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Do U.S. Chapter 11 Bankruptcies Have Extraterritorial Effects?

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1.

U.S.LAWPRINCIPLES

For businesses with international operations, a U.S. Chapter 11 bankruptcy often raises the question of whether its protections can extend beyond U.S. borders. The Bankruptcy Code does contemplate such reach, primarily through the automatic stay under 11 U.S.C. §362 and the broad definition of “property of the estate” under §541, which includes all legal and equitable interests “wherever located and by whomever held.”

Court decisions have confirmed this intended scope. In *In re Nakash*, 190 B.R. 763 (Bankr. S.D.N.Y. 1995), and *In re McLean Industries, Inc.*, 74 B.R. 589 (Bankr. S.D.N.Y. 1987), the automatic stay was held to apply extraterritorially. In *In re Soundview Elite, Ltd.*, 503 B.R. 571 (Bankr. S.D.N.Y. 2014), the court voided certain foreign proceedings under U.S. law based on the stay but also stressed that a U.S. court cannot control a foreign court and can only bind parties over which it has personal jurisdiction.

On this basic statutory question of whether the stay applies worldwide as a matter of U.S. law, the answer is clear: it does. The harder problem is how to make it effective in other jurisdictions, which depends on whether the U.S. court has personal jurisdiction over the parties and, in many cases, whether there are procedures abroad to recognize and act on U.S. bankruptcy orders.

While the automatic stay’s extraterritorial scope as a matter of statute is settled, other provisions of the Code are far less certain. One prominent example is the reach of the Bankruptcy Code’s avoidance powers, which are tools to unwind preferential or fraudulent transfers made before bankruptcy.

The Second Circuit in *In re Maxwell Communication Corp.*, 186 B.R. 807 (Bankr. S.D.N.Y. 1995), concluded that preference actions under § 547 have no extraterritorial effect without explicit congressional intent. In contrast, the Fourth Circuit in *In re French*, 440 F.3d 145 (4th Cir. 2006), found that § 548 fraudulent transfer claims apply to property “wherever located.” The Supreme Court in *Morrison v. National Australia Bank*, 561 U.S. 247 (2010), reinforced the presumption against extraterritorial application in federal statutes generally, but has not addressed bankruptcy-specific provisions, leaving the question to lower courts with differing results.

2. THE ROLE OF THE UNCITRAL MODEL LAW

The UNCITRAL Model Law on Cross-Border Insolvency, adopted in 1997, is the main procedural framework for recognition of foreign insolvency cases in many countries. Built on the concept of modified universalism, it aims to promote cooperation between courts and insolvency practitioners without attempting to harmonize substantive insolvency law. It provides for recognition of foreign main proceedings, relief on recognition, coordination of concurrent cases, and equal treatment of domestic and foreign creditors.

The United States implements the Model Law through Chapter 15 of the Bankruptcy Code. Recognition of a foreign main proceeding under Chapter 15 automatically triggers the stay in the U.S. and allows courts to grant further assistance. Other jurisdictions have adopted similar provisions into their domestic law, although the details vary significantly, which is why practical enforcement abroad depends heavily on the local regime.

3. JAPAN AS A CASE STUDY

Japan's Act on Recognition of and Assistance for Foreign Insolvency Proceedings ("RAFIP"), enacted in 2000 and modelled on the UNCITRAL Model Law on Cross-Border Insolvency (1997), gives the Tokyo District Court exclusive jurisdiction over recognition of foreign insolvency cases, including U.S. Chapter 11 filings. Recognition is not automatic: the debtor or its foreign representative must petition the court, which determines whether recognition is needed, whether Japanese assets are involved, and whether recognition would violate Japanese public policy.

When granting recognition, the court may issue:

- orders staying creditor enforcement against assets in Japan,
- measures to preserve assets pending resolution, and
- appointments of a recognition trustee to administer local assets.

The total number of recognition cases to date is not large, but they do exist. For example, these powers were deployed during the Lehman Brothers collapse, when multiple U.S. Chapter 11 proceedings were recognized in Japan, allowing coordinated administration of assets in both countries. Other Chapter 11 cases have been handled similarly when Japanese creditors or property were involved. RAFIP differs from some Model Law regimes in that recognition does not automatically trigger a stay, and relief is crafted specifically for each case, which gives Japanese courts flexibility.

These cases often arise in the face of actual or imminent enforcement or litigation by Japanese creditors against the local assets of foreign debtors. For example, after the Lehman Brothers Chapter 11 filing in September 2008, Lehman's Japanese entities immediately filed civil rehabilitation petitions in Tokyo because Japanese creditors were poised to seize assets and commence collection. Later, when related Hong Kong Lehman entities sought recognition, the Tokyo court granted Administration Orders [1] to counteract creditor attempts to enforce against the entities' assets in Japan.

In the *Azabu Building* case, a U.S. entity filed for Chapter 11 and sought recognition in Japan because it owned real estate that was threatened by creditor enforcement in Japan; here, a stay order was issued [2] to shield assets pending the outcome of the U.S. proceedings.

The Tokyo court's relief is tailored to the urgency and nature of the threatened creditor action. Stay orders are common in debtor-in-possession (DIP)-style cases like Chapter 11, while administration orders, which entails the appointment of a "recognition trustee," are more common when the foreign proceeding is trustee-administered or enforcement is already underway. [3]

4.

SUMMARY

In summary, U.S. law clearly provides for extraterritorial reach of the automatic stay and estate property concept. Enforcing these protections abroad hinges on local law and court procedures, as illustrated by the Japanese example. Where cooperation is built into the system, U.S. bankruptcy protections can be transformed from theory into enforceable reality. However, for areas like avoidance powers, legal uncertainty persists at the U.S. law level, and therefore must be navigated on a case-by-case, jurisdiction-by-jurisdiction basis.

[1] Anderson Mori & Tomotsune, *Legal Framework of Cross-Border Insolvency in Japan - Ancillary Proceeding for Foreign Insolvency Proceedings* -, at 3 (May 2017), https://www.amtlaw.com/asset/pdf/bulletins11_pdf/170531.pdf (last visited Aug. 12, 2025).

[2] *Id.*

[3] *Id.* at 2.

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