 11 v. §1511</p>	<p>Article 11. Application by a foreign representative to commence a proceeding under [identify laws of the enacting State relating to insolvency]</p> <p>A foreign representative is entitled to apply to commence a proceeding under [identify laws of the enacting State relating to insolvency] if the conditions for commencing such a proceeding are otherwise met.</p>	<p>§ 1511. Commencement of case under section 301 or 303</p> <p><i>(a) Upon recognition, a foreign representative may commence--</i> <i>(1) an involuntary case under section 303; or</i> <i>(2) a voluntary case under section 301 or 302, if the foreign proceeding is a foreign main proceeding.</i></p> <p><i>(b) The petition commencing a case under subsection (a) must be accompanied by a certified copy of an order granting recognition. The court where the petition for recognition has been filed must be advised of the foreign representative's intent to commence a case under subsection (a) prior to such commencement.</i></p>	<p>The Model Law gives a foreign representative authority to commence a domestic bankruptcy proceeding. Chapter 15 reflects the intent of the Model Law, but adds language conforms to U.S. law or that is otherwise necessary in the United States given its many bankruptcy court districts and the importance of full information and coordination among them. Chapter 15 therefore bifurcates the authority of a foreign representative to commence a proceeding: upon recognition, any foreign representative can file an involuntary petition pursuant to Section 1511(a)(1), but only the representative of a foreign proceeding that has been recognized as a main proceeding is given authority to commence a voluntary case under Section 1511(a)(2).</p>
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<p>Art. 19 v. § 1519</p>	<p>Article 19. Relief that may be granted upon application for recognition of a foreign proceeding</p> <p>1. From the time of filing an application for recognition until the application is decided upon, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including:</p> <p>(a) Staying execution against the debtor's assets;</p> <p>(b) Entrusting the administration or realization of all or part of the debtor's assets located in this State to the foreign representative or another person designated by the court, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy;</p> <p>(c) Any relief mentioned in paragraph 1 (c), (d) and (g) of article 21 below.</p> <p>2. [Insert provisions (or refer to provisions in force in the enacting State) relating to notice.]</p>	<p>§ 1519. Relief that may be granted upon filing petition for recognition</p> <p>(a) From the time of filing a petition for recognition until the court rules on the petition, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including--</p> <p>(1) staying execution against the debtor's assets;</p> <p>(2) entrusting the administration or realization of all or part of the debtor's assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and</p> <p>(3) any relief referred to in paragraph (3), (4), or (7) of section 1521(a).</p> <p>(b) Unless extended under section 1521(a)(6), the relief granted under this section terminates when the petition for recognition is granted.</p> <p>(c) It is a ground for denial of relief under this section that such relief would interfere with the administration of a foreign main proceeding.</p> <p>(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.</p> <p>(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under this section.</p> <p>(f) The exercise of rights not subject to the stay arising under section 362(a) pursuant to paragraph (6), (7), (17), or (27) of section 362(b) or pursuant to section 362(n) shall not be stayed by any order of a court or administrative agency in any proceeding under this chapter.</p>	<p>Article 19 of the Model Law, recognizing that emergency relief may be necessary before recognition can be granted, authorized injunctive and other relief when “urgently needed to protect the assets of the debtor or the interests of the creditors.”</p> <p>Section 1519 adopts this general approach, but provides for three limitations: (1) no police or regulatory act maybe enjoined under the section (but section 105 of the Bankruptcy Code still applies and may be support for such relief); (2) the standards, procedures and limitations applicable to an injunction shall apply; and (3) the rights relative to the financial contracts which are excepted from stay under section 362 and granted in various of the chapter 5 sections may not be stayed in a proceeding under Chapter 15.</p>
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<p>Art. 20 v. §1520</p>	<p>Article 20. Effects of recognition of a foreign main proceeding</p> <p>1. Upon recognition of a foreign proceeding that is a foreign main proceeding: (a) Commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities is stayed; (b) Execution against the debtor's assets is stayed; (c) The right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.</p> <p>2. The scope, and the modification or termination, of the stay and suspension referred to in paragraph 1 of the present article are subject to [refer to any provisions of law of the enacting State relating to insolvency that apply to exceptions, limitations, modifications or termination in respect of the stay and suspension referred to in paragraph 1 of the present article].</p> <p>3. Paragraph 1 (a) of the present article does not affect the right to commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor.</p> <p>4. Paragraph 1 of the present article does not affect the right to request the commencement of a proceeding under [identify laws of the enacting State relating to insolvency] or the right to file claims in such a proceeding.</p>	<p>§ 1520. Effects of recognition of a foreign main proceeding</p> <p>(a) Upon recognition of a foreign proceeding that is a foreign main proceeding-- <i>(1) sections 361 and 362 apply with respect to the debtor and the property of the debtor that is within the territorial jurisdiction of the United States;</i> <i>(2) sections 363, 549, and 552 apply to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate;</i> <i>(3) unless the court orders otherwise, the foreign representative may operate the debtor's business and may exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552; and</i> <i>(4) section 552 applies to property of the debtor that is within the territorial jurisdiction of the United States.</i></p> <p>(b) Subsection (a) does not affect the right to commence an individual action or proceeding in a foreign country to the extent necessary to preserve a claim against the debtor.</p> <p>(c) Subsection (a) does not affect the right of a foreign representative or an entity to file a petition commencing a case under this title or the right of any party to file claims or take other proper actions in such a case.</p>	<p>Upon recognition, Article 20 of the Model Law imposes an automatic stay against litigation execution and transfer of assets.</p> <p>Because the Bankruptcy Code has long provided for injunctive relief, Section 1520 incorporates Sections 361 and 362 of the Bankruptcy Code (limited to property “within the territorial jurisdiction”), which provide for the stay of actions against the debtor (including the exceptions to stay of § 362(b) and the grounds for relief from stay of § 362(d)) and establish the standards for adequate protection when it is required to protect the interests of a party in property.</p> <p>Section 1520 also incorporates the Bankruptcy Code sections dealing with post-petition use, sale or lease of property, restrictions on post-petition transfer of property on the post-petition effects of security interests and the operation of the debtor’s business.</p>
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<p>Art. 21 v. § 1521</p>	<p>Article 21. Relief that may be granted upon recognition of a foreign proceeding</p> <p>(1) Upon recognition of a foreign proceeding, whether main or non-main, where necessary to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including: * * *</p> <p>(g) granting any additional relief that may be available to [insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State] under the laws of this State.</p> <p>(2) Upon recognition of a foreign proceeding, whether main or non-main, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in this State to the foreign representative or another person designated by the court, provided that the court is satisfied that the interests of creditors in this State are adequately protected.</p> <p>(3) In granting relief under this article to a representative of a foreign non-main proceeding, the court must be satisfied that the relief relates to assets that, under the law of this State, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.</p>	<p>§ 1521. Relief that may be granted upon recognition</p> <p>(a) Upon recognition of a foreign proceeding, whether main or non-main, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including-- * * *</p> <p>(7) granting any additional relief that may be available to a trustee, <i>except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a)</i>. * * *</p> <p>[ADDS:]</p> <p><i>(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.</i></p> <p><i>(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under paragraphs (1), (2), (3), and (6) of subsection (a).</i></p> <p><i>(f) The exercise of rights not subject to the stay arising under section 362(a) pursuant to paragraph (6), (7), (17), or (27) of section 362(b) or pursuant to section 362(n) shall not be stayed by any order of a court or administrative agency in any proceeding under this chapter.</i></p>	<p>Section 1521(a)(7) limits “any additional relief,” by excluding relief relating to avoidance power, which are mostly dealt with in § 1523 (the avoidance power of 549 is covered by § 1520(a)(2)).</p> <p>Section 1521 also adds the same the same constraints as Section 1519, that police and regulatory actions may not be stayed and injunctive-type requests must meet the standards, procedures and limitations otherwise applicable to requests for injunctions from a Federal court and financial contract rights must remain unimpeded.</p>
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<p>Art. 22 v. § 1522</p>	<p>Article 22. Protection of creditors and other interested persons * * *</p> <p>2. The court may subject relief granted under article 19 or 21 to conditions it considers appropriate.</p>	<p>§ 1522. Protection of creditors and other interested persons * * *</p> <p>(b) The court may subject relief granted under section 1519 or 1521, or the operation of the debtor's business under section 1520(a)(3), to conditions it considers appropriate, <i>including the giving of security or the filing of a bond.</i></p> <p>* * *</p> <p><i>[ADDS:]</i> <i>(d) Section 1104(d) shall apply to the appointment of an examiner under this chapter. Any examiner shall comply with the qualification requirements imposed on a trustee by section 322.</i></p>	<p>Section 1522 specifies that a requirement for security may be among the conditions that a court may impose for relief.</p> <p>Since an examiner may be authorized under Section 1505 to act in a foreign country or may be entrusted with the administration of assets under Section 1519 or 1521, Section 1522(d) directs that Section 1104(d) shall apply to such appointment and that such examiner is subject to certain duties and bonding requirements based on those imposed on trustees and examiners under other chapters of Title 11.</p>
<p>Art. 23 v. § 1523</p>	<p>Article 23. Actions to avoid acts detrimental to creditors</p> <p>1. Upon recognition of a foreign proceeding, the foreign representative has standing to initiate [refer to the types of actions to avoid or otherwise render ineffective acts detrimental to creditors that are available in this State to a person or body administering a reorganization or liquidation].</p> <p>2. When the foreign proceeding is a foreign non-main proceeding, the court must be satisfied that the action relates to assets that, under the law of this State, should be administered in the foreign non-main proceeding.</p>	<p>§ 1523. Actions to avoid acts detrimental to creditors</p> <p>(a) Upon recognition of a foreign proceeding, the foreign representative has standing <i>in a case concerning the debtor pending under another chapter of this title</i> to initiate actions under sections 522, 544, 545, 547, 548, 550, 553, and 724(a).</p> <p>(b) When a foreign proceeding is a foreign non-main proceeding, the court must be satisfied that an action under subsection (a) relates to assets that, under United States law, should be administered in the foreign non-main proceeding.</p>	<p>One of the controversial provisions of the Model Law for the United States delegation to UNCITRAL concerned conferring avoiding powers on a foreign representative, because a simple grant of standing to bring avoidance actions would neglect to address very difficult choice of law and forum issues. Article 23 of the Model Law survived this opposition. However, Chapter 15 contains limitations and provides that the foreign representative has standing to bring an avoidance action under Section 1523, but he can only bring it in a case pending under another chapter, whereas the Model Law is unclear about whether it would grant standing in a recognized foreign proceeding if no full case were pending. Thus, the foreign representative must commence a full bankruptcy case pursuant to Section 1509 (with a risk of loss of control over the case to a trustee or debtor in possession). This limited grant of standing does not create or establish any legal right of avoidance, nor does it create or imply any legal rules with respect to the choice of applicable law as to the avoidance of any transfer of obligation. Instead, as the legislative history notes, the courts will determine the nature and extent of any such action and what national law may be applicable to such action.</p>