G. Conclusion

This work examined the matter of striking a fair balance between the interests of the debtor and dissenting foreign creditors in recognising restructuring plans under the MLCBI. It consisted of five main parts.

Part B was devoted to the foundations of debt restructuring with a particular focus on cross-border aspects. It discussed the nature of restructuring proceedings and concluded that their cross-border effects could be achieved through the existing cross-border insolvency frameworks, such as the MLCBI, provided that the interests of all parties are balanced. Therefore, it also examined several principles underlying the cross-border insolvency system as well as three notable instruments in this area, including the MLCBI.

In Part C, this work first examined two leading jurisdictions that have already implemented the MLCBI: England and the US. This examination demonstrated that these jurisdictions apply substantially different approaches to recognising restructuring plans under the national versions of the MLCBI. This work analysed both approaches and considered neither to be entirely preferable despite possessing certain fairly advantageous features. That is to say, the English approach sees discharge in restructuring proceedings as a strictly contractual matter. Therefore, initiating restructuring proceedings under the governing law of the contract is effectively required to bind a dissenting foreign creditor. While this approach provides certainty for creditors, it is not consistent with the principle of modified universalism, which offers multi-fold advantages. Additionally, it does not reflect the spirit of the MLCBI. The American approach is generally in line with modified universalism, but it primarily evaluates the substantive fairness of foreign restructuring proceedings within a procedural context, which can potentially lead to inconsistency. Furthermore, the American approach is designed to protect mainly the interests of local creditors. Nonetheless, this work noted that the American approach offers a more robust framework, which also aligns with the spirit of the MLCBI. As a result of the analysis, this work suggested a model that, to the extent possible, combines the advantageous aspects of the respective approaches while eliminating their disadvantages. That is to say, this work argued that the American approach needs to raise the bar for fairness review to expressly

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include the substantive fairness of foreign restructuring plans in contested cases.

As part of the model suggested in this work, Part D analysed the traditional safeguards in recognising foreign judgments (public policy and procedural fairness), particularly in the context of recognising foreign plans under the MLCBI. This work highlighted and joined the arguments for the limited application, particularly when it comes to the public policy exception. It also underscored that the primary purpose of the public policy exception is the protection of the most fundamental policies of the receiving state, not the interests of local creditors.

The rest of this work was dedicated to substantive fairness in restructuring proceedings. Part E explored substantive fairness in a domestic context without considering cross-border issues. It concluded that due to inherent uncertainty around certain aspects of restructuring frameworks and their ability to modify substantive rights against the will of their holders, ensuring substantive fairness is a much more complex and vital issue in restructuring proceedings and many matters depend on the peculiarities of each case (as compared to insolvency proceedings). The analysis of the fairness frameworks under Chapter 11, English law, and the PRD confirmed this conclusion.

Part F focused on developing a framework to ensure substantive fairness in recognising restructuring plans under the MLCBI (substantive fairness framework under the MLCBI) as part of the model suggested in this work. In that Part, this work thoroughly analysed and justified the need for a substantive fairness review in recognising foreign plans under modified universalism. It then examined the MLCBI in that regard. It concluded that the *adequate protection* safeguard under article 22 (1) of the MLCBI provides for and requires such a substantive fairness review. This work also discussed critical aspects of the substantive fairness framework under the MLCBI, starting with its limited scope and application. Most importantly, this work argued and justified that a benchmark law is required to evaluate the fairness of the plan in relation to the opposing creditor, and the most suitable law for that purpose is the governing law of the contract. It also elaborated on the process of comparison with the benchmark law and the establishment of unfairness. This work concluded that the unfairness of the plan in relation to the opposing creditor should be established when the position of that creditor under the governing law of the contract has materially worsened under the plan. In that Part, this work also outlined several advantages of the respective framework.

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