

INVITATION TO COMMENT ON UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY

25 May 1998

Closing date for Comments: 30 June 1998

On 13 November 1997 the General Assembly of the United Nations adopted a resolution, co-sponsored by South Africa, recommending that States review their legislation on cross-border insolvency and in that review give favourable consideration to UNCITRAL's model law, bearing in mind the need for internationally harmonised legislation governing instances of cross-border insolvency. The resolution also recommended that all efforts be made to ensure that the Model Law together with the Guide to Enactment became generally known and available.

The Model Law was developed in close cooperation with the International Association of Insolvency Practitioners (INSOL) over a number of years and benefitted from its expert advice during all stages of the preparatory work. Active consultative assistance during the formation of the Law was also received from Committee J of the Section on Business Law of the International Bar Association. UNCITRAL and INSOL held two international colloquia of insolvency practitioners, judges, government officials and representatives of other interested sectors in Vienna and Toronto where it was suggested that the work of UNCITRAL should have the limited but useful goal of facilitating judicial cooperation, court access for foreign insolvency administrators and recognition of foreign insolvency proceedings. Before the session of the Commission in May 1977, at which the Model Law was adopted, another international meeting of practitioners was held in New Orleans to discuss the draft text prepared by a Working Group. The participants were mostly judges - including the Honourable Mr Justice Zulman who also participated in a number of the UNCITRAL sessions, judicial administrators and government officials. They generally considered that the model legislation, when enacted, would constitute a major improvement in dealing with cross-border insolvency cases. The Commission considered that the Model Law would be a more effective tool for legislators if it were accompanied by background and explanatory information.

A copy of the Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency is attached as ANNEXURE A. A proposed adaptation of the Model Law for enactment in South Africa, is attached as ANNEXURE B. In line with paragraph 12 of the Guide to Enactment as few changes as possible have been made in the proposed adaptation in order to strive for a satisfactory degree of harmonisation and certainty.

Further changes to the South African law on cross-border insolvency will be considered once a final report on the matter has been received from the Chairperson of the Commission's insolvency project committee, the Honourable Mr Justice Zulman.

Comments on the advisability of the enactment of the adaptation of the Model Law in ANNEXURE B and comments on further adaptations that are regarded as advisable and the reasons why they are regarded as advisable will be appreciated. Please submit your comments to the Commission by 30 June 1998.

Yours faithfully

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