NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS
39TH CONSTITUTION REGULAR SESSION, 2018

Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY IMPLEMENTATION ACT, 2018

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UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY IMPLEMENTATION ACT, 2018

AN ACT to implement the UNCITRAL Model Law on Cross-Border Insolvency to provide effective mechanisms for dealing with cases of cross-border insolvency so as to promote the objectives of: (a) Cooperation between the High Court and other competent authorities of the Republic and foreign States involved in cases of cross-border insolvency; (b) Greater legal certainty for trade and investment; (c) Fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor; (d) Protection and maximization of the value of the debtor's assets; and (e) Facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

BE IT ENACTED BY THE NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS

§600. Short Title.

This Act may be cited as the *UNCITRAL Model Law on Cross-Border Insolvency Implementation Act 2018*.

§601. Scope of application.

(1) This Act applies where:

(a) Assistance is sought in the Republic by a foreign court or a foreign representative in connection with a foreign proceeding; or

(b) Assistance is sought in a foreign State in connection with a proceeding under the laws of the Republic relating to insolvency; or

(c) A foreign proceeding and a proceeding under the laws of the Republic relating to insolvency in respect of the same debtor are taking place concurrently; or

(d) Creditors or other interested persons in a foreign State have an interest in requesting the commencement of, or participating in, a proceeding under the laws of the Republic relating to insolvency.

(2) This Act does not apply to a proceeding concerning entities, such as banks and insurance companies, that are subject to a special insolvency regime in the Republic and the Republic wishes to exclude from this Act.

§602. Definitions.

For the purposes of this Act:

(a) "Foreign proceeding" means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;

(b) "Foreign main proceeding" means a foreign proceeding taking place in the State where the debtor has the center of its main interests;

(c) "Foreign non-main proceeding" means a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment within the meaning of subparagraph (f) of this section;

(d) "Foreign representative" means a person or body, including one appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding;

(e) "Foreign court" means a judicial or other authority competent to control or supervise a foreign proceeding; and

(f) "Establishment" means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services.

§603. International obligations of the Republic.

To the extent that this Act conflicts with an obligation of the Republic arising out of any treaty or other form of agreement to which it is a party with one or more other States, the requirements of the treaty or agreement prevail to the extent they have been enacted into law.

§604. The competent court or authority.

The functions referred to in this Act relating to recognition of foreign proceedings and cooperation with foreign courts shall be performed by the High Court.

§605. Authorization of a person or body administering reorganization or liquidation under the law of the Republic to act in a foreign State.

A person or body administering a reorganization or liquidation under the law of the Republic is authorized to act in a foreign State on behalf of a proceeding under the laws of the Republic relating to insolvency, as permitted by the applicable foreign law.

§606. Public policy exception.

Nothing in this Act prevents the High Court from refusing to take an action governed by this Act if the action would be manifestly contrary to the public policy of the Republic.

§607. Additional assistance under other laws.

Nothing in this Act limits the power of the High Court or a person or body administering a reorganization or liquidation under the law of the Republic to provide additional assistance to a foreign representative under other laws of the Republic.

§608. Interpretation.

In the interpretation of this Act, regard is to its international origin and to the need to promote uniformity in its application and the observance of good faith.

DIVISION 2: ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO COURTS IN THE REPUBLIC

§609. Right of direct access.

A foreign representative is entitled to apply directly to the High Courts of the Republic.

§610. Limited jurisdiction.

The sole fact that an application pursuant to this Act is made to the High Court by a foreign representative does not subject the foreign representative or the foreign assets and affairs of the debtor to the jurisdiction of the High Court for any purpose other than the application.

§611. Application by a foreign representative to commence a proceeding under the laws of the Republic relating to insolvency.

A foreign representative is entitled to apply to commence a proceeding under the laws of the Republic relating to insolvency if the conditions for commencing such a proceeding are otherwise met.

§612. Participation of a foreign representative in a proceeding under the laws of the Republic relating to insolvency.

Upon recognition of a foreign proceeding, the foreign representative is entitled to participate in a proceeding regarding the debtor under the laws of the Republic relating to insolvency.

§613. Access of foreign creditors to a proceeding under the laws of the Republic relating to insolvency.

(1) Subject to paragraph (2) of this section, foreign creditors have the same rights regarding the commencement of, and participation in, a proceeding under the laws of the Republic relating to insolvency as creditors in the Republic.

(2) Paragraph (1) of this section does not affect the ranking of claims in a proceeding under the laws of the Republic relating to insolvency, except that the claims of foreign creditors shall not be ranked lower than the class of general non-preference claims, while providing that a foreign claim is to be ranked lower than the general non-preference claims if an equivalent local claim (e.g., claim for a penalty or deferred-payment claim) has a rank lower than the general non-preference claims.

§614. Notification to foreign creditors of a proceeding under the laws of the Republic relating to insolvency.

(1) Whenever under the laws of the Republic relating to insolvency notification is to be given to creditors in the Republic, such notification shall also be given to the known creditors that do not have addresses in the Republic. The High Court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

(2) Such notification shall be made to the foreign creditors individually, unless the High Court considers that, under the circumstances, some other form of notification would be more appropriate. No letters rogatory or other, similar formality is required.

(3) When a notification of commencement of a proceeding is to be given to foreign creditors, the notification shall:

(a) Indicate a reasonable time period for filing claims and specify the place for their filing;

(b) Indicate whether secured creditors need to file their secured claims; and

(c) Contain any other information required to be included in such a notification to creditors pursuant to the law of the Republic and the orders of the High Court.

DIVISION 3: RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

§615. Application for recognition of a foreign proceeding.

(1) A foreign representative may apply to the High Court for recognition of the foreign proceeding in which the foreign representative has been appointed.

(2) An application for recognition shall be accompanied by:

(a) A certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; or

(b) A certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or

(c) In the absence of evidence referred to in subparagraphs (a) and (b), any other evidence acceptable to the High Court of the existence of the foreign proceeding and of the appointment of the foreign representative.

(3) An application for recognition shall also be accompanied by a statement identifying all foreign proceedings in respect of the debtor that are known to the foreign representative.

(4) The High Court may require a translation of documents supplied in support of the application for recognition into an official language of the Republic.

§616. Presumptions concerning recognition.

(1) If the decision or certificate referred to in paragraph (2) of section 605 indicates that the foreign proceeding is a proceeding within the meaning of subparagraph (a) of section 602 and that the foreign representative is a person or body within the meaning of

subparagraph (d) of section 602, the High Court is entitled to so presume.

(2) The High Court is entitled to presume that documents submitted in support of the application for recognition are authentic, whether or not they have been legalized.

(3) In the absence of proof to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the center of the debtor's main interests.

§617. Decision to recognize a foreign proceeding.

(1) Subject to section 6, a foreign proceeding shall be recognized if:

(a) The foreign proceeding is a proceeding within the meaning of subparagraph (a) of section 602;

(b) The foreign representative applying for recognition is a person or body within the meaning of subparagraph (d) of section 602;

(c) The application meets the requirements of paragraph (2) of section 615; and

(d) The application has been submitted to the High Court referred to in section 614.

(2) The foreign proceeding shall be recognized:

(a) As a foreign main proceeding if it is taking place in the State where the debtor has the center of its main interests; or

(b) As a foreign non-main proceeding if the debtor has an establishment within the meaning of subparagraph (f) of section 602 in the foreign State.

(3) An application for recognition of a foreign proceeding shall be decided upon at the earliest possible time.

(4) The provisions of sections 615, 616, 617 and 618 do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist.

§618. Subsequent information.

From the time of filing the application for recognition of the foreign proceeding, the foreign representative shall inform the High Court promptly of:

(a) Any substantial change in the status of the recognized foreign proceeding or the status of the foreign representative's appointment; and

(b) Any other foreign proceeding regarding the same debtor that becomes known to the foreign representative.

§619. Relief that may be granted upon application for recognition of a foreign proceeding.

(1) From the time of filing an application for recognition until the application is decided upon, the High 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:

(a) Staying execution against the debtor's assets;

(b) Entrusting the administration or realization of all or part of the debtor's assets located in the Republic to the foreign representative or another person designated by the High 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; and

(c) Any relief mentioned in paragraph (1)(c), (d), and (g) of section 621.

(2) Reserved.

(3) Unless extended under paragraph (1)(f) of section 621, the relief granted under this section terminates when the application for recognition is decided upon.

(4) The High Court may refuse to grant relief under this section if such relief would interfere with the administration of a foreign main proceeding.

§620. Effects of recognition of a foreign main proceeding.

(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; and

(c) The right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.

(2) The scope, and the modification or termination, of the stay and suspension referred to in paragraph (1) of this section are subject to any provisions of law of the Republic relating to insolvency that apply to exceptions, limitations, modifications or termination in respect of the stay and suspension referred to in paragraph (1) of this section.

(3) Paragraph (1)(a) of this section does not affect the right to commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor.

(4) Paragraph (1) of this section does not affect the right to request the commencement of a proceeding under laws of the Republic relating to insolvency or the right to file claims in such a proceeding.

§621. Relief that may be granted upon recognition of a foreign proceeding.

(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 High Court may, at the request of the foreign representative, grant any appropriate relief, including:

(a) Staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities, to the extent they have not been stayed under paragraph (1)(a) of section 620;

(b) Staying execution against the debtor's assets to the extent it has not been stayed under paragraph (1)(b) of section 620;

(c) Suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under paragraph (1)(c) of section 620;

(d) Providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;

(e) Entrusting the administration or realization of all or part of the debtor's assets located in the Republic to the foreign representative or another person designated by the High Court;

(f) Extending relief granted under paragraph (1) of section 619; and

(g) Granting any additional relief that may be available to the person or body administering a reorganization or liquidation under the law of the Republic.

(2) Upon recognition of a foreign proceeding, whether main or non-main, the High Court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in the Republic to the foreign representative or another person designated by the High Court, provided that the High Court is satisfied that the interests of creditors in the Republic are adequately protected.

(3) In granting relief under this section to a representative of a foreign non-main proceeding, the High Court must be satisfied that the relief relates to assets that, under the law of the Republic, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

§622. Protection of creditors and other interested persons.

(1) In granting or denying relief under section 619 or 621, or in modifying or terminating relief under paragraph (3) of this section, the High Court must be satisfied that the interests of the creditors and other interested persons, including the debtor, are adequately protected.

(2) The High Court may subject relief granted under sections 619 or 621 to conditions it considers appropriate.

(3) The High Court may, at the request of the foreign representative or a person affected by relief granted under sections 619 or 621, or at its own motion, modify or terminate such relief.

§623. Actions to avoid acts detrimental to creditors.

(1) Upon recognition of a foreign proceeding, the foreign representative has standing to initiate actions to avoid or otherwise render ineffective acts detrimental to creditors that are available in the Republic to a person or body administering a reorganization or liquidation.

(2) When the foreign proceeding is a foreign non-main proceeding, the High Court must be satisfied that the action relates to assets that, under the law of the Republic, should be administered in the foreign non-main proceeding.

§624. Intervention by a foreign representative in proceedings in the Republic.

Upon recognition of a foreign proceeding, the foreign representative may, provided the requirements of the law of the Republic are met, intervene in any proceedings in which the debtor is a party.

DIVISION 4: COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

§625. Cooperation and direct communication between a court of the Republic and foreign courts or foreign representatives.

(1) In matters referred to in section 1, the High Court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through the person or body administering a reorganization or liquidation under the law of the Republic.

(2) The High Court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives.

§626. Cooperation and direct communication between the High Court and foreign courts or foreign representatives.

(1) In matters referred to in section 601, the person or body administering a reorganization or liquidation under the law of the Republic shall, in the exercise of its functions and subject to the supervision of the High Court, cooperate to the maximum extent possible with foreign courts or foreign representatives.

(2) The person or body administering a reorganization or liquidation under the law of the Republic is entitled, in the exercise of its functions and subject to the supervision of the High Court, to communicate directly with foreign courts or foreign representatives.

§627. Forms of cooperation.

Cooperation referred to in sections 625 and 626 may be implemented by any appropriate means, including:

(a) Appointment of a person or body to act at the direction of the High Court;

(b) Communication of information by any means considered appropriate by the High Court;

(c) Coordination of the administration and supervision of the debtor's assets and affairs;

(d) Approval or implementation by courts of agreements concerning the coordination of proceedings;

(e) Coordination of concurrent proceedings regarding the same debtor; and

(f) Reserved.

DIVISION 5: CONCURRENT PROCEEDINGS

§628. Commencement of a proceeding under the laws of the Republic relating to insolvency after recognition of a foreign main proceeding.

After recognition of a foreign main proceeding, a proceeding under the laws of the Republic relating to insolvency may be commenced only if the debtor has assets in the Republic; the effects of that proceeding shall be restricted to the assets of the debtor that are located in the Republic and, to the extent

necessary to implement cooperation and coordination under sections 625, 626 and 627, to other assets of the debtor that, under the law of the Republic, should be administered in that proceeding.

§629. Coordination of a proceeding under the laws of the Republic relating to insolvency and a foreign proceeding.

Where a foreign proceeding and a proceeding under the laws of the Republic relating to insolvency are taking place concurrently regarding the same debtor, the High Court shall seek cooperation and coordination under sections 625, 626 and 627, and the following shall apply:

(a) When the proceeding in the Republic is taking place at the time the application for recognition of the foreign proceeding is filed, (i) Any relief granted under section 619 or 621 must be consistent with the proceeding in the Republic; and

(ii) If the foreign proceeding is recognized in the Republic as a foreign main proceeding, section 620 does not apply;

(b) When the proceeding in the Republic commences after recognition, or after the filing of the application for recognition, of the foreign proceeding, (i) Any relief in effect under sections 619 or 621 shall be reviewed by the High Court and shall be modified or terminated if inconsistent with the proceeding in the Republic; and

(ii) If the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in paragraph (1) of section 620 shall be modified or terminated pursuant to paragraph (2) of section 620 if inconsistent with the proceeding in the Republic; and

(c) In granting, extending or modifying relief granted to a representative of a foreign non-main proceeding, the High Court must be satisfied that the relief relates to assets that, under the law of the Republic, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

§630. Coordination of more than one foreign proceeding.

In matters referred to in section 601, in respect of more than one foreign proceeding regarding the same debtor, the High Court shall seek cooperation and coordination under sections 625, 626 and 627, and the following shall apply:

(a) Any relief granted under sections 619 or 621 to a representative of a foreign non-main proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding;

(b) If a foreign main proceeding is recognized after recognition, or after the filing of an application for recognition, of a foreign non-main proceeding, any relief in effect under sections 619 or 621 shall be reviewed by the High Court and shall be modified or terminated if inconsistent with the foreign main proceeding;

(c) If, after recognition of a foreign non-main proceeding, another foreign non-main proceeding is recognized, the High Court shall grant, modify or terminate relief for the purpose of facilitating coordination of the proceedings.

§631. Presumption of insolvency based on recognition of a foreign main proceeding.

In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under the laws of the Republic relating to insolvency, proof that the debtor is insolvent.

§632. Rule of payment in concurrent proceedings.

Without prejudice to secured claims or rights in rem, a creditor who has received part payment in respect of its claim in a proceeding pursuant to a law relating to insolvency in a foreign State may not receive a payment for the same claim in a proceeding under the laws of the Republic relating to insolvency regarding the same debtor, so long as the payment to the other creditors of the same class is proportionately less than the payment the creditor has already received.

DIVISION 5. SHORT TITLE AND EFFECTIVE DATE

§633. Effective Date.

This Act shall take effect on the date of certification in accordance with Article IV, Section 21 of the Constitution.

CERTIFICATE

I hereby certify:

1. That Nitijela Bill No: 112 was passed by the Nitijela of the Republic of the Marshall Islands on the 20th day of February 2018; and

2. That I am satisfied that Nitijela Bill No: 112 was passed in accordance with the relevant provisions of the Constitution of the Republic of the Marshall Islands and the Rules of Procedures of the Nitijela.

I hereby place my signature before the Clerk this 15th day of March 2018.

Hon. Kenneth A. Kedi
Speaker
Nitijela of the Marshall Islands

Attest:

Morean Watak
Clerk
Nitijela of the Marshall Islands