

# Cross-Border Insolvency: The Missing Piece in the Philippine Economy

*Fidel Maximo M. Diego III\**

I. INTRODUCTION.....	340
A. <i>Cross-Border Insolvency</i>	
II. CROSS-BORDER INSOLVENCY IN THE PHILIPPINES .....	345
A. <i>History of Insolvency and Rehabilitation Law in the Philippines</i>	
B. <i>Cross-Border Insolvency in the Philippines</i>	
C. <i>Access</i>	
D. <i>Recognition</i>	
E. <i>Relief</i>	
F. <i>Cooperation</i>	
III. CONCLUSION.....	360

## I. INTRODUCTION

International trade agreements have allowed corporations to move freely around increasingly porous boundaries. Transnational Corporations (TNCs) — as these corporations are commonly known — are corporations that are “generally regarded as [corporations] comprising entities [operating] in more than one country[.]”<sup>1</sup> TNCs can take many forms. It can be an incorporated or unincorporated enterprise comprising of a parent enterprise and its foreign affiliates, or it can just be a single company which conducts its business in various jurisdictions.<sup>2</sup>

---

\* '16 J.D. cand., Ateneo de Manila University School of Law. Member, Executive Committee and Board of Editors, *Ateneo Law Journal*. The Author was the Associate Lead Editor for the second issue of the 58th volume of the *Journal*. He previously wrote *Evolution of International Arbitration Law in the Philippines*, 59 ATENEO L.J. 297 (2014).

*Cite as* 60 ATENEO L.J. 340 (2015).

1. United Nations Conference on Trade and Development (UNCTAD), Transnational Corporations Statistics, *available at* <http://unctad.org/en/Pages/DIAE/Transnational-Corporations-Statistics.aspx> (last accessed July 25, 2015) [hereinafter UNCTAD, TNC Statistics].
2. *See* UNCTAD, Transnational corporations (TNC), *available at* [http://unctad.org/en/Pages/DIAE/Transnational-corporations-\(TNC\).aspx](http://unctad.org/en/Pages/DIAE/Transnational-corporations-(TNC).aspx) (last accessed July 25, 2015).

A TNC, like any other ordinary corporation,<sup>3</sup> is not immune to financial distress.<sup>4</sup> However, unlike an ordinary corporation, a TNC's financial distress is felt globally.<sup>5</sup> In 2008, the Lehman Brothers, the fourth largest bank in the United States of America (USA) and one of the largest financial services firms in the world,<sup>6</sup> filed for bankruptcy as it incurred "\$619 billion in debt."<sup>7</sup> Unfortunately, because of the integrated and global nature of the Lehman Brothers' business, its failure affected businesses from different countries.<sup>8</sup> In fact, the collapse triggered global economic turmoil.<sup>9</sup>

Eventually, the Lehman Brothers applied for insolvency to have its assets distributed to its creditors worldwide.<sup>10</sup> Unfortunately, insolvency laws are only domestic in scope — it only affects the debtors and the creditors within the enacting state.<sup>11</sup> Thus, to help facilitate the proceeding, the Cross-Border Insolvency Protocol (Protocol) was developed.<sup>12</sup> The Protocol was needed because "many of the [Lehman Brothers'] assets and activities [were] spread across different jurisdictions, and ... [were] subject to the laws of more than one [f]orum."<sup>13</sup> The Protocol was established to "facilitate the coordination of the [p]roceedings, and to enable the [courts from various jurisdictions] to

- 
3. For purposes of this Essay, an ordinary corporation is a non-TNC corporation.
  4. An ordinary corporation or a TNC under financial distress is a corporation that "cannot meet or has difficulty in paying off its financial obligations to its creditors." Investopedia, Financial Distress, *available at* [http://www.investopedia.com/terms/f/financial\\_distress.asp](http://www.investopedia.com/terms/f/financial_distress.asp) (last accessed July 15, 2015).
  5. DAVID MILMAN, NATIONAL CORPORATE LAW IN A GLOBALISED MARKET: THE UK EXPERIENCE IN PERSPECTIVE 130 (2009 2d.).
  6. See VanEps Kunneman VanDoorne, Cross-Border Insolvency Protocol for the Lehman Brothers Group of Companies (Execution Copy of the Cross-Border Insolvency Protocol from the Law Firm of VanEps Kunneman VanDoorne), *available at* <http://www.ekvandoorne.com/files/CrossBorderProtocol.pdf> (last accessed July 25, 2015) [hereinafter VanEps, Cross-Border Insolvency Protocol].
  7. Investopedia, Case Study: The Collapse of Lehman Brothers, *available at* <http://www.investopedia.com/articles/economics/09/lehman-brothers-collapse.asp> (last accessed July 25, 2015) & Carrick Mollenkamp, et al., *Lehman Files for Bankruptcy, Merrill Sold, AIG Seeks Cash*, WALL ST. J., Sep. 16, 2008, *available at* <http://www.wsj.com/articles/SB122145492097035549> (last accessed July 25, 2015).
  8. See VanEps, Cross-Border Insolvency Protocol, *supra* note 6.
  9. Adam Shell, Lehman Bros. collapse triggered economic turmoil, *available at* <http://abcnews.go.com/Business/lehman-bros-collapse-triggered-economic-turmoil/story?id=8543352> (last accessed July 25, 2015).
  10. See Investopedia, *supra* note 7.
  11. See generally VanEps, Cross-Border Insolvency Protocol, *supra* note 6, at 2.
  12. *Id.*
  13. *Id.*

[cooperate] in the administration of the [Lehman Brothers' assets] in the interest of all of [its] creditors.”<sup>14</sup> Furthermore, “cooperation and communication among [courts], where possible, would enable effective case management and consistency of judgments.”<sup>15</sup>

Lehman Brothers showed how the territoriality principle of insolvency laws can be a problem for TNCs. A TNC has its assets and activities situated in various jurisdictions and its creditors are located within and without its home state.<sup>16</sup> Numerous obstacles arise from the situation: (1) which courts have jurisdiction to hear cases; (2) whether local or foreign insolvency law will apply; and (3) how the judgment will be enforced. Aside from the legal obstacles, cultural and political factors also muddle the situation — a state, dealing with the insolvency and rehabilitation of a TNC within its territory, is inclined to prefer local creditors over foreign ones.<sup>17</sup>

#### *A. Cross-Border Insolvency*

Cross-border insolvency is a situation wherein an “insolvent debtor has assets and/or creditors in more than one country.”<sup>18</sup> A cross-border insolvency situation arises in two instances: (1) when the distressed TNC has assets in more than one state; or (2) where the TNC's creditors are not from the state where the insolvency proceedings are taking place.<sup>19</sup>

These instances happen because TNCs “incur liabilities and acquire assets in [different] foreign jurisdictions in the course of trade and investment.”<sup>20</sup> At present, national insolvency and rehabilitation laws are the only method for resolving cross-border insolvency.<sup>21</sup> Thus, the “major complication in cross-border insolvency is the difference between the form and [the] implementation of national insolvency laws.”<sup>22</sup>

---

14. *Id.*

15. *Id.*

16. UNCTAD, TNC Statistics, *supra* note 1.

17. See Pedro Jose F. Bernardo, *Cross-Border Insolvency and the Challenges of the Global Corporation: Evaluating Globalization and Stakeholder Predictability through the UNCITRAL Model Law on Cross-Border Insolvency and the European Union Insolvency Regulation*, 56 ATENEO L.J. 799 (2012).

18. Aryja B. Majumdar, *The UNCITRAL Model Law on Cross-Border Insolvency*, INDIA L.J., Mar. 2009, at 2.

19. *Id.*

20. ROMAN TOMASIC, *INSOLVENCY LAW IN EAST ASIA* 536 (2013 2d.).

21. *Id.* at 537.

22. *Id.* (citing IAN F. FLETCHER, *INSOLVENCY IN PRIVATE INTERNATIONAL LAW: NATIONAL AND INTERNATIONAL APPROACHES* 4 (1999)).

Generally, the courts apply Conflicts of Law doctrines in any cross-border insolvency dispute.<sup>23</sup> There are three phases in resolving Conflicts of Law problems:

- (1) jurisdiction;
- (2) choice of law; and
- (3) enforcement of judgment.<sup>24</sup>

As regards cross-border insolvency, three approaches are applied. These are the following:

- (1) the Universalist Approach;
- (2) the Territorial Approach; and
- (3) the Mixed Approach.<sup>25</sup>

In the Universalist Approach, the courts and laws of a particular state have exclusive jurisdiction over the insolvency of the TNC, and the creditors must pursue their claims in that state alone.<sup>26</sup> Universalism is “conceptually [ ] attractive”<sup>27</sup> because only one court has jurisdiction over the entirety of the TNCs assets.<sup>28</sup> Thus, it ensures the creditor’s equal treatment,<sup>29</sup> it lowers administration and litigation cost,<sup>30</sup> and it promotes economic activity.<sup>31</sup>

However, this approach might promote “systematic bias”<sup>32</sup> wherein the state, exercising exclusive jurisdiction over the proceeding, might favor the creditors of a particular state over others.<sup>33</sup> This approach also raises

---

23. TOMASIC, *supra* note 20, at 537 (citing EDWARD I. SYKES & MICHAEL C. PRYLES, *AUSTRALIAN PRIVATE INTERNATIONAL LAW* 1 (2d ed. 1987)).

24. *Hasegawa v. Kitamura*, 538 SCRA 261, 272–73 (2007).

25. TOMASIC, *supra* note 20, at 538.

26. *Id.*

27. Fredrick Tung, *Fear of Commitment in International Bankruptcy*, 33 GEO. WASH. INT’L L. REV. 555, 561 (2001) (citing Jay Lawrence Westbrook, *Theory and Pragmatism in Global Insolvencies: Choice of Law and Choice of Forum*, 65 AM. BANKR. L.J. 457, 465 (1991)).

28. *Id.*

29. *Id.* at 561–62.

30. *Id.*

31. *Id.* at 562.

32. *Id.* at 576.

33. Tung, *supra* note 27, at 576.

sovereignty concerns — other states might assert their own jurisdiction over assets within their territory.<sup>34</sup>

In the Territorial Approach, “each jurisdiction manages the assets [of the TNC] within its own territory according to its own laws, and the representatives of [the] creditors outside the jurisdiction are not recognized.”<sup>35</sup> This would result to an “international grab”<sup>36</sup> wherein each state would apply its own laws on the assets located within its jurisdiction and ignore the rulings made by other states.<sup>37</sup> The Territorial Approach is frowned upon as it is unfair to foreign creditors who gets a favourable judgment in other jurisdictions.

In the Mixed Approach, “courts of each jurisdiction have authority over the assets [of the TNC] in their territory but acknowledge the interests of foreign creditors and aim to cooperate with courts in other jurisdictions.”<sup>38</sup> This approach

implicitly recognizes that states are not likely to surrender their sovereignty in resolving entities within their jurisdiction. Still, because of the imperatives of transnational cooperation that attempts to bring all parties together by recognizing a locus of corporate activity[,] [i.e.,] the foreign main proceeding, jurisdictions are allowed a cooperative space [wherein] a coordinated effort at corporate resolution could be undertaken. The [Mixed Approach], therefore, would allow the [TNC] to be dealt with as a going concern rather than as a separate operating entity. This preserves the total firm value and even allows for the possibility of coordinated corporate rehabilitation and not merely outright [TNC] liquidation.<sup>39</sup>

According to a World Bank Report,<sup>40</sup> there is “no universal [approach to a cross-border insolvency problem] because countries vary significantly in their needs, as do their laws on security interests, recordation, property and contract rights, remedies[,] and enforcement procedures.”<sup>41</sup> In fact, national,

---

34. *Id.* at 578.

35. See TOMASIC, *supra* note 20, at 538.

36. *Id.*

37. *Id.*

38. *Id.*

39. Bernardo, *supra* note 17, at 804-05 (emphasis supplied).

40. The World Bank, The Principles and Guidelines for Effective Insolvency and Creditor Rights Systems (An Unpublished Paper of the World Bank in Connection with the Program to Develop Reports on the Observance of Standards and Codes), available at [http://www.worldbank.org/ifa/ipg\\_eng.pdf](http://www.worldbank.org/ifa/ipg_eng.pdf) (last accessed July 25, 2015).

41. *Id.* at 26, ¶ 75.

social, and economic policies would also play an important part in any cross-border insolvency problem.<sup>42</sup>

Regardless of the approach, a good insolvency law “balance[s] the rights and interests of the creditor and [of the country] by reapportioning the risk of insolvency in a way that suits a country’s economic, social[,] and political goals.”<sup>43</sup> The Report also recognized that society is continuously evolving, thus, insolvency laws should not be static.<sup>44</sup> Thus, lawmakers should make sure that any insolvency law is constantly reappraised.

## II. CROSS-BORDER INSOLVENCY IN THE PHILIPPINES

### A. *History of Insolvency and Rehabilitation Law in the Philippines*

The first law concerning insolvency and rehabilitation in the Philippines is Act No. 1956 or the Insolvency Law of 1909.<sup>45</sup> However, the Insolvency Law of 1909 has no provision on cross-border insolvency. It merely provides for suspension of payments,<sup>46</sup> voluntary insolvency,<sup>47</sup> and involuntary insolvency.<sup>48</sup>

The law on rehabilitation came 67 years later with the enactment of the Presidential Decree No. 902-A, commonly known as the Securities and Exchange Commission (SEC) Reorganization Act (SEC Reorganization

---

42. According to the World Bank, a country’s policy objectives would also influence its insolvency law, to wit —

[S]hould the [insolvency] law promote discipline and seek to weed out inefficient and incompetent market players? Or should it be tolerant, and would tolerance encourage entrepreneurial activity? Should the law be pro-debtor [(debtor friendly)] or pro-creditor [(creditor friendly)], and what do these labels mean? Should the law have a wider social or collective purpose, or should it aim to achieve a just and reasonable resolution of individual competing interests? For example, should the law seek to protect employment? Should it encourage investment? Should it be biased toward rehabilitation to shield the economy from systemic collapses that are not the fault of management?

*Id.* at 26, ¶ 74.

43. *Id.* ¶ 75.

44. *Id.* ¶ 77.

45. An Act Providing for the Suspension of Payments, the Relief of Insolvent Debtors, the Protection of Creditors, and the Punishment of Fraudulent Debtors [The Insolvency Law], Act No. 1956 (1909).

46. *Id.* §§ 2-13.

47. *Id.* §§ 14-19.

48. *Id.* §§ 20-28.

Act).<sup>49</sup> Curiously, the main purpose of the SEC Reorganization Act was not so much the creation of a corporate rehabilitation law; but, as the name implies, the reorganization of the SEC. The principal objectives of the law were to “reorganize and restructure the [SEC]” and confer upon it additional powers.<sup>50</sup> Thus, the SEC’s powers were expanded to include the appointment of “rehabilitation receivers.”<sup>51</sup> Because the SEC Reorganization Act was not meant to impose a rehabilitation law, it could not, without the aid of judicial interpretation, address the numerous issues that arose during the rehabilitation proceedings.

Two decades later, the Supreme Court approved the Interim Rules of Procedure on Corporate Rehabilitation (Interim Rules)<sup>52</sup> drafted by the SEC. The Interim Rules can be considered as the law governing rehabilitation. In all the three laws, however, there is no provision for cross-border insolvency.

It was only on 27 July 2009, when the Philippines enacted Republic Act No. 10142 or the Financial Rehabilitation and Insolvency Act of 2010 (FRIA),<sup>53</sup> when cross-border insolvency was finally introduced. Sections 139 to 142 of the FRIA provide that —

Section 139. Adoption of Uncitral Model Law on Cross-Border Insolvency. — Subject to the provision of Section 136 hereof and the rules of procedure that may be adopted by the Supreme Court, the Model Law on Cross-Border Insolvency of the [UNCITAD] is hereby adopted as part of this Act.

Section 140. Initiation of Proceedings. — The court shall set a hearing in connection with an insolvency or rehabilitation proceeding taking place in a foreign jurisdiction, upon the submission of a petition by the representative of the foreign entity that is the subject of the foreign proceeding.

Section 141. Provision of Relief. — The court may issue orders:

---

49. Reorganization of the Securities and Exchange Commission with Additional Powers and Placing the said Agency under the Administrative Supervision of the Office of the President, Presidential Decree No. 902-A (1976).

50. *Id.* whereas cl. & §§ 5-6.

51. Amending Further Section 6 of Presidential Decree No. 902-A, Presidential Decree No. 1799, § 1 (1981).

52. Supreme Court of the Philippines, Rules of Procedure on Corporate Rehabilitation, SC Administrative Matter No. 00-8-10-SC [Rules of Procedure on Corporate Rehabilitation] (Dec. 2, 2008).

53. An Act Providing for the Rehabilitation or Liquidation of Financially Distressed Enterprises and Individuals [Financial Rehabilitation and Insolvency Act] Republic Act No. 10142 (2010).

- (a) suspending any action to enforce claims against the entity or otherwise seize or foreclose on property of the foreign entity located in the Philippines;
- (b) requiring the surrender [of the] property of the foreign entity to the foreign representative; or
- (c) providing other necessary relief.

Section 142. Factors in Granting Relief. — In determining whether to grant relief under this subchapter, the court shall consider[:]

- (a) the protection of creditors in the Philippines and the inconvenience in pursuing their claim in a foreign proceeding;
- (b) the just treatment of all creditors through resort to a unified insolvency or rehabilitation proceedings;
- (c) whether other jurisdictions have given recognition to the foreign proceeding;
- (d) the extent that the foreign proceeding recognizes the rights of creditors and other interested parties in a manner substantially in accordance with the manner prescribed in this Act; and
- (e) the extent that the foreign proceeding has recognized and shown deference to proceedings under this Act and previous legislation.<sup>54</sup>

### *B. Cross-Border Insolvency in the Philippines*

According to Section 139 of the FRIA, the governing cross-border insolvency procedure in the Philippines will be the United Nations Commission on International Trade Law Model Law on Cross-Border Insolvency (UNCITRAL Model Law),<sup>55</sup> “subject to the provision of Section 136 [ ] and the rules of procedure that may be adopted by the Supreme Court[.]”<sup>56</sup> The adoption of the UNCITRAL Model Law is permissible via the incorporation clause of the Constitution.<sup>57</sup> Under Article

54. *Id.* §§ 139-42.

55. Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law, G.A. Res. 52, U.N. Doc. A/RES/52/158 (Jan. 30, 1998) [hereinafter UNCITRAL Model Law on Cross-Border Insolvency] & Revision of the Guide to Enactment of the Model Law on Cross-Border Insolvency and part four of the Legislative Guide on Insolvency Law of the United Nations Commission on International Trade Law, G.A. Res. 68, U.N. Doc. A/RES/68/107 A-B (Dec. 18, 2013) [hereinafter UNCITRAL Guide to Enactment].

56. Financial Rehabilitation and Insolvency Act, § 139.

57. *See* PHIL. CONST. art. 2, § 2 & *Rubrico v. Macapagal-Arroyo*, 613 SCRA 233, 267 (2010) (J. Carpio-Morales, separate opinion) (citing PHIL. CONST. art. 2, § 2 & 4 RECORD OF THE CONSTITUTIONAL COMMISSION 772 (1986)).



II, Section 2 of the Constitution, the Philippines adopts the “generally accepted principles of international law as part of the law of the land[.]”<sup>58</sup> Based on the clarification provided by Commissioner Adolfo S. Azcuna, during the deliberations of the Constitutional Commission, the import of this provision is that the “incorporated law would have the force of statute.”<sup>59</sup> Thus, for all intents and purposes, the UNCITRAL Model Law shall be treated as a local law, subject only to Section 136 of the FRIA<sup>60</sup> and the rules of procedure adopted by the Supreme Court.

### 1. The UNCITRAL Model Law

National insolvency laws are often “ill-equipped to deal with cases of a cross-border nature.”<sup>61</sup> Even if national insolvency laws are adequate, there are “[o]nly a limited number of countries [which] have a legislative framework for dealing with cross-border insolvency[.]”<sup>62</sup> Applying Conflicts of Law doctrines does not fare any better in resolving cross-border disputes because they do “not provide the same degree of predictability and reliability as can be provided by specific legislation, such as contained in the [UNCITRAL] Model Law, on judicial cooperation, recognition of foreign insolvency proceedings[,] and access for foreign representatives to courts.”<sup>63</sup> There is also the problem of fraudulent insolvent debtors who conceal assets in foreign jurisdictions.

---

58. PHIL. CONST. art. 2, § 2.

59. *Rubrico*, 613 SCRA at 267.

60. Financial Rehabilitation and Insolvency Act, § 136. This Section provides —

Liquidation of a Securities Market Participant. — The foregoing provisions of this chapter shall be without prejudice to the power of a regulatory agency or self-regulatory organization to liquidate trade-related claims of clients or customers of a securities market participant which, for purposes of investor protection, are hereby deemed to have absolute priority over other claims of whatever nature or kind insofar as trade-related assets are concerned.

For purposes of this [S]ection, trade-related assets include cash, securities, trading right[,] and other owned and used by the securities market participant in the ordinary course of this business.

*Id.*

61. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL), UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY WITH GUIDE TO ENACTMENT AND INTERPRETATION, at 20, ¶ 5, U.N. Sales No. E.14.V.2 (2014) [hereinafter UNCITRAL, MODEL LAW WITH GUIDE TO ENACTMENT].

62. *Id.* at 21, ¶ 7.

63. *Id.* ¶ 8.

Therefore, the UNCITRAL Model Law was formulated “to assist [s]tates to equip their [national] insolvency laws with a modern, harmonized[,] and fair framework to address more effectively instances of cross-border proceedings concerning [TNCs] experiencing severe financial distress or insolvency.”<sup>64</sup> Article 1, paragraph 1 of the UNCITRAL Model Law outlines the types of issues that the UNCITRAL Model Law covers in cases of cross-border insolvency, to wit:

- (a) inward-bound requests for recognition of a foreign proceeding;
- (b) outward-bound requests from a court or insolvency representative in the enacting [s]tate for recognition of an insolvency proceeding commenced under the laws of the enacting [s]tate;
- (c) coordination of proceedings taking place concurrently in two or more [s]tates; and
- (d) participation of foreign creditors in insolvency proceedings taking place in the enacting [s]tate.<sup>65</sup>

The UNCITRAL Model Law “reflects practices in cross-border insolvency matters that are characteristic of modern [and] efficient insolvency systems. [ ] The [s]tates enacting the Model Law would be introducing useful additions and improvements in national insolvency regimes designed to resolve problems arising in cross-border insolvency cases.”<sup>66</sup> The UNCITRAL Model Law also represents the harmonization of local and foreign laws in the area of cross-border insolvency. The UNCITRAL Model Law focuses on four key areas in order to achieve this harmonization, namely: (1) access; (2) recognition; (3) relief; and (4) cooperation.<sup>67</sup> These four areas will be further explained in another part of this Essay.

*a. Procedural Aspect Only*

Any acceptable Model Law has to be procedural in nature, rather than substantive, because of the wide range of legal regimes in various countries. Thus, even though the UNCITRAL Model Law “reflects practices in cross-border insolvency matters that are characteristic of modern [and] efficient insolvency systems[,]”<sup>68</sup> it does not attempt a *substantive* unification of insolvency laws. On the contrary, it only provides for a *procedural* unification of insolvency laws. In fact, the UNCITRAL Model Law has been characterized as a template that countries could incorporate into their

---

64. *Id.* at 19, ¶ 1.

65. *Id.* at 35, ¶ 53.

66. *Id.* at 19, ¶ 2.

67. UNCITRAL, MODEL LAW WITH GUIDE TO ENACTMENT, *supra* note 61, at 26-27, ¶ 24.

68. *Id.* at 19, ¶ 2.

domestic insolvency law, making changes to it, where necessary, to accommodate foreign law.<sup>69</sup>

Pursuant to its procedural nature, the UNCITRAL Model Law respects the sovereignty of the state to formulate its own insolvency laws. In fact, the UNCITRAL Model Law does even not define *insolvency*. It allows the different jurisdictions to have its own definition. Thus, if foreign creditors want to file a petition for liquidation of an insolvent debtor, the foreign creditor must first show that the debtor satisfies the meaning of insolvency as defined under the local law.

The procedural nature of the UNCITRAL Model Law is manifested by how its Articles are drafted, to wit —

Article 11. Application by a foreign representative to commence a proceeding under [*identify laws of the enacting [s]tate relating to insolvency*].

A foreign representative is entitled to apply to commence a proceeding under [*identify laws of the enacting [s]tate relating to insolvency*] if the conditions for commencing such a proceeding are otherwise met.<sup>70</sup>

Similar to the given example, most of the Articles of the UNCITRAL Model Law are drafted this way.<sup>71</sup> The main purpose of the *square brackets* is to enable the UNCITRAL Model Law to fit in with any kind of national insolvency system. Thus, “where the expression is likely to vary from country to country, the [UNCITRAL] Model Law, instead of using a particular term, indicates the meaning of the term in italics within square brackets and calls upon the drafters of the national law to use the appropriate term[.]”<sup>72</sup> Thus, a party to an insolvency proceeding would just “fill in the blanks” with the appropriate local law, to wit —

Article 11. Application by a foreign representative to commence a proceeding under [*Section 91 of the FRLA*].

A foreign representative is entitled [to] commence a proceeding under [*Section 91 of the FRLA*] if the conditions for commencing such a proceeding are otherwise met.<sup>73</sup>

69. *Id.* at 25, ¶ 20.

70. UNCITRAL Model Law on Cross-Border Insolvency, *supra* note 55, art. 11 (emphasis supplied).

71. *See generally* UNCITRAL Model Law on Cross-Border Insolvency, *supra* note 55.

72. UNCITRAL, MODEL LAW WITH GUIDE TO ENACTMENT, *supra* note 61, at 25, ¶ 21 (a).

73. *See generally* UNCITRAL Model Law on Cross-Border Insolvency, *supra* note 55, art. 11 & Financial Rehabilitation and Insolvency Act, § 91.

Section 91 of the FRIA<sup>74</sup> refers to persons who can file a petition for involuntary liquidation. Thus, a foreign creditor who wants to file a petition for involuntary liquidation of a domestic corporation would follow the procedural requirements in Article 11 of the UNCITRAL Modal Law and have to satisfy the substantive requirements in Section 91 of the FRIA.

---

74. Financial Rehabilitation and Insolvency Act, § 91. This Section provides that

*Involuntary Liquidation.* — Three [ ] or more creditors the aggregate of whose claims is at least either [o]ne million pesos (₱1,000,000.00) or at least [ ] 25% of the subscribed capital stock or partner's contributions of the debtor, whichever is higher, may apply for and seek the liquidation of an insolvent debtor by filing a petition for liquidation of the debtor with the court. The petition shall show that:

- (a) there is no genuine issue of fact or law on the claims/s of the petitioner/s, and that the due and demandable payments thereon have not been made for at least [ ] 180 days or that the debtor has failed generally to meet its liabilities as they fall due; and
- (b) there is no substantial likelihood that the debtor may be rehabilitated.

At any time during the pendency of or after a rehabilitation court-supervised or pre-negotiated rehabilitation proceedings, three [ ] or more creditors whose claims [are] at least either [o]ne million pesos (₱1,000,000.00) or at least [ ] 25% of the subscribed capital or partner's contributions of the debtor, whichever is higher, may also initiate liquidation proceedings by filing a motion in the same court where the rehabilitation proceedings are pending to convert the rehabilitation proceedings into liquidation proceedings. The motion shall be verified, shall contain or set forth the same matters required in the preceding paragraph, and state that the movants are seeking the immediate liquidation of the debtor.

If the petition or motion is sufficient in form and substance, the court shall issue an [o]rder:

- (1) directing the publication of the petition or motion in a newspaper of general circulation once a week for two [ ] consecutive weeks; and
- (2) directing the debtor and all creditors who are not the petitioners to file their comment on the petition or motion within [ ] 15 days from the date of last publication.

If, after considering the comments filed, the court determines that the petition or motion is meritorious, it shall issue the Liquidation Order mentioned in Section 112 hereof.

*Id.*

The UNCITRAL Model Law recognizes that foreign orders might sometimes clash with local laws. Thus, Article 20, paragraph 2<sup>75</sup> provides the procedure if the local court wants to modify or terminate the effects of foreign decrees. All the local court has to do is fill in the square brackets with the particular provisions of local law that applies. Article 20, paragraph 2 also satisfies procedural due process as it provides for a way for parties to a proceeding, adversely affected by a stay or suspension order, to have an opportunity to be heard in court. The parties would just have to spell out or refer to the local provisions that govern such situation.

Other indicators of the procedural nature of the UNCITRAL Model Law are the following:

- (a) Providing the person administering a foreign insolvency proceeding [ ] with access to the [local] courts [ ], thereby permitting the foreign representative to seek a temporary ‘breathing space,’ and allowing the [local] courts [ ] to determine what coordination among the jurisdictions or other relief is warranted for optimal disposition of the insolvency;
- (b) Determining when a foreign insolvency proceeding should be accorded ‘recognition’ and what the consequences of recognition may be;
- (c) Providing a transparent regime for the right of foreign creditors to commence, or participate in, an insolvency proceeding in the [Philippines];

---

75. UNCITRAL Model Law on Cross-Border Insolvency, *supra* note 55, art. 20, ¶ 2. This provision pertains to the effects of recognition of a foreign main proceeding in the following manner —

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 [A]rticle are subject to [refer to any provisions of law of the enacting [s]tate 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 [A]rticle].

*Id.* (emphasis supplied).

- (d) Permitting [local] courts [ ] to cooperate more effectively with foreign courts and foreign representatives involved in an insolvency matter;
- (e) Authorizing [local] courts [ ] and persons administering insolvency proceedings in the enacting [s]tate to seek assistance abroad;
- (f) Providing for court jurisdiction and establishing rules for coordination where an insolvency proceeding in the [Philippines] is taking place concurrently with an insolvency proceeding in a foreign [s]tate; [and]
- (g) Establishing rules for coordination of relief granted in the [Philippines] to assist two or more insolvency proceedings that may take place in foreign [s]tates regarding the same debtor.<sup>76</sup>

*b. Four Key Areas*

The framework of operation of the UNCITRAL Model Law hinges upon the right of the foreign representative to seek insolvency relief in a jurisdiction with respect to proceedings taking place in another state. Here, the UNCITRAL Model Law introduces the concept of a “foreign proceeding” which refers to “a collective judicial or administrative proceeding in a foreign [s]tate, 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[.]”<sup>77</sup>

However, the mere institution of a foreign proceeding does not require local courts to automatically afford relief in favor of a foreign representative; the law requires the foreign representative to *apply* for recognition of such foreign proceeding.<sup>78</sup>

This is possible because the text of the UNCITRAL Model Law focuses on four areas upon which international agreement might be feasible:

- (a) Representatives of foreign insolvency proceedings [and foreign creditors have access to local courts,] and [ ] representatives of proceedings [in the Philippines and creditors in the Philippines have access to foreign courts];
- (b) Recognition [by local courts] of certain orders issued by foreign courts;
- (c) Relief to assist foreign proceedings; and
- (d) Cooperation among the courts of [s]tates where the debtor’s assets are located and coordination of concurrent proceedings.<sup>79</sup>

---

76. UNCITRAL, MODEL LAW WITH GUIDE TO ENACTMENT, *supra* note 61, at 20.

77. UNCITRAL Model Law on Cross-Border Insolvency, *supra* note 55, art. 2 (a).

78. *Id.* art. 15, ¶ 1.

79. UNCITRAL, MODEL LAW WITH GUIDE TO ENACTMENT, *supra* note 611, at 26-27, ¶ 24.

C. Access

Access refers to both inbound access and outbound access.<sup>80</sup> Inbound access refers to foreign representatives and foreign creditors having access to local courts;<sup>81</sup> while outbound access refers to Philippine representatives and Philippine creditors having access to foreign courts.<sup>82</sup> A summary of both inbound and outbound access is seen in the table below:

Inbound Access	Outbound Access
<p>A foreign representative applying in the Philippines has the following rights:</p> <p>(1) Direct access to local courts;<sup>83</sup></p> <p>(2) To apply to commence a proceeding in the Philippines in accordance with Philippine law;<sup>84</sup> and</p> <p>(3) To apply for recognition of the foreign proceeding for which they have been appointed.<sup>85</sup></p>	<p>Article 5 of the UNCITRAL Model Law allows a Philippine representative or a Philippine creditor involved in a liquidation proceeding under the Philippine law to act in the foreign state on behalf of such local proceedings.<sup>86</sup></p>
<p>Upon recognition of the foreign proceeding, the foreign representative or foreign creditor is entitled to participate in insolvency-related proceedings in the Philippines in accordance with Philippine law; to initiate in the Philippines an action to avoid or otherwise render ineffective acts detrimental to creditors, and to intervene in any Philippine proceeding in which the creditor is a party.</p>	

80. *Id.* at 27, ¶ 25.

81. *Id.*

82. *Id.*

83. UNCITRAL Model Law on Cross-Border Insolvency, *supra* note 55, art. 9.

84. *Id.* art 11.

85. *Id.* art. 15.

86. *Id.* art. 5. This provision states that

[a] [insert the title of the person or body administering a reorganization or liquidation under the law of the enacting [s]tate] is authorized to act in a foreign [s]tate on behalf of a proceeding under [identify laws of the enacting [s]tate relating to insolvency], as permitted by the applicable foreign law.

*Id.* (emphasis supplied).

The fact that a foreign representative has the right to apply to a local court does not subject the foreign representative to the jurisdiction of the local court for any other purpose other than that application.<sup>87</sup> Most importantly, foreign creditors applying for recognition in the Philippines have the same rights as local creditors.<sup>88</sup> As a result, the preference of credits in the Civil Code of the Philippines applies to foreign creditors.<sup>89</sup> The UNCITRAL Model Law however does not have any provision regarding notice to persons. Thus, it can be presumed that the laws of the forum govern the notice requirement.<sup>90</sup>

#### *D. Recognition*

One of the main purposes of the UNCITRAL Model Law is to establish a much simpler procedure for the recognition of foreign proceedings.<sup>91</sup> Thus, local courts should give recognition when the requirements under Article 2 of the UNCITRAL Model Law are met and the evidences mentioned in Article 15 of the UNCITRAL Model Law<sup>92</sup> are provided for. There is no

---

87. Article 10 of the UNCITRAL Model Law provides that

[t]he sole fact that an application pursuant to the present [l]aw is made to the [local] court[s] in [a] [s]tate by a foreign representative does not subject the foreign representative of the foreign assets and affairs of the debtor to the jurisdiction of the [such local] courts [ ] for any purpose other than the application.

*Id.* art 10.

88. *Id.* art. 13, ¶ 1.

89. UNCITRAL, MODEL LAW WITH GUIDE TO ENACTMENT, *supra* note 611, at 89, ¶ 194. See also An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, arts. 2236–51 (1950).

90. See UNCITRAL, MODEL LAW WITH GUIDE TO ENACTMENT, *supra* note 611, at 27–28, ¶ 28.

91. Compare UNCITRAL Model Law on Cross-Border Insolvency, *supra* note 55, with 1997 RULES OF CIVIL PROCEDURE, rule 39, § 48.

92. UNCITRAL Model Law on Cross-Border Insolvency, *supra* note 55, art. 15. The application for recognition of a foreign proceedings shall be accompanied by:

- (a) [a] certified copy of the decision commencing the foreign proceeding and appointing representative;
- (b) [a] certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or
- (c) [i]n the absence of evidence referred to in subparagraphs (a) and (b), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.



need for authenticating the documents mentioned in Article 15 because “[local courts] [are] entitled to presume that documents submitted in support of the application for recognition are authentic, whether or not they have been legalized.”<sup>93</sup> Also, local courts can refuse recognition when it is against public policy.<sup>94</sup>

There are two kinds of foreign proceedings that are subject to recognition: (1) main proceedings, and (2) non-main proceedings.<sup>95</sup>

A main proceeding is a proceeding located in the place where the debtor has its center of main interests at the date of the commencement of a foreign proceeding.<sup>96</sup> The “center of main interests” is not defined under the UNCITRAL Model Law, but it is presumed to be the registered office of the debtor.<sup>97</sup> As a general rule, the main proceeding should have principal responsibility for managing the insolvency of the debtor — subject only to the appropriate coordination procedures under the UNCITRAL Model Law.<sup>98</sup> According to the Virgos-Schmit Report to the European Union Council,<sup>99</sup> the “main proceedings have universal scope. [It encompasses] all the debtor’s assets on a world-wide basis and [it affects] all creditors, wherever located[.] [O]nly one set of main proceedings may be opened[.]”<sup>100</sup>

A non-main proceeding is one where the debtor has an establishment.<sup>101</sup> Under Article 2, paragraph (f) of the UNCITRAL Model Law, an establishment is “any place of operation where the debtor carries out [a] non-transitory economic activity with human means and goods or

---

*Id.*

93. *Id.* art. 16, ¶ 3.

94. UNCITRAL, MODEL LAW WITH GUIDE TO ENACTMENT, *supra* note 61, at 65, ¶ 129.

95. UNCITRAL Model Law on Cross-Border Insolvency, *supra* note 55, art. 17, ¶ 2.

96. *Id.*

97. *Id.* art. 16, ¶ 3.

98. UNCITRAL, MODEL LAW WITH GUIDE TO ENACTMENT, *supra* note 61, at 28, ¶ 31.

99. See Miguel Virgos & Etienne Schmit, *Report on the Convention on Insolvency Proceedings*, European Union Council Document 6500/96, DRS 8 (CFC) (May 3, 1996).

100. UNCITRAL, MODEL LAW WITH GUIDE TO ENACTMENT, *supra* note 61, at 44, ¶ 84 (citing Virgos & Schmit, *supra* note 99, at 51, ¶ 73).

101. UNCITRAL Model Law on Cross-Border Insolvency, *supra* note 55, art. 17, ¶ 2 (b).

services.”<sup>102</sup> To be considered as an establishment, the economic activity must be carried out using human resources.<sup>103</sup> This implies that there should be a certain stability in the operation.<sup>104</sup> A purely occasional economic activity cannot be classified as an establishment.<sup>105</sup> Unlike the “center of main interest” in the main proceeding, there is no presumption as to the “establishment.”<sup>106</sup> Thus, the determination of whether or not it is an establishment is factual in nature. However, under Article 16 of the UNCITRAL Model Law, local courts are entitled to presume as valid the determination of the foreign court that the place of operation is an establishment.<sup>107</sup>

Recognition of a main proceeding or a non-main proceeding has many effects, which includes the following:

- (1) the foreign representative is entitled to participate in any local insolvency proceeding regarding the debtor;<sup>108</sup>
- (2) the foreign representative has standing to initiate actions in the local proceeding;<sup>109</sup> and
- (3) the foreign representative may intervene in any proceeding where the debtor is a party.<sup>110</sup>

#### *E. Relief*

The UNCITRAL Model Law provides for two kinds of relief: (1) relief upon application or interim relief; and (2) relief as a result of recognition.<sup>111</sup>

On the one hand, the interim relief is given when it is urgently needed to protect the assets of the debtor or the interests of the creditors from the time of the filing of the recognition until the recognition have been acted upon.<sup>112</sup> On the other hand, the relief as a result of recognition is the relief

---

102. *Id.* art. 2 (f).

103. *Id.* See also Virgos & Schmit, *supra* note 99, at 49, ¶ 71.

104. Virgos & Schmit, *supra* note 99, at 49, ¶ 71.

105. *Id.*

106. UNCITRAL, MODEL LAW WITH GUIDE TO ENACTMENT, *supra* note 611, at 47, ¶ 90.

107. See UNCITRAL Model Law on Cross-Border Insolvency, *supra* note 55, art. 16.

108. *Id.* art 12.

109. *Id.* art 23 (1).

110. *Id.* art 24.

111. *Id.* arts. 19 & 20.

112. UNCITRAL, MODEL LAW WITH GUIDE TO ENACTMENT, *supra* note 611, at 80, ¶ 170.

given when the application has already been granted.<sup>113</sup> However, it is possible for the relief granted as a result of recognition to coincide with other reliefs in a comparable proceeding commenced under the local law.<sup>114</sup> Thus, the reliefs provided for in the FRIA may also be used in conjunction with the reliefs in the UNCITRAL Model Law.

Similar to the FRIA, one of the reliefs provided for in the UNCITRAL Model Law is the stay order.<sup>115</sup> Such stay order is “mandatory” in the sense that it is automatically imposed upon the granting of the application of recognition.<sup>116</sup> National insolvency laws can, however, modify stay orders.<sup>117</sup>

#### *F. Cooperation*

Cooperation between and among courts from various jurisdictions is the core element of the UNCITRAL Model Law —

[i]t’s objective is to enable courts and insolvency representatives from two or more countries to be efficient and achieve optimal results. Cooperation ... is often the only realistic way, for example, to prevent dissipation of assets, to maximize the value of assets (*e.g.*[,] when items of production equipment located in two [s]tates are worth more if sold together than if sold separately)[,] or to find the best solutions for the reorganization of the enterprise.<sup>118</sup>

Cooperation is not dependent upon the recognition of the foreign proceeding.<sup>119</sup> Thus, there can be cooperation even before a proceeding has been commenced. The UNCITRAL Model Law only provides that the courts shall “cooperate to the maximum extent possible”<sup>120</sup> and that the local courts should cooperate with foreign courts and foreign representatives

---

113. *Id.* at 83, ¶ 176.

114. UNCITRAL Model Law on Cross-Border Insolvency, *supra* note 55, art. 7.

115. See UNCITRAL Model Law on Cross-Border Insolvency, *supra* note 55, art. 20, ¶ 1.

116. *Id.*

117. *Id.* art. 20, ¶ 2.

118. UNCITRAL, MODEL LAW WITH GUIDE TO ENACTMENT, *supra* note 611, at 95, ¶ 211. See generally UNCITRAL Model Law on Cross-Border Insolvency, *supra* note 55, arts. 25-27.

119. UNCITRAL, MODEL LAW WITH GUIDE TO ENACTMENT, *supra* note 611, at 95, ¶ 212.

120. UNCITRAL Model Law on Cross-Border Insolvency, *supra* note 55, art. 25, ¶ 1.

“directly.”<sup>121</sup> The use of the word “directly” is intended to avoid traditional time-consuming procedures such as letters rogatory.<sup>122</sup>

Article 27 of the UNCITRAL Model Law provides for the forms of cooperation that may be used by the local courts, to wit:

- (a) Appointment of a person or body to act at the direction of the court;
- (b) Communication of information by any means considered appropriate by the 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; [and]
- (e) Coordination of concurrent proceedings regarding the same debtor[.]<sup>123</sup>

The list is not exclusive as Article 27, paragraph (f) gives each country the discretion to supplement additional forms or examples of cooperation.<sup>124</sup>

The UNCITRAL Model Law also provides for the coordination of concurrent proceedings.<sup>125</sup> This means that the recognition of a foreign proceeding does not terminate the proceedings pending in local courts and vice versa. The coordination of concurrent proceedings also means that the reliefs granted in various jurisdictions can be adjusted<sup>126</sup> — pursuant to the basic principle that the no person shall recover twice from the same act or omission, and the relief granted in all proceedings should be consistent.<sup>127</sup>

An example of how the reliefs are adjusted is provided for in Article 32 of the UNCITRAL Model Law or the rule of payment in concurrent proceedings, to wit —

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 [s]tate may not receive a payment for

121. *Id.*

122. UNCITRAL, MODEL LAW WITH GUIDE TO ENACTMENT, *supra* note 61, at 97, ¶ 218.

123. UNCITRAL Model Law on Cross-Border Insolvency, *supra* note 55, art. 27.

124. *Id.* art. 27 (f). *See also* UNCITRAL, MODEL LAW WITH GUIDE TO ENACTMENT, *supra* note 61, at 99, ¶ 222.

125. *See* UNCITRAL Model Law on Cross-Border Insolvency, *supra* note 55, art. 27 (e).

126. *Id.*

127. CIVIL CODE, art. 2177. This Provision provides that a “plaintiff cannot recover damages twice for the same act or omission of the defendant.” *Id.*

the same claim in a proceeding under [*identify laws of the enacting*] [*s*] [*tate 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.<sup>128</sup>

Article 32 is intended to avoid the situation

in which a creditor might obtain more [*favorable*] treatment than the other creditors of the same class by obtaining payment of the same claim in insolvency proceedings in different jurisdictions. For example, an unsecured creditor has received [*five percent*] of its claim in a foreign insolvency proceeding; [*and*] that creditor also participates in the insolvency proceeding [*in the Philippines*], where the rate of distribution is 15[*%*]. [*I*]n order to put the creditor in the equal position as the other creditors [*in the Philippines*], the creditor would receive 10[*%*] of its claim [*in the Philippines*].<sup>129</sup>

However, Article 32 does not affect the preference of credit as provided for in the Civil Code.<sup>130</sup>

### III. CONCLUSION

2015 is the year that the vision of Association of South East Asian Nations Community (ASEAN Community) is expected to materialize. Part of this vision is “the establishment of a globally integrated and competitive single market and production base, built on the principles of equitable economic development and shared prosperity, through the ASEAN Economic Community (AEC).”<sup>131</sup> The AEC aims to transform “ASEAN into a region with free movement of goods, services, investment, skilled [*labor*,] and [*free*] flow of capital.”<sup>132</sup>

However, as global integration increases, “there is a tendency for risk-taking behavior to rise, inasmuch as it contributes to success in a market-based economy.”<sup>133</sup> Therefore, the Philippine government needs to create

---

128. UNCITRAL Model Law on Cross-Border Insolvency, *supra* note 55, art. 32.

129. UNCITRAL, MODEL LAW WITH GUIDE TO ENACTMENT, *supra* note 611, at 107, ¶ 239.

130. See CIVIL CODE, arts. 2236–51.

131. ASIAN DEVELOPMENT BANK & INTERNATIONAL LABOUR ORGANIZATION, ASEAN COMMUNITY 2015: MANAGING INTEGRATION FOR BETTER JOBS AND SHARED PROSPERITY I (2014) (citing ASSOCIATION OF SOUTH EAST ASIAN NATIONS, ASEAN ECONOMIC COMMUNITY BLUEPRINT (2008) [hereinafter ASEAN, BLUEPRINT]).

132. ASEAN, BLUEPRINT, *supra* note 131, at 5.

133. Francisco Ed. Lim, Toward a More Forward Looking Insolvency System (An Unpublished Paper Submitted for the 9th Metrobank Foundation Professional Chair) 3, available at [http://www.mbfoundation.org.ph/docs/TOWARD%](http://www.mbfoundation.org.ph/docs/TOWARD%20)

mechanisms that would encourage profitable behavior and, at the same time, protect businesses and the public from the possible negative repercussions of certain ventures.<sup>134</sup> One of the mechanisms that would address these areas is a sound insolvency system, to wit —

the manner in which a country addresses insolvency is tied to other decisions [—] about support for entrepreneurial behavior as an engine of growth, about the promotion of education as a contributor to the well-educated workforce needed for the future, and about the extent to which safety nets are provided by governments to assist those who are less fortunate, among others.<sup>135</sup>

In fact, having a sound insolvency system is one of the indicators used by financial institutions in “benchmarking economies to determine the competitiveness of its investment climate.”<sup>136</sup> The financial institutions

[measure], among others, the degree to which the [ ] bankruptcy laws protect the borrower’s and lender’s rights. The measurement is made under the Legal Rights Index for Pillar 8 on Financial Market Development, one of the [12] pillars for measuring the competitiveness of economies worldwide.

While the Philippines improved by [10] notches overall in the 2012-2013 Global Competitiveness Report of the [World Economic Forum], relative to its rank for 2011-2012, it still fares quite poorly with a score/value of [four] on a 0-10 (best) scale under the Legal Rights Index. The Philippines’ score is the same as those of Lebanon, Iran[,] and Sri Lanka. This score is much lower than the scores of other Asian countries like Singapore, Hong Kong[,] and Malaysia, all of which obtained a perfect score of 10.<sup>137</sup>

One of the benefits of the AEC is that it allows “ASEAN service suppliers in providing services and in establishing [corporations] across national borders within the region[.]”<sup>138</sup> Thus, there is a need to protect the

20A%20MORE%20FORWARD-LOOKING%20INSOLVENCY%20SYSTEM\_Atty-Francis-Ed-Lim.pdf (last accessed July 25, 2015) (citing Parliament of Canada, Debtors and Creditors Sharing the Burden: A Review of the Bankruptcy and Insolvency Act and the Companies’ Creditors Arrangement Act (A Report of the Standing Senate Committee on Banking, Trade and Commerce Dated November 2003) 7-8, available at <http://www.parl.gc.ca/Content/SEN/Committee/372/bank/rep/bankruptcy-e.pdf> (last accessed July 25, 2015) [hereinafter Parliament of Canada, Debtors and Creditors Sharing the Burden]).

134. *Id.*

135. *Id.* at 2 (citing Parliament of Canada, Debtors and Creditors Sharing the Burden, *supra* note 133, at 8).

136. *Id.* at 9.

137. *Id.* at 9-10.

138. ASEAN, BLUEPRINT, *supra* note 131, at 10, ¶ 20.

TNCs that would inevitably emerge across the region. The recent addition of cross-border insolvency in Philippine law will definitely provide for the necessary security — the missing piece in the Philippine economy.