Amendment by section 254 of Pub. L. 99–554 effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub. L. 99–554.

Amendment by section 283 of Pub. L. 99–554 effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99–554.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by sections 426(a) and 427 of Pub. L. 98–353 effective with respect to cases filed 90 days after July 10, 1984, and amendment by section 426(b) of Pub. L. 98–353 effective July 10, 1984, see section 552(a), (b) of Pub. L. 98–353, set out as a note under section 101 of this title.

ADJUSTMENT OF DOLLAR AMOUNTS

For adjustment of dollar amounts specified in subsec. (b)(1), (2) of this section by the Judicial Conference of the United States, see note set out under section 104 of this title.

[§ 304. Repealed. Pub. L. 109–8, title VIII, § 802(d)(3), Apr. 20, 2005, 119 Stat. 146]

Section, Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2560, related to cases ancillary to foreign proceedings.

EFFECTIVE DATE OF REPEAL

Repeal effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as an Effective Date of 2005 Amendment note under section 101 of this title.

§ 305. Abstention

(a) The court, after notice and a hearing, may dismiss a case under this title, or may suspend all proceedings in a case under this title, at any time if—

(1) the interests of creditors and the debtor would be better served by such dismissal or suspension; or

(2)(A) a petition under section 1515 for recognition of a foreign proceeding has been granted; and

(B) the purposes of chapter 15 of this title would be best served by such dismissal or suspension.

(b) A foreign representative may seek dismissal or suspension under subsection (a)(2) of this section.

(c) An order under subsection (a) of this section dismissing a case or suspending all proceedings in a case, or a decision not so to dismiss or suspend, is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of title 28 or by the Supreme Court of the United States under section 1254 of title 28.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2561; Pub. L. 101–650, title III, § 309(a), Dec. 1, 1990, 104 Stat. 5113; Pub. L. 102–198, § 5, Dec. 9, 1991, 105 Stat. 1623; Pub. L. 109–8, title VIII, § 802(d)(6), Apr. 20, 2005, 119 Stat. 146.)

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95–989

A principle of the common law requires a court with jurisdiction over a particular matter to take jurisdiction. This section recognizes that there are cases in which it would be appropriate for the court to decline jurisdiction. Abstention under this section, however, is of jurisdiction over the entire case. Abstention from jurisdiction over a particular proceeding in a case is governed by proposed 28 U.S.C. 1471(c). Thus, the court is permitted, if the interests of creditors and the debtor would be better served by dismissal of the case or suspension of all proceedings in the case, to so order. The court may dismiss or suspend under the first paragraph, for example, if an arrangement is being worked out by creditors and the debtor out of court, there is no prejudice to the results of creditors in that arrangement, and an involuntary case has been commenced by a few recalcitrant creditors to provide a basis for future threats to extract full payment. The less expensive out-of-court workout may better serve the interests in the case. Likewise, if there is pending a foreign proceeding concerning the debtor and the factors specified in proposed 11 U.S.C. 304(c) warrant dismissal or suspension, the court may so act.

Subsection (b) gives a foreign representative authority to appear in the bankruptcy court to request dismissal or suspension. Subsection (c) makes the dismissal or suspension order nonreviewable by appeal or otherwise. The bankruptcy court, based on its experience and discretion is vested with the power of decision.

AMENDMENTS

2005—Subsec. (a)(2). Pub. L. 109–8 added par. (2) and struck out former par. (2) which read as follows:

''(2)(A) there is pending a foreign proceeding; and

''(B) the factors specified in section 304(c) of this title warrant such dismissal or suspension.''

1991—Subsec. (c). Pub. L. 102–198 substituted ''title 28'' for ''this title'' in two places.

1990—Subsec. (c). Pub. L. 101–650 inserted before period at end ''by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title''.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under this title before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of this title.

§ 306. Limited appearance

An appearance in a bankruptcy court by a foreign representative in connection with a petition or request under section 303 or 305 of this title does not submit such foreign representative to the jurisdiction of any court in the United States for any other purpose, but the bankruptcy court may condition any order under section 303 or 305 of this title on compliance by such foreign representative with the orders of such bankruptcy court.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2561; Pub. L. 109–8, title VIII, § 802(d)(5), Apr. 20, 2005, 119 Stat. 146.)

HISTORICAL AND REVISION NOTES

SENATE REPORT NO. 95–989

Section 306 permits a foreign representative that is seeking dismissal or suspension under section 305 of an ancillary case or that is appearing in connection with a petition under section 303 or 304 to appear without subjecting himself to the jurisdiction of any other court in the United States, including State courts. The protection is necessary to allow the foreign representative to present his case and the case of the foreign estate, without waiving the normal jurisdictional rules of the foreign country. That is, creditors in this country will still have to seek redress against the foreign estate according to the host country's jurisdictional rules.