

# Cross-Border Insolvency and Structural Reform in a Global Economy

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## I. Introduction—The World Economy and International Insolvency

What do the economic crisis of 1997–98 and the Internet have in common? The answer is: cross-border insolvency. The economic crisis of 1997 (Economic Crisis), which began in Asia and in 1998 spread to Russia and Latin America,<sup>1</sup> demonstrated the interdependency of the world economy. Moreover, global interdependence is a future trend. Greater mobility, better communication, increases in world trade, and cross-border private investment<sup>2</sup> are all factors that contribute to the commercial crossing of borders. Another factor that will multiply cross-border economic relationships at an exponential rate is the Internet.

At a basic level, the Internet is a relatively inexpensive, fairly reliable, global communications network. At its most expansive, the Internet delivers the world to its users.<sup>3</sup> On a commercial level, a business can theoretically use the Internet to: (i) procure inventory and supplies; (ii) sell to customers; (iii) recruit investors; and (iv) employ people. Furthermore, these activities can take place anywhere in the world. A business is not limited to its own national borders. Indeed, the Internet gives a business the ability to actually be “present” in multiple jurisdictions. For example, a business can have its employees in one country, its

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1. For a discussion on the interdependency of global economies, see Stanley Fischer, *Global Markets and the Global Village in the 21st Century: Are International Organizations Prepared for the Challenge?* (visited Nov. 19, 1999) <<http://www.imf.org/external/np/speeches/1999/111999.htm>> (a speech prepared for delivery to the Deutsche Gesellschaft für Auswärtige Politik, German Society for Foreign Affairs, Berlin, Germany).

2. For a discussion of trade flows and private investment, see *World Economic Outlook* (visited May 9, 2000) <<http://www.imf.org/external/pubs/ft/weo/1999/02/index.htm>>.

3. Cyber Atlas cites a study in *The Computer Industry Almanac*, which predicts that the number of worldwide users with Internet access will reach 490 million by the year 2002. See *The World's Online Populations* (visited Feb. 24, 2000) <[http://cyberatlas.internet.com/big\\_picture/demographics/article/0,1323,5911\\_151151,00.html](http://cyberatlas.internet.com/big_picture/demographics/article/0,1323,5911_151151,00.html)>.

technology in another, and its physical headquarters elsewhere. Moreover, this “virtual global company” can be a business of almost any size, as the smallest of merchants can now cross borders.<sup>4</sup>

But what happens when a virtual global business fails? How will the various legal systems take account of the issues that arise when a debtor’s assets (real or intangible), creditors (suppliers, customers, investors, employees), and physical locations are scattered throughout the world? These are some of the questions that were being addressed in 1999 and will continue to be addressed in 2000.

This article will: (i) review some of the insolvency initiatives currently taking place in different parts of the world; (ii) provide a summary of various U.S. court cases that dealt with cross-border insolvency issues; and (iii) provide the reader with a selection of Internet-based resources.

## II. U.S. Cases of Interest to International Practitioners

### A. SUPREME COURT—*GRUPO MEXICANO DE DESARROLLO S.A. v. ALLIANCE BOND FUND, INC.*

In *Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc.*,<sup>5</sup> the U.S. Supreme Court reversed the Second Circuit and held that the district court had no authority to issue a preliminary injunction barring a debtor from disposing of assets prior to the obtaining of a judgment by an unsecured creditor. In doing so, the Supreme Court clearly stated that it would not follow the English example by establishing a prejudgment injunction comparable to a Mareva injunction.<sup>6</sup>

Grupo Mexicano de Desarrollo, S.A. (GMD) was a Mexican holding company involved in the financing of road construction projects in Mexico.<sup>7</sup> GMD issued \$250 million worth of notes to investors in February 1994 that were guaranteed by GMD’s four subsidiaries.<sup>8</sup> GMD in turn invested in companies to which the Mexican government had granted concessions to build and operate toll roads, and GMD was among the construction companies employed by the concessionaires.<sup>9</sup> The concessionaires fell into financial difficulty and defaulted in paying GMD and other contractors.<sup>10</sup> As part of a government rescue, GMD expected to receive \$309 million in assets from the Mexican government; however, GMD began to satisfy other substantial obligations rather than the payments due under the notes.<sup>11</sup>

The payees, respondents in front of the Court, filed suit in the Southern District of New York to enforce the notes.<sup>12</sup> The payees also sought and won a preliminary injunction against

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4. For example, the World Bank Institute is a partner in a virtual souk. See *The Virtual Souk* (visited May 9, 2000) <<http://www.elsouk.com>>. Artisans in Morocco, Tunisia, and Lebanon can sell their goods across borders. The goal is to build a global marketplace and thereby reduce local poverty.

5. *Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308 (1999).

6. See *id.* at 339.

7. See *id.* at 310.

8. See *id.*

9. See *id.* at 316.

10. See *id.*

11. See *id.*

12. See *id.* at 312. Respondents alleged that GMD was insolvent, was dissipating its only assets, and was preferring Mexican creditors. See *id.*

GMD and its subsidiaries prohibiting the entities “from dissipating, disbursing, transferring, conveying, encumbering or otherwise disturbing or affecting [GMD’s or any subsidiary’s] right to, interest in, title to receive or retain any of the [assets received from the Mexican government].”<sup>13</sup> Soon thereafter, the district court granted summary judgment against the GMD group for \$82,444,259.<sup>14</sup> The Second Circuit affirmed the preliminary injunction.<sup>15</sup>

The Court framed the question and limited its holding in terms of whether a U.S. district court, in an action for money damages, has the power to issue a preliminary injunction preventing the defendant from transferring assets in which no lien or equitable interest is claimed.<sup>16</sup>

The Court first rejected the argument of *amicus curiae* that the preliminary injunction constituted a “creditor’s bill” because this remedy was strictly a *post-judgment* remedy.<sup>17</sup> The Court further refused to expand equity or acknowledge a rule that would support the preliminary injunction.<sup>18</sup> The majority opinion rejected the dissent’s position that district court relief was proper under a general power to afford relief when legal remedies are not “practical and efficient” and when no statutory bar to the relief exists.<sup>19</sup> The majority could discern neither a basis in the traditional powers of equity courts to support the preliminary injunction nor sufficient precedent in the United States to allow interference by a court of equity with the debtor’s disposition of property upon the insistence of a nonjudgment unsecured creditor.<sup>20</sup>

The Court carefully distinguished two cases, *Deckert v. Independence Shares Corp.*<sup>21</sup> and *De Beers Consolidated Mines, Ltd. v. United States*,<sup>22</sup> where preliminary injunctions had withstood scrutiny upon final review. *Deckert* was not on point as to *Grupo Mexicano* because the plaintiffs in *Deckert* stated a cause of action for equitable relief, whereas the plaintiffs in *Grupo Mexicano* sought only money damages.<sup>23</sup> In *De Beers*, the Court rejected a sweeping injunction as the petitioners sought in *Grupo Mexicano* but affirmed that “‘a preliminary injunction is always appropriate to grant intermediate relief of the same character as that which may be granted finally.’”<sup>24</sup> Subsequent appellate opinions construe *Grupo Mexicano* to have a relatively narrow scope and have borne out its divergence from *De Beers* and *Deckert*.<sup>25</sup>

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13. *Id.* at 312–13.

14. *See id.* at 313.

15. *See id.*

16. *See id.* at 310.

17. *See id.* at 319.

18. *See id.*

19. *Id.* at 321, 342.

20. *See id.* at 327–29.

21. *Deckert v. Independence Shares Corp.*, 311 U.S. 282 (1940).

22. *De Beers Consol. Mines, Ltd. v. United States*, 325 U.S. 212 (1945).

23. *See Grupo Mexicano de Desarrollo*, 527 U.S. at 327.

24. *Id.* at 326 (quoting *De Beers*, 325 U.S. at 220).

25. *See United States ex rel. Rahman v. Oncology Associates, P.C.*, 198 F.3d 489, 496 (4th Cir. 1999) (preliminary injunction to freeze specific assets appropriate where creditor asserts cognizable claim to specific assets or seeks remedy involving those assets); *Walczak v. EPL Prolong, Inc.*, 198 F.3d 725, 729 (9th Cir. 1999) (preliminary injunction appropriate to halt inter-affiliate transfer agreement and liquidation of one of the companies to preserve status quo and prevent irreparable loss of rights before judgment).

## B. OTHER CASES

1. *Schimmelpenninck v. Byrne*

In *Schimmelpenninck v. Byrne*,<sup>26</sup> the curators of a Dutch bankruptcy proceeding successfully enjoined on appeal a “reverse piercing” Texas state court lawsuit against the foreign debtor’s wholly-owned subsidiary.<sup>27</sup> Even though the court of appeals acknowledged that the curators’ ancillary proceeding was not governed by 11 U.S.C. § 362, the court still applied a test developed under section 362 to determine that the plaintiff’s suit should be enjoined.<sup>28</sup> Alternatively, the plaintiff’s single entity and alter ego claims were subject to being stayed under 11 U.S.C. § 304(b)(1).<sup>29</sup> The debtor’s property interest in its subsidiary was sufficient for the subsidiary to be “involved in” the foreign proceeding within the meaning of section 304(b)(1)(A).<sup>30</sup>

2. *Haarhuis v. Kunnan Enterprises, Ltd.*

In *Haarhuis v. Kunnan Enterprises, Ltd.*,<sup>31</sup> the foreign representatives of a Taiwanese reorganization proceeding filed an ancillary proceeding to enjoin the continuation of a lawsuit against the debtor in federal district court.<sup>32</sup> In an apparent case of first impression, the court of appeals concluded that a bankruptcy court has jurisdiction, and relief can be afforded, under 11 U.S.C. §§ 304(b)(1)(A)(i) and (b)(3) without the debtor owning any assets in the United States.<sup>33</sup>

3. *In re Petition of the Board of Directors of Hopewell International Insurance Ltd.*

In *In re Petition of the Board of Directors of Hopewell International Insurance Ltd.*,<sup>34</sup> the bankruptcy court granted recognition under 11 U.S.C. § 304 to a Bahamian “scheme of arrangement” for the winding up of a foreign reinsurance company.<sup>35</sup> The bankruptcy court was satisfied that the scheme qualified as a foreign proceeding, and the company’s board of directors qualified as foreign representatives, under the U.S. Bankruptcy Code.<sup>36</sup>

4. *In re Interbulk, Ltd.*

In *In re Interbulk, Ltd.*,<sup>37</sup> the creditor argued that 11 U.S.C. § 547 could not reach the creditor’s attachment of one of debtor’s assets by a French court under *In re Maxwell Communication Corp.*<sup>38</sup> The court rejected that argument because of the factual differences be-

26. *Schimmelpenninck v. Byrne*, 183 F.3d 347 (5th Cir. 1999).

27. *Id.* at 351.

28. *See id.* at 351, 354–61 (citing *In re S.I. Acquisition*, 817 F.3d 1142 (5th Cir. 1987)).

29. *See id.* at 361–66.

30. *See id.* at 363 (quoting *In re Rubin*, 160 B.R. 269, 277 (Bankr. S.D.N.Y. 1993)).

31. *Haarhuis v. Kunnan Enter., Ltd.*, 177 F.3d 1007 (D.C. Cir. 1999).

32. *See id.* at 1009–10.

33. *See id.* at 1011–12.

34. *In re Petition of the Board of Dir. of Hopewell Int’l Ins. Ltd.*, 238 B.R. 25 (Bankr. S.D.N.Y. 1999).

35. *Id.* at 31.

36. *See id.* at 48–54.

37. *In re Interbulk, Ltd.*, 240 B.R. 195 (Bankr. S.D.N.Y. 1999).

38. *See id.* at 195–98; *In re Maxwell Communication Corp.*, 170 B.R. 800 (Bankr. S.D.N.Y. 1994), *aff’d* 186 B.R. 807 (S.D.N.Y. 1995), *aff’d* 93 F.3d 1036 (2d Cir. 1996). In *Interbulk*, the asset in question was a sum of money owed to the debtor. *See Interbulk*, 240 B.R. at 197–98.

tween this case and *Maxwell*.<sup>39</sup> Both parties in *Interbulk* were U.S. domiciled corporations unlike the parties in *Maxwell*, so the bankruptcy court maintained subject matter jurisdiction over the transaction.<sup>40</sup> The creditor also submitted to the bankruptcy court's jurisdiction by filing a "protective" proof of claim and failing to consistently object to jurisdiction.<sup>41</sup>

#### 5. *In re Ionica, PLC*

In *In re Ionica, PLC*,<sup>42</sup> the Joint Administrators, appointed under an English insolvency case, commenced a Chapter 11 proceeding for the same debtor for the purpose of asserting claims of equitable subordination against the debtor's parent corporation and seeking substantive consolidation of the cases.<sup>43</sup> Analyzing the case under 11 U.S.C. § 305, and in turn 11 U.S.C. § 304(c), the bankruptcy court concluded that the absence of the equitable subordination and substantive consolidation remedies from English law would not tip the balance against deferring to the English proceeding.<sup>44</sup>

#### 6. *In re Commodore International Ltd.*

In *In re Commodore International Ltd.*,<sup>45</sup> the bankruptcy court dismissed the complaint of the unsecured creditors, committee that sought avoidance actions on the debtors' behalf against third parties, including former insiders of the debtor.<sup>46</sup> The authority that Bahamian liquidators once had to authorize the committee's suit in the companion U.S. bankruptcy proceeding, and thus the committee's standing, vanished when the liquidators pursued the same claims in the Bahamas pursuant to a court order by the presiding Bahamian bankruptcy judge.<sup>47</sup>

### III. Model Law on Cross-Border Insolvency— United States Adoption

In May 1997, the U.N. Commission on International Trade Law (UNCITRAL) adopted the final text of the Model Law on Cross-Border Insolvency (Model Law). The Model Law was not intended to harmonize bankruptcy laws, but rather to provide a framework for dealing with issues that result upon a cross-border insolvency. The issues addressed, among others, include: (i) access for a foreign representative to the courts of any State that has enacted the Model Law (State); (ii) determining whether a foreign insolvency should be recognized by the State and what the consequences are of such recognition; (iii) permitting courts of countries involved in the cross-border insolvency to cooperate more fully; (iv) authorizing foreign representatives to seek assistance in another State; (v) providing for jurisdiction and other rules of cooperation; and (vi) providing rules for coordination of remedies.<sup>48</sup>

39. See *Interbulk*, 240 B.R. at 199.

40. See *id.*

41. *Id.* at 199–200.

42. *In re Ionica, PLC*, 241 B.R. 829 (Bankr. S.D.N.Y. 1999).

43. See *id.* at 831.

44. *Id.* at 837–38.

45. *In re Commodore Int'l Ltd.*, 231 B.R. 175 (Bankr. S.D.N.Y. 1999).

46. *Id.* at 175–76.

47. See *id.* at 180.

48. See *Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency*, United States Commission on Int'l Law, 30th Sess., ¶ 3, U.N. Doc. A/CN.9/442 (1997), available at <<http://www.uncitral.org/en-index.htm>>.

Since it is a model law, as opposed to a treaty, the text of the law must be incorporated into the domestic law of the enacting country.<sup>49</sup>

In the United States, the text of the Model Law has been proposed as a new chapter, chapter 15, of the Bankruptcy Code. The bill containing these changes (among others) is the Bankruptcy Reform Act of 1999/2000,<sup>50</sup> currently pending in the U.S. Congress.<sup>51</sup> The U.S. Senate and House of Representatives have each passed their own bankruptcy reform legislation. Both bills will now go to conference. After committee members from both the Senate and House are chosen, they will attempt to reconcile the differences between the two bills, present a committee report to both Houses for a vote, and if passed, submit the report to the president for his signature or veto. There is no time limit as to how long the bills may remain in conference.

#### IV. Insolvency Law Initiatives

Although 1999 showed little change respecting progress on the adoption of the Model Law and bankruptcy reform in the United States, activity continued in other countries in the process of overhauling or implementing bankruptcy laws. The following is (i) a summary of some of these initiatives and (ii) a guide to additional resources.

##### A. INTERNATIONAL MONETARY FUND

Since the Economic Crisis, the International Monetary Fund (IMF) has taken an aggressive approach to structural reform, including the adoption/reform of insolvency laws and coordinating supporting functions. An organized and efficient insolvency regime not only alleviates economic chaos and assists in the orderly rebuilding required during and after a crisis, but also can promote investor confidence and thereby contribute to economic stability. As such, the IMF has made insolvency reform a requirement of several of its lending programs and has focused internal resources to the study and development of such reform.<sup>52</sup> The IMF is also working with other organizations such as the World Bank and UNCITRAL to promote such reform. The following is a list of countries that at the IMF's direction have amended their bankruptcy laws or have committed to do so in the near term.

##### 1. *Albania (Letter of Intent*<sup>53</sup> *dated December 21, 1999)*

In the hope of providing a modern legal framework for secured financing, the Law on Secured Transactions and associated changes in the Civil Code and Civil Procedures Code

49. In addition, the enacting State does not have to notify the United Nations or any other state of the enactment of the law. *See id.* ¶ 11.

50. The House passed its version, H.R. 833, on May 5, 1999. The Senate passed its version, S. 625, on February 2, 2000. For more information on the status of these bills, or any other, the Library of Congress has an online legislative tracking service available at <<http://thomas.loc.gov/>>.

51. Previous attempts in 1998 and 1999 at instituting bankruptcy reform failed because of the continuing disputes over proposed amendments geared to tightening the requirements for individuals seeking bankruptcy protection. Actual comment (or debate) regarding the proposed chapter 15 has been sparse.

52. *See Orderly & Effective Insolvency Procedures—Key Issues* (visited May 9, 2000) <<http://www.imf.org/external/pubs/ft/orderly/index.htm>>. The IMF Legal Department details the major policy choices countries must address in designing an insolvency system. This report is intended for all countries, irrespective of the different stages of their development, and draws upon input from the public and private sectors to set out the major issues and ideas for implementing an effective insolvency scheme.

53. A "Letter of Intent" is a letter from the government of a country to the IMF that: (i) describes the financial policies and legal reforms the country intends to implement and (ii) updates the IMF on progress regarding the implementation of such policies and reform in relation to the country's specific requests for financial aid from the IMF.

became effective in January 2000. Enforcement of the bankruptcy law is being improved through additional training of the judiciary, with assistance from the World Bank and other donors.<sup>54</sup>

2. *Bulgaria (Letter of Intent dated August 20, 1999)*

Recognizing that liquidation and bankruptcy procedures need to be accelerated, Bulgaria is seeking to facilitate the bankruptcy of insolvent enterprises. To this end, draft legislation was being prepared to provide for a more rapid and efficient liquidation and bankruptcy of state-owned enterprises. Bulgaria will also speed up the bankruptcy procedures by devoting more resources to training judges.<sup>55</sup>

3. *Guinea (Letter of Intent dated December 7, 1999)*

Guinea plans to examine the law on privatization and regulations in the area of bankruptcy and liquidation with a view to ensuring an effective liquidation process.<sup>56</sup>

4. *Indonesia (Letter of Intent dated July 22, 1999)*

To improve implementation of the bankruptcy law, Indonesia plans to implement guidelines for the assignment and remuneration of ad hoc judges as members of the panel in cases before the commercial court as well as raise salaries of the judiciary.<sup>57</sup>

5. *Kazakhstan (Letter of Intent dated November 22, 1999)*

The government expects to review laws relating to bankruptcy, collateral pledges, and leasing by September 30, 2000, to identify necessary improvements.<sup>58</sup>

6. *Republic of Moldova (Letter of Intent dated July 29, 1999)*

Moldova's goal is to establish hard-budget constraints for economic agents and eliminate the use of resources by enterprises that are not viable in a market environment. Moldova also will attempt to ensure that adequate resources are made available for the full functioning of the bankruptcy courts, including the recruitment and training of at least fifty liquidators. The collateral law has also been amended to provide for simultaneous execution of sale and purchase documents, mortgages, and foreclosure procedures.<sup>59</sup>

7. *Russia (Letter of Intent dated July 13, 1999)*

Russia set out numerous goals in its proposed bankruptcy reform including: (i) amending its bankruptcy law to strengthen the rights of secured creditors to recover and liquidate collateral, including strengthening the ability of creditors to pursue fraudulent transfers;

54. See *Albania Letter of Intent, December 21, 1999* (visited May 9, 2000) <<http://www.imf.org/external/NP/LOI/1999/122199.htm>>.

55. See *Bulgaria Letter of Intent, August 20, 1999* (visited May 9, 2000) <<http://www.imf.org/external/np/loi/1999/082099.htm>>.

56. See *Guinea Letter of Intent, December 7, 1999* (visited May 9, 2000) <<http://www.imf.org/external/NP/LOI/1999/120799.htm>>.

57. See *Indonesia Letter of Intent, July 22, 1999* (visited May 9, 2000) <<http://www.imf.org/external/np/loi/1999/072299.htm>>.

58. See *Kazakhstan Letter of Intent, November 22, 1999* (visited May 9, 2000) <<http://www.imf.org/external/np/loi/1999/112299.htm>>.

59. See *Republic of Moldova Letter of Intent, July 29, 1999* (visited May 9, 2000) <<http://www.imf.org/external/np/loi/1999/072999.htm>>.

(ii) initiating asset seizures and bankruptcy actions to ensure compliance with tax collection by businesses; (iii) strengthening the participation of the state in the bankruptcy process; and (iv) ensuring the independent status of the Federal Insolvency and Financial Rehabilitation Service and taking measures to complete its staffing.<sup>60</sup>

In his December report to the Executive Board on the status of the economic program of Russia, Michel Camdessus, Managing Director of the IMF, noted that Russia had not yet met its structural benchmarks of passing amendments to its Bankruptcy Law to eliminate bias toward reorganization rather than liquidation, eliminating court discretion in overruling the creditors' decision to liquidate a debtor, and providing for the participation of the state in bankruptcy proceedings at all stages where relevant for the protection of the public interest.<sup>61</sup>

8. *Sierra Leone (Letter of Intent dated November 25, 1999)*

The government plans to introduce judicial reforms to improve the legal powers for contract enforcement, including new laws governing bankruptcy and establishing a commercial court.<sup>62</sup>

9. *Republic of Tajikistan (Letter of Intent dated June 17, 1999)*

To expedite liquidation and post-privatization restructuring, the Ministry of Justice will review bankruptcy court procedures and revise the mechanisms for the enforcement of the Bankruptcy Law. The government also intends to pursue judicial reforms, with the aim of developing an effective and independent judiciary, to complement the bankruptcy reform.<sup>63</sup>

10. *Uruguay (Letter of Intent dated June 16, 1999)*

To bolster the development of the domestic capital market, draft laws on factoring and discounting are progressing in Congress, as is the overhaul of the bankruptcy legislation.<sup>64</sup>

## B. THE WORLD BANK

The World Bank is also involved in a number of initiatives directed toward promoting structural reform and insolvency regimes. To that end, the World Bank established an initiative to "identify principles and guidelines for sound insolvency systems and for the strengthening of related debtor-creditor rights in emerging markets."<sup>65</sup> Assisted by a task force composed of a number of prominent individuals from the areas of business, law, and academia, the World Bank is developing a report on the matter that is expected to be completed by mid-year 2000 and available on their web site at a future date.<sup>66</sup>

60. See *Russia Letter of Intent, July 13, 1999* (visited May 9, 2000) <<http://www.imf.org/external/np/loi/1999/071399.htm>>.

61. See *International Monetary Fund News Brief, No. 99/81* (last modified Dec. 7, 1999) <<http://www.imf.org/external/np/sec/nb/1999/NB9981.htm>>.

62. See *Sierra Leone Letter of Intent, November 25, 1999* (visited May 9, 2000) <<http://www.imf.org/external/np/loi/1999/112599.htm>>.

63. See *Republic of Tajikistan Letter of Intent, June 17, 1999* (visited May 9, 2000) <<http://www.imf.org/external/np/loi/1999/061799a.htm>>.

64. See *Uruguay Letter of Intent, June 16, 1999* (visited May 9, 2000) <<http://www.imf.org/external/np/loi/1999/061699.htm>>.

65. *World Bank Insolvency Initiative* (visited May 9, 2000) <[http://www.worldbank.org/legal/insolvency\\_ini/overview.htm](http://www.worldbank.org/legal/insolvency_ini/overview.htm)>.

66. See *id.*



## C. OHADA

Organisation pour l'Harmonisation en Afrique du Droit des Affaires, or the Treaty on the Harmonization of Business Law in Africa (OHADA), is a convention originally among fourteen sub-Saharan African states for the adoption of uniform commercial laws. Along with the adoption of common statutes in the areas of general commercial law, business entities and economic interests groups, securities, and arbitration, these states have also enacted a uniform insolvency statute, the Uniform Act Organizing Collective Proceedings for Wiping Off Debts (Collective Proceedings Act). The Collective Proceedings Act went into effect within the contracting states on January 1, 1999.<sup>67</sup> The OHADA Treaty also establishes an institute to train judges and court personnel (Regional High Judiciary School) and a central court (Common Court of Justice and Arbitration) to interpret the uniform acts.<sup>68</sup>

## V. Additional Resources

The World Wide Web continues to grow as a resource for legal practitioners. The following is just a sample of some of these resources.<sup>69</sup>

### A. FOR ADDITIONAL INFORMATION ON TOPICS DISCUSSED IN THIS ARTICLE

#### 1. U.S. Court Sites

Supreme Court Cases (Legal Information Institute) <<http://supct.law.cornell.edu/supct>>  
 Bankruptcy Court Web Sites (Federal Judiciary Homepage) <<http://www.uscourts.gov/allinks.html>>

67. The American Bar Association and the Joint Judicial Conference of the United States, with the Paris Bar Association, provided a review of the OHADA commercial statutes to a conference presented by the International Bar Association on December 8–11, 1999, in Yaoundé, Cameroon. Members of the International Creditors' Rights and Bankruptcy Committee (Committee), together with members of the Judiciary, participated in this effort by drafting comments on the Collective Proceedings Act. The Collective Proceedings Act was also the subject of a separate session at the Yaoundé conference on December 10, 1999. The organ responsible for drafting uniform acts under OHADA is the Permanent Secretariat. A copy of the program for the Yaoundé conference is available at the International Bar Association's web site <[www.ibanet.org/General/Conferencedetails.asp?ID=458&Section=&Committee=](http://www.ibanet.org/General/Conferencedetails.asp?ID=458&Section=&Committee=)>. A link to papers presented at the Yaoundé conference is included on this particular page. See Treaty on the Harmonization of Business Law in Africa, §§ 6–7.

68. See Treaty on the Harmonization of Business Law in Africa, §§ 14 and 41. For more information on OHADA, the following contact numbers may be useful: Permanent Secretariat, P.O. Box 10071, Yaoundé, Cameroon—Tel./Fax: (237) 21 67 45; Advanced Regional School of Magistracy (ERSUMA), P.O. Box 967, Cotonou, Benin—Tel.: (229) 22 43 67 22 44 11, Fax: (229) 31 34 48; Common Court of Justice and Arbitration, 01 BP 8702, Abidjan 01, Côte d'Ivoire, Tel.: (225) 32 83 60/32 38 01, Fax: (225) 33 12 59.

69. The web sites listed in this article are a sample of the many resources available on the Internet. At the time of this writing, each of these sites was available. However, because sites do change or are taken down, it is possible that by publication date, or anytime thereafter, a web site may not be available or may have moved. Inclusion or exclusion of a web site does not constitute a recommendation or an endorsement of the site by the American Bar Association, the International Creditors' Rights and Bankruptcy Committee, or by the individual authors. Furthermore, the foregoing parties are not responsible for the content of any web site or the accuracy of or omission of any material on any web site. Each person must make their own independent assessment as to the site, including without limitation, an assessment as to the accuracy of the information contained therein.

2. *Model Law and U.S. Bankruptcy Reform*

United Nations Commission on International Trade Law <<http://www.uncitral.org>>  
Bankruptcy Reform Updates <<http://thomas.loc.gov>>

3. *International Initiatives*

International Monetary Fund <<http://www.imf.org>>  
World Bank <<http://www.worldbank.org>>

4. *OHADA*

Text of all statutes of OHADA in French and English <<http://parma.crdp.umontreal.ca/ohada/ohada.html>>

Government of Senegal OHADA site [French] <<http://www.primature.sn/neuf/ohada.htm>>

B. GENERAL LEGAL SITES/COLLECTIONS

American Bar Association <<http://www.abanet.org>>  
American Society of International Law <<http://www.asil.org>>  
Findlaw <<http://www.findlaw.com>>  
Hieros Gamos <<http://www.hg.org>>  
World Wide Web Virtual Library: Law <<http://www.law.indiana.edu/law/v-lib/lawindex.html>>

C. INSOLVENCY: SPECIFIC SITES

American Bankruptcy Institute <<http://www.abiworld.org>>  
Australasia Legal Information Institute <<http://www.austlii.edu.au>>  
Canadian Bankruptcy Law Centre <<http://wwlia.org/~wlia/ca-bankr.htm>>  
Italian Insolvency Law, Sources, and Proceedings <<http://www.gelso.unitn.it/card-adm/Review/Business/Insol.html>>  
Russia (and other transition states) <<http://www.gtz.de/lexinfosys/>>  
UK Bankruptcy & Insolvency Web site <<http://www.insolvency.co.uk>>  
United States Bankruptcy Code (Legal Information Institute) <<http://www.law.cornell.edu/uscode/11>>  
World Bank Insolvency Database (Canada, Romania, United States) <[http://www.worldbank.org/legal/legps\\_bank/Insolvency/index.html](http://www.worldbank.org/legal/legps_bank/Insolvency/index.html)>

D. LAW SCHOOL INTERNATIONAL LAW COLLECTIONS

Cornell Law School <<http://www.law.cornell.edu/world/>>  
Harvard Law School <[http://www.law.harvard.edu/library/ref/ils\\_ref/ils\\_web\\_sites.htm](http://www.law.harvard.edu/library/ref/ils_ref/ils_web_sites.htm)>  
New York University School of Law <[http://www.law.nyu.edu/library/foreign\\_intl/](http://www.law.nyu.edu/library/foreign_intl/)>  
University of Southern California <<http://www.usc.edu/dept/lw-lib/legal/foreign.html>>  
Washburn University School of Law <<http://www.washlaw.edu/froit/forintmain.html>>

E. INTERNATIONAL ORGANIZATIONS

Bank for International Settlements <<http://www.bis.org>>  
European Union <<http://europa.eu.int>>

Organisation For Economic Co-operation and Development <<http://www.oecd.org>>  
United Nations <<http://www.un.org>>

## **VI. Conclusion**

The old cliché that the world is becoming a smaller place was clearly evidenced during the Economic Crisis. The Internet will only serve to hasten the process. Failures of business entities will have an increasing cross-border impact. While there may be no way to eliminate business failures, steps can be taken at a national and supranational level to address structural causes and contributions to insolvency, impose early warning systems and proper monitoring standards, and finally, to enact laws that allow for the orderly resolution of cross-border issues. In 1999, some of these steps were undertaken, but clearly there remain challenges for the future.

