Introduction

With the adoption of the North American Free Trade Agreement ("NAFTA"), trade and investment among Canada, Mexico and the United States has grown dramatically. Since 1994, the total volume of trade between the three NAFTA parties has expanded from $297 billion to $676 billion in 2000, an increase of 128 percent.[1] In NAFTA's first year, foreign direct investment (both outflows and inflows) among the NAFTA parties totaled $16.1 billion. By 1999, those flows had more than doubled to $40.5 billion.

[2]These investments have not all been one way.[3] Certainly, U.S. companies have made enormous investments in Canadian and Mexican companies, with Citibank's recent acquisition of Banamex representing only one impressive example. But Mexican companies also have been purchasers.[4] Increasingly, Canadian, Mexican and U.S. companies conduct business and own assets throughout the NAFTA region. This growth in international business is certain to generate a corresponding growth in the number of international business failures.[5] With these companies conducting business in multiple jurisdictions, their financial distress will create situations where assets and claimants are spread across the continent.

Today, we will both consider what legal rules apply in these situations and how international law accommodates (or fails to accommodate) financial distress. A short answer to this question was recently offered by Robert Rasmussen, Professor of Law at Vanderbilt University, who said quite simply that:

> "There is no international bankruptcy law. No question, there are international insolvencies. Transnational firms, just like domestic ones, often cannot generate sufficient revenue to satisfy their debt obligations. Their financial distress creates a situation where assets and claimants are scattered across more than one country. But there is no international law

> that provides a set of rules for resolving the financial distress of these firms. The absence of any significant free-standing international bankruptcy treaty means that a domestic court confronted with the domestic part of a transnational enterprise has to decide which nation's domestic bankruptcy law will apply to which assets. To the extent that one wants to talk about an 'international bankruptcy law,' it is nothing more than the question of when, as a matter of domestic law, a court will resolve a dispute according to the law of another country rather than its own nation's bankruptcy law. *International bankruptcy law as it currently exists is thus, in reality, domestic bankruptcy law.*"[6]

As former U.S. Speaker of the House of Representatives "Tip" O'Neill once said, "all politics is local." The same is true with international insolvency laws: at the core of every international insolvency is the domestic law of the various nations participating in the insolvency.

Core International Insolvency Concepts

What gives a nation the right to participate in the corporate insolvency process? The answer to this question illustrates the several core concepts crucial to a basic understanding of the international insolvency process.

FIND THE FOREIGN ELEMENT

There is a simple, one word answer to the above question – nexus. There are three possible nexuses to a cross-border insolvency which link a sovereign nation to the proceeding – a debtor, its creditors and the debtor's assets. Each nexus raises potential cross-border issues complicating the administration of the debtor's estate. For example, are we dealing with a U.S. debtor that has Canadian creditors? Is a particular Canadian creditor subject to the jurisdiction of the U.S. Bankruptcy Court such that it would be bound by the provisions of the U.S. Bankruptcy Code (such as the automatic stay), as well as orders of the U.S. Bankruptcy Court (such as an order confirming

the plan of reorganization). What if the Canadian creditor is not subject to the U.S. Bankruptcy Court's jurisdiction and seeks to enforce its lien against assets located outside the United States? Does the U.S. Bankruptcy Court have the power to preclude such action? If not, what steps could the U.S. debtor take to protect its Canadian assets from lien foreclosure? Can it institute an "ancillary" or supplementary proceeding in Canada to the U.S. bankruptcy proceeding to protect its Canadian assets from Canadian creditors? If it can, what happens if local law does not include an automatic stay of creditor collection activities? How is the U.S. debtor supposed to reorganize its business if foreign creditors are allowed to strip the company of its foreign assets? There are no easy answers to these questions.

Similar questions arise with respect to a Mexican corporation with assets located in the United States that seeks bankruptcy protection in its home jurisdiction of Mexico. Is protection available under U.S. law to stay collection activities of U.S. creditors concerning assets located in the United States? To what extent must a U.S. creditor accept the scheme of priority afforded under Mexican law? Does it matter if U.S. law governs the transaction between the parties? If not, can and should the U.S. creditor institute a full-blown or "plenary" bankruptcy proceeding under U.S. law to protect its rights? If a U.S. bankruptcy is initiated, what happens when two competing forums – a Mexican court and a U.S. court – each assert jurisdiction over the U.S. assets and issue conflicting orders concerning the disposition of such assets? Is there an existing framework for resolving such conflict? Again, there are no easy answer to these questions. Still, some of the answers drive how cross-border proceedings are structured, how cross-border bankruptcy estates are administered and ultimately, the respective outcomes of the various participants in the proceeding.

JURISDICTION

A starting point to answering some of these questions is to consider the jurisdiction of the U.S. Bankruptcy Courts over foreign assets and foreign creditors. The jurisdiction of U.S. Bankruptcy Courts is

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both in personam and in rem.

In Rem Jurisdiction

As a fundamental matter, the U.S. Bankruptcy Court has power over all estate assets regardless of where such assets are located. Thus, to the extent that a debtor subject to a U.S. bankruptcy has assets in Guadalajara, Mexico, the U.S. Bankruptcy Court has the power to issue orders with respect to such assets and ultimately distribute those assets to creditors under a plan of reorganization. The question, however, is whether foreign creditors are bound by such orders of the U.S. Bankruptcy Court. The answer to this question is a function of whether the U.S. Bankruptcy Court has personal jurisdiction over the creditor.

Personal Jurisdiction

As a rule, the jurisdiction of U.S. Bankruptcy Courts extends to all persons who are present within the territorial boundaries of the United States. Thus, regardless of whether you personally appear in a bankruptcy case, everybody within the United States is subject to the jurisdiction of the U.S. Bankruptcy Court for purposes of obeying its orders. This includes Mexican corporations which transact business in the United States. Thus, if the U.S. Bankruptcy Court has personal jurisdiction over a foreign creditor, that creditor is bound by orders of the U.S. Bankruptcy Court.

INTERNATIONAL COMITY

In situations where the U.S. Bankruptcy Court does not have personal jurisdiction over the foreign creditor, orders of the U.S. Bankruptcy Court may still be enforced by a foreign court having jurisdiction over the foreign creditor under principles of international comity.

The U.S. Supreme Court has described comity as:

> [T]he recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another

> nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws.

Hilton v. Guyot, 159 U.S. 113, 164 (1895). As the U.S. Court of Appeals for the Third Circuit explained:

> Although more than mere courtesy and accommodation, comity does not achieve the force of an imperative or obligation. Rather, it is a nation's expression of understanding which demonstrates due regard both to international duty and convenience and to the rights of persons protected by its own laws. Comity should be withheld only when its acceptance would be contrary or prejudicial to the interest of the nation called upon to give it effect.

Somportext Ltd. v. Philadelphia Chewing Gum Corp., 453 F.2d 435, 440 (3d Cir. 1971) (citing L. Orfield & E. Re, *International Law* 736-37 (1965)), *cert. denied,* 405 U.S. 1017 (1972).

Thus, to the extent that the foreign court abides by the doctrine of international comity, by asserting its jurisdiction over the foreign creditor, it can compel the foreign creditor to abide by orders of the U.S. Bankruptcy Court (or any other U.S. court for that matter). Similarly, to the extent that a foreign court issues an order concerning a foreign debtor, U.S. courts can recognize and enforce the order under comity principles.

In the United States, U.S. Bankruptcy Courts have historically recognized the importance of extending comity to a foreign bankruptcy proceeding and have uniformly granted comity to insolvency proceedings in Canada, Switzerland, Germany and England, among others.[7] Non-bankruptcy courts in the United States have also recognized comity principles in non-payment suits brought against a debtor that is subject to an insolvency proceeding in its home jurisdiction. In a recent case, the U.S. Second Circuit cited comity as a reason to dismiss a non-payment suit brought by Ecoban Finance Limited, a banking organization, against Altos

Hornos de Mexíco S.A., which was then subject to a suspension of payments proceeding in Mexico.[8]

It is important to recognize, however, that comity is not unfettered. As a threshold matter, federal courts will recognize foreign bankruptcy proceedings only if the foreign laws comport with due process.[9] Due process in this context refers to the right of persons affected by the foreign judgment to be given notice and the opportunity to be heard in the foreign proceeding.[10]

The comity a U.S. court affords a foreign court also may be limited by the jurisdiction of the foreign court. Thus, in seeking the application of the comity doctrine in a U.S. court, the applicant may be required to show that the foreign court has jurisdiction to hear the insolvency proceeding regarding the relevant debtors. Comity may also be withheld "when its acceptance would be contrary or prejudicial to the interest of the nation called upon to give it effect."[11]

Thus, assuming that (i) the foreign law complies with due process; (ii) the foreign court has proper jurisdiction over the matter; and (iii) extension of comity is not contrary or prejudicial to local law, a U.S. court can enforce the foreign order under comity principles. This is true for a foreign debtor seeking to enforce a foreign order in a U.S. court, as well as for a U.S. debtor seeking to enforce an order of the U.S. Bankruptcy Court in a foreign jurisdiction.

CHOICE-OF-LAW

This discussion begs the question of multiple insolvency proceedings in different jurisdictions occurring simultaneously for the same debtor and/or its affiliates. Naturally, bankruptcy laws differ across nations. We would expect some of these differences even if all countries agreed as to the fundamental purpose of bankruptcy or insolvency, which they do not. At the core at the insolvency debate is the question of whether (and when) a firm in financial distress should be liquidated or reorganized. Some domestic bankruptcy laws guard against inefficient attempts to keep a firm going, while others protect against premature liquidation. While most capitalist

nations embrace "efficiency" as the core goal, they often disagree on how to achieve it. Liquidate a company suffering economic distress, but reorganize a company suffering only from financial distress, or give companies suffering economic distress an opportunity to survive through the economic cycle. Socialist nations simply favor redistribution over efficiency as a fundamental matter.

These choices reflect different, often conflicting, policy judgments about which group or groups should be favored in bankruptcy proceedings. Some nations provide extra protections to current employees, tort claimants or creditors generally. For instance, English bankruptcy law incorporates the law of preferential transfers, but includes intent as an element to having received a preference. Moreover, few nations have incorporated the concept of the automatic stay in their insolvency laws, and even fewer nations provide for adequate protection of a secured creditor's collateral. Without question, the fundamental problem that arises when a transnational firm becomes insolvent is what law to apply in the collective proceedings.

Harmonization of Cross-Border Proceedings

Today, as a result of recent statutory changes, the bankruptcy laws of Canada, Mexico and the U.S. recognize the choice-of-law issues inherent in transnational insolvencies, as well as the practical issues presented in administering a cross-border bankruptcy estate.

RIGHTS AND REMEDIES OF FOREIGN DEBTORS UNDER THE U.S. BANKRUPTCY CODE

The U.S. Bankruptcy Code provides a good example of recognition provided under a domestic bankruptcy law to cross-border insolvencies. While the U.S. Bankruptcy Code does not currently address the majority of the problems associated with transnational insolvencies, it does fill part of the void left by the lack of any international insolvency treaty and offers several important mechanisms to facilitate an equitable administration of a multinational debtor's reorganization or liquidation.

Under the U.S. Bankruptcy Code, the foreign debtor has two legal options regarding assets and creditor claims in this country. These are (1) to commence a plenary bankruptcy case in the United States; or (2) to commence an ancillary proceeding in the United States to aid in the administration of the foreign insolvency proceeding.

Plenary Proceeding

A foreign debtor – and in recognition of today's forum, we specify a Mexican debtor – can commence a plenary bankruptcy case in the United States so long as the debtor satisfies the eligibility requirement of § 109 of the U.S. Bankruptcy Code. This basically means that the Mexican debtor must be a person that resides or has a domicile, a place of business or property in the United States. For all practical purposes, the inquiry begins and ends with whether the Mexican company has a bank account in the U.S.[12] Regardless of the account's balance, merely having the account in the United States is sufficient to confer jurisdiction on the U.S. Bankruptcy Court over the Mexican debtor.[13] A foreign representative (as well as foreign creditors) may also file an involuntary plenary petition against the Mexican debtor, thereby commencing a full bankruptcy case under § 303(b)(4) of the U.S. Bankruptcy Code. Upon the commencement of either a voluntary or involuntary case, all of the procedural and substantive aspects of a full bankruptcy case would apply to the Mexican debtor as they would apply to any U.S. debtor.

A Mexican debtor, however, may not need a plenary bankruptcy proceeding in the United States because of the full procedural and substantive requirements associated with this full-blown proceeding. A plenary proceeding is also more costly, complicated and time consuming because it requires the scheduling of creditors, the possible formation of a creditors' committee and, in the case of a Mexican debtor concurrently involved in a Mexican insolvency proceeding, the coordination of a plan of reorganization or liquidation between the U.S. and Mexican courts. It may also open transactions to unnecessary judicial or creditor scrutiny. The U.S. Bankruptcy Code, therefore, contains a mechanism which allows the Mexican debtor to accomplish tailored objectives without commencing a full-

blown, plenary proceeding.

304 Proceeding

Section 304 of the U.S. Bankruptcy Code, titled "Cases Ancillary to Foreign Proceedings," permits a foreign representative, such as a conciliator or intervenor under the Mexican Ley de Concursos Mercantiles (the "LCM"), to commence an ancillary case in the United States to assist the "foreign" insolvency proceeding (e.g., our Mexican proceeding). A § 304 proceeding does not involve the filing of schedules, the formation of any plan or any of the other requirements generally applicable to full proceedings under the U.S. Bankruptcy Code. At the same time, the § 304 proceeding generally does not provide the full benefits of the automatic stay and other protections of plenary bankruptcy relief. Rather, it is a limited proceeding designed to allow a foreign representative to pursue specific objectives.

Section 304(b) of the U.S. Bankruptcy Code sets forth the relief available in an ancillary proceeding. First, to prevent U.S. creditors from seizing the Mexican debtor's U.S. assets, the U.S. Bankruptcy Court may enter a wide range of interim or permanent injunctions concerning such action.[14] This may include enjoining the creation or enforcement of liens against the Mexican debtor's property in the United States. Second, the U.S. Bankruptcy Court may order the turnover of a Mexican debtor's U.S. assets to the Mexican representative for administration in the foreign proceedings.[15] Finally, in addition to injunctive and turnover relief, a court may grant "other appropriate relief".[16] Courts have used this catchall provision to order a wide range of relief including granting discovery requests and the appointment of a co-trustee.

Section 304(c) of the U.S. Bankruptcy Code provides the U.S. Bankruptcy Court with specific criteria for deciding whether to grant ancillary relief. Under § 304(c), "the court shall be guided by what will best assure an economical and expeditious administration" of the Mexican debtor's estate consistent with six factors:

(1) just treatment of all holders claims against or interests in such estate;

(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreignproceeding;

(3) prevention of preferential or fraudulent dispositions of property of such estate;

(4) distribution of proceeds of such estate substantially in accordance with the order prescribed by this title;

(5) comity; and

(6) if appropriate, the provisions of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

No weight is given to any particular factor, thereby giving the U.S. Bankruptcy Court administering the ancillary proceeding maximum flexibility in fashioning particular relief. However, judicial opinions vary across the board as to what actions are appropriate. The proper approach is to examine each request for ancillary relief on a case-by-case basis with a view toward practical resolution of the dispute.

CANADIAN AND MEXICAN INTERNATIONAL INSOLVENCY REGIMES: ADOPTING THE UNCITRAL MODEL LAW

Recently, both Canada and Mexico have adopted new insolvency statutes that aim, in part, to facilitate the administration of cross-border insolvency proceedings by incorporating provisions of a United Nations model law on cross-border insolvencies (the "Model Law"). UNCITRAL – The United Nations Commission on International Trade Law – published its Model Law on Cross-Border Insolvencies in May 1997. The Model Law does not modify the existing material rules concerning the insolvency proceeding in a particular jurisdiction, but rather provides an overarching

framework of fundamental principles to guide case administration and, thus, functions much like a de facto protocol. The Model Law sets forth rules concerning the cooperation of judicial authorities and coordination of several proceedings. A primary or "home" proceeding must be elected and adopting states are required to recognize a foreign proceeding if certain conditions are met. As a result, the foreign representative has direct access to the local jurisdictions' courts and need not rely on diplomatic channels, such as consulates or embassies, to facilitate the proceeding.

Since UNCITRAL adopted the Model Law in 1997, its provisions have been incorporated into Canadian insolvency legislation – the Bankruptcy and Insolvency Act (the "BIA") and the Companies' Creditors Arrangement Act – in 1997, and Mexican insolvency legislation – the LCM – in 2000.[17]

Examination of these provisions as set forth in the BIA and LCM illustrates how the Model Law attempts to harmonize multiple insolvency proceedings occurring simultaneously in different jurisdictions. For instance, the BIA now provides that the Court may "make such orders and grant such relief as it considers appropriate to facilitate, approve or implement arrangements that will result in a co-ordination of proceedings under this Act with any foreign proceeding."[18] These orders may be made "on such terms and conditions as the court considers appropriate in the circumstances."[19] Similarly, under the LCM, the Mexican judge is directed to "attempt to cooperate and coordinate his actions with other proceedings" occurring in the foreign jurisdiction.[20]

Each of the BIA and LCM also incorporates the concept of, and recognizes, a "foreign representative". A "foreign representative" is defined as a person who under the laws of his or her jurisdiction is assigned the functions in connection with a foreign proceeding that are similar to those performed by a trustee, liquidator, administrator or receiver appointed by the court.[21] Under the BIA, a foreign representative may commence and continue an action in respect of a debtor as if the foreign representative were a creditor, trustee, liquidator or receiver of the property of the debtor.[22] The foreign

representative can also be recognized without having to attorn to the jurisdiction of the Canadian court, subject to being liable for costs.[23] Under the LCM, the foreign representative has full access to the Mexican courts, may initiate a commercial insolvency proceeding under Mexican law, fully participate in any such proceeding, and direct the local trustee, inspector or conciliator to take certain actions on behalf of the foreign representative such as selling or distributing estate property.[24]

Under both the BIA and LLM, a "foreign proceeding" is broadly defined to include any judicial or administrative proceeding commenced under a law relating to bankruptcy or insolvency and dealing with the collective interest of creditors generally.[25] A certified copy of a foreign court order, absent evidence to the contrary, is deemed to be proof of insolvency and, with respect to foreign representatives, is deemed to be proof of the foreign representative's appointment pursuant to the foreign court order.[26] Under the BIA, recognition by a Canadian court of both the foreign proceeding and the foreign representative is not precluded by the fact that an appeal or a review of the proceeding in the foreign jurisdiction may be underway. Canadian courts are also permitted to grant relief as if the foreign appeal or review proceedings has not been undertaken.[27]

The BIA also allows a Canadian court to seek the aid and assistance of a court, tribunal or other authority by order or written request or otherwise in a foreign proceeding as the Court considers appropriate.[28] Thus, a Canadian court is statutorily empowered to seek the assistance of U.S. Bankruptcy Courts. This provision also allows for the recognition of such innovations a joint teleconference proceedings, which has been implemented in cases such as The Loewen Group. The LCM does not expressly contain such provisions, but cooperation among the Mexican and foreign proceedings is presumed.

Moreover, both of the BIA and LCM allow for a "stay" of local judicial proceedings under certain conditions. Section 271(2) of the BIA provides that,

> On application by a foreign representative in respect of a foreign proceeding commenced for the purpose of effecting a composition, an extension of time or a scheme of arrangement in respect of a debtor or in respect of the bankruptcy of a debtor, the Court may grant a stay of proceedings against the debtor or against the debtor's property in Canada on such terms and for such period as is consistent with the relief provided for [under the BIA] in respect of a debtor in Canada who files a Notice of Intention or a Proposal or becomes bankrupt in Canada, as the case may be.

Therefore, a foreign representative may apply for a stay of proceedings in Canada.[29] In *Multijurisdictional Insolvencies and Reorganizations,* Bruce Leonard discussed the effect of these provisions at page 57:

> The new provision appears to provide some relief from the uncertainty created by the extraterritorial applications of the automatic stay provisions of, for example, the *U.S. Bankruptcy Code*. Section 362 of the *U.S. Bankruptcy Code* creates an automatic worldwide stay of proceedings against the debtor immediately upon a bankruptcy or reorganizational filing and this stay would continue to be enforceable against, among others, Canadian creditors who are subject to the *in personam* jurisdiction of the United States courts by virtue of their doing business or having assets in the United States. This provision would therefore be of assistance to creditors in Canada who are not subject to the *in personam* jurisdiction of the foreign court.[30]

The same is true under Mexican insolvency law. Under Article 300 of the LCM, the presiding Mexican judge, upon request of the foreign representative, is authorized to stay (i) all enforcement proceedings against the debtor's property, and (ii) the exercise of a right to transfer, encumber or otherwise dispose of the debtor's property.[31]

THE GAP BETWEEN LAW AND REALITY

Without question, the recent developments in NAFTA bankruptcy laws will eventually facilitate the administration of cross-border insolvencies. The emphasis, however, must be on *eventually*. For the time being, few debtors or creditors in any of the NAFTA countries have invoked or relied upon these provisions. We suspect that this result is due primarily to judges' and lawyers' unfamiliarity with the new provisions. In Mexico, it may also be partly due to the preference for out-of-court workouts.

We further suspect that, as judges and lawyers initially gain familiarity with these provisions and attempt to take advantage of them, the provisions themselves will present opportunities for creative counsel representing a debtor or a minority creditor to delay and hinder the efficient administration of a cross-border case.[32] As any seasoned workout banker or lawyer has experienced, insolvency in every country offers numerous and varied examples of the gap between the law as written and as practiced, with law as practiced being rather inefficient and playing to the debtor's interest in prolonging the case as long as possible to avoid servicing its debt.

As a result, at least initially, these cross-border insolvency provisions in U.S., Canadian and Mexican law are likely to prolong the administration of cross-border insolvency cases by offering rich lodes of procedural challenges, defenses and appeals. Eventually, U.S., Canadian and Mexican courts should gain familiarity with the procedures and protocols now established (or pending adoption) in each country's legislation to more efficiently administer cross-border insolvency cases, and judges will have a body of precedents upon which to draw. The goal will be to foster legal integration of cross-border insolvency cases at a pace that matches the pace of economic integration likely achieved under NAFTA.

Endnotes

1. NAFTA At Seven, Building on a North American Partnership (July 2001).
2. NAFTA Delivers for America, The Council of the Americas, in association with The U.S. Council of the Mexico-U.S. Business Committee (August 2000). NAFTA Delivers for America, The Council of the Americas, in association with The U.S. Council of the Mexico-U.S. Business Committee (August 2000).
3. Between 1994 and 1998, Canadian investment in the United States increased approximately 82 percent from $41 billion to $74.8 billion. Mexican investment almost doubled during this time from about $2 billion to $4 billion. *Id.*
4. Representative examples of Mexican corporate investment in the U.S. include: Bimbo's acquisition of a Texas bakery company; Dina's purchase of Motor Coach Industries; Vitro's purchase of Anchor Glass; Imsa's purchase of a small U.S. steel company; and, most recently, Cemex's purchase of Southdown.
5. One widely-publicized, current example of a transnational NAFTA bankruptcy is The Loewen Group, the second largest operator of funeral homes and cemeteries in North America. Among the NAFTA integrators just mentioned, truck manufacturer DINA is rumored to be in financial distress and engaged in restructuring negotiations with creditors. Other NAFTA integrators will surely follow.
6. Rasmussen, Robert K., "Resolving Transactional Insolvencies through Private Ordering," Michigan L. Rev. (June 2000).
7. *See, e.g., Canada Southern R. Co. v. Gebhard,* 109 U.S. 527, 539-40 (1883); *Ritchie v. McMullen,* 159 U.S. 235 (1895); *Cornfield v. Investors Overseas Servs., Ltd.,* 471 F.Supp. 1255, 1260-62 (S.D.N.Y.), aff'd, 614 F.2d 1286 (2nd Cir. 1979); *Caddel v. Clariton Corp.,* 105 BR. 366 (N.D. Texas 1989); *In re Davis,* 191 BR. 577 (Bankr. S.D.N.Y. 1996) (court extends comity to Canadian debtor with respect to "automatic stay" under Bankruptcy and Insolvency Act § 69).
8. *Ecoban Finance Limited v. Altos Hornos de Mexico, S.A.,* 2001 WL 40895 (2nd Cir.).
9. *Vetrix Steamship Co., S.A. v. Salen Dry Cargo A.B.,* 825 F.2d 709, 713 (2nd Cir. 1987).
10. For cases refusing to extend comity where the affected party was not afforded

due process in the foreign proceeding, see *Remington Rand Corp.-Delaware v. Business Systems Inc.,* 830 F.2d 160, 1266 (3rd Cir. 1987); *Somportex Ltd. v. Philadelphia Chewing Gum Corp.,* 453 F.2d 435, 443 (10th Cir. 1971).

11. *Somportex Ltd. v. Philadelphia Chewing Gum Corp.,* 453 F.2d at 440; *In re Colorado Corp.,* 531 F.2d 463, 468 (10th Cir. 1976).
12. *In re Berthoud,* 231 F. 529 (S.D.N.Y.1916); *Bank of America v. Word of English,* 23 B.R. 1015 (N.D. Ga. 1982).
13. However, just because the U.S. Bankruptcy Court may take jurisdiction over the foreign debtor, that does not mean the Court *will* take jurisdiction. Section 305 of the U.S. Bankruptcy Code expressly permits a bankruptcy court to decline jurisdiction over a case where "the interests of creditors and the debtor would be better served" by abstention.
14. 11 U.S.C. § 304(b)(1).
15. 11 U.S.C. § 304(b)(2). A few courts have placed conditions on the turnover of a foreign debtor's property. For example, in *In re Lineas Aereas de Nicaragua S.A.,* 13 B.R. 779 (Bankr. S.D. Fla. 1981), the court ordered the turnover of the debtor's American assets only upon the condition that the foreign representative apply the assets to claims of the debtor's American creditors.
16. 11 U.S.C. § 304(b)(3).
17. The Model Law is currently before the U.S. Congress and may be enacted as Chapter 15 of the Bankruptcy Code if the two bills passed by the House and Senate are reconciled in conference to a single piece of legislation.
18. BIA, § 268(3).
19. BIA, § 268(4).
20. LCM, Art. 308.
21. BIA, § 267; LCM, Art. 279(IV).
22. BIA, § 270.
23. BIA, § 272.
24. LCM, Arts. 298, 300 and 302.
25. BIA, § 267; LCM, Art. 279(I).
26. LCM, Arts. 292 and 295.
27. BIA, § 273.
28. BIA, § 271(1).
29. However, the BIA stipulates that a stay of proceedings may only be granted as a result of proceedings taken in Canada. BIA, § 269.
30. E. Bruce Leonard, "MultiJurisdictional Insolvencies and Reorganizations," 10 Comm. Insol. R. (1988), at p. 59.

[31] LCM, Art. 300.

[32] This fact has historically been true. Notable cross-border insolvencies such as Olympia & York was administered for over eight years. The international bankruptcies of Maxwell Communications and Dow Corning began in 1991 and 1995, respectively, and are still open cases.

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