

# Chapter 2

## Development of the Model Law

### Overview

This Chapter examines:

- The history of the development and introduction of the Model Law.
- Historical background to the creation of laws dealing with cross-border insolvencies.
- The need identified following the recession in the 1980s for a better system of recognising cross-border insolvencies as a result of a number of high profile insolvencies of individuals and corporate entities who had assets and creditors in multiple States.

### 2.1 Background

The free enterprise economic system is premised upon people being willing to take a risk in establishing businesses by contributing their capital with the anticipation that the risk associated with running a business will attract a return. In any business, the recognition and presence of an element of risk means that a proportion of people who commence a business must fail. Legal systems have for a long time developed rules to deal with the consequences of these businesses failures including an orderly and equitable distribution of the assets which are left to the creditors of the failed business.<sup>1</sup>

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<sup>1</sup>See, eg, Philip R Wood, *Principles of International Insolvency* (Sweet & Maxwell, 2nd ed, 2007), 891 [29-074] referring to Treaty between Verona and Trent in 1204 regarding transfer of debtors' assets and to a Treaty between Verona and Venice in 1306 in respect of extradition of fugitive debtors; Kurt H Nadelmann *Conflict of Laws: International and Interstate* (Martinus Nijhoff, 1972) 302 n15, 303 referring to a treaty between Verona and Trent of 1204 providing for the transfer of assets to the place where the insolvency had occurred and the insolvency convention between Holland and Utrecht in 1679.

When the assets of a business have been spread across more than one State, it is difficult to conduct an orderly and equitable distribution of the assets due to differences in laws, legal systems, political interests and self-interest that characterise each State.<sup>2</sup> In the Middle Ages, non-secular intervention was sometimes sought to achieve equitable outcomes, an example of which was the Pope's intervention in the affairs of the Ammanati Bank of Pistoia following its collapse in 1302.<sup>3</sup> The Pope arranged for the safe conduct of the owners back to Rome and directed the clergy in a number of European countries to collect the debts on behalf of the Bank and transmit the funds to Rome for distribution among all the Bank's creditors.

Over time, a number of bilateral and multilateral treaties have been adopted between different States. They have largely been concluded between States that are not only geographical neighbours, but also have close legal traditions and consistent cultural, linguistic and political affiliations.<sup>4</sup>

The wide use of corporations in the nineteenth century complicated this issue further as corporations commenced trading in multiple States. When a corporation became insolvent, it had to liquidate/bankrupt its assets in each State in which they were held. In order to facilitate this, it was necessary for the liquidator/trustee to be recognised by the local laws of that State or for a separate liquidator/trustee to be appointed in each State in which assets were held.<sup>5</sup> This led to a number of different representatives being appointed to the one legal entity, each of whom dealt with the assets in their respective jurisdictions in accordance with their local laws. In some cases, the representatives attempted to coordinate their efforts, but not always.<sup>6</sup>

During the eighteenth and nineteenth centuries when the British Empire was the most dominant in the world and Britain was the foremost trading nation, the British Commonwealth countries developed a common law principle of 'comity'. Comity was a principle whereby a court in one member of the British Empire or common law world would recognise a court in another member of the British Empire and assist it in the enforcement of its judgements to the extent permitted by the latter

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<sup>2</sup>In this paper, the word 'State' has the same meaning as that used in the Model Law on Cross-Border Insolvency issued by UNCITRAL. Cross-border insolvency issues may arise not only between different countries but also between different States in which the country has adopted a federal system.

<sup>3</sup>Kurt H Nadelmann, 'Bankruptcy Treaties' (1944) 93 *University of Pennsylvania Law Review* 58, 58–9; Kurt H Nadelmann *Conflict of Laws: International and Interstate* (Martinus Nijhoff, 1972) 299–300; Bob Wessels, Bruce A Markell and Jason J Kilborn, *International Cooperation in Bankruptcy and Insolvency Matters* (Oxford, 2009) 2.

<sup>4</sup>Anton Trichardt 'The Uncitral Model Law on Cross-Border Insolvency' (2002) 6 *Flinders Journal of Law Reform* 95 [101–102].

<sup>5</sup>For example, in the case of National Employers Mutual General Insurance Association Limited, a company incorporated in England, and recognised as a foreign corporation in three other States: Australia, Canada and South Africa. The writer acted for the Australian liquidators in this liquidation.

<sup>6</sup>See Lord Justice Leonard Hoffman, 'Cross-Border Insolvency: A British Perspective' (1996) 64 *Fordham Law Review*, 2507 and reference to Maxwell Communication Corporation administration.

court's laws and give assistance to the foreign court by allowing nominated persons to obtain the assistance of the foreign court. This included assisting liquidators appointed by those courts by either allowing them to sell assets or examining witnesses within the second court's jurisdiction or appointing local liquidators to assist.<sup>7</sup> This principle was not universally recognised by countries outside the Commonwealth because of issues of sovereignty.

The United States however adopted a similar principle which was explained by the US Supreme Court as follows:

"Comity", in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws.<sup>8</sup>

In the late nineteenth and early twentieth century's several States introduced legislation to allow their courts to assist foreign courts to deal with insolvency matters.<sup>9</sup> Problems arose regarding the laws that should apply (especially with the advent of multinational corporations); how the members of such groups should be treated; and, how creditors should be dealt with by the different jurisdictions in order to ensure equality. In common law countries this legislation extended the existing principles of comity in relation to the nominated States referred to the legislation.

At its twenty sixth session the UNCITRAL decided to pursue the issue of cross border insolvency following a proposal made at the UNCITRAL Congress titled "Uniform Commercial Law in the 21st Century" and a proposal for future possible work being presented.<sup>10</sup>

<sup>7</sup>See, eg, *Schmitt v Deichmann* [2012] 2 All ER 1217, 1232–1233 [62–65].

<sup>8</sup>*Hilton v Guyot* (1895) 159 US 113, 163–4.

<sup>9</sup>For example see *Montevideo Treaty on Commercial International Law* Argentina, Bolivia, Columbia, Paraguay, Peru and Uruguay (entered into force 1889) Articles 35–48; 11 USC §304 (2012); *Insolvency Act 1986* c 45s 426; *Corporations Act 2001* (Cth) ss 580, 581; *Bankruptcy Act 1966* (Cth) s 29; *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 s271. *The Bankruptcy Act 1869* 32 & 33 Vict c 71 (Eng) required Her Majesty's Courts to act in aid of each other. Its subsequent incorporation into many of the Commonwealth Colonies' laws had the effect of British colonial courts recognising and acting in aid of each other. However, each colony's court was restricted to dealing with the property within its own respective jurisdiction. See Rosalind Mason, 'Cross-border insolvency: Adoption of CLERP 8 as an evolution of Australian insolvency law' (2003) 11 *Insolvency Law Journal* 62, 68–7.

<sup>10</sup>See United Nations Commission on International Trade Law, *Possible Future Work, Note by Secretariat addendum, Cross Border Insolvency* UN DocA/CN.9/378 (23 June 1993).

In 1994 UNCITRAL and INSOL held a colloquium at which it was recognised that ‘the practical problems caused by the disharmony among national laws governing cross-border insolvencies warranted further study of legal issues in cross-border insolvencies and possible internationally acceptable solutions’.<sup>11</sup> There was a high degree of support expressed at the colloquium for the Commission to commence a project on cross border insolvency.<sup>12</sup> A second colloquium was held in March 1995 for judges and government officials.<sup>13</sup> At the same time UNCITRAL’s Working Group V was reconstituted and commenced working on the issue of cross border insolvency.

In 1995, the European Community proposed the introduction of the *European Convention on Insolvency Proceedings* which faltered due to the UK failing to agree to it in protest against the European Commission’s refusal to lift the embargo on British beef and cattle imposed during the mad cow disease threat.<sup>14</sup>

In 1996, Virgos & Schmidt<sup>15</sup> prepared a Report on the *European Convention on Insolvency Proceedings* which has been considered the leading text on the same, even though that convention was not enacted. The report has been extensively cited in the interpretation of the meaning of COMI,<sup>16</sup> and the assumptions contained in it which both the later EC Regulation and the UNCITRAL Guide refer to. This is discussed below in Sects. 8.2, 8.3 and Chaps. 12, 13.

In May 1997 UNICTRAL adopted the Model Law on Cross Border Insolvency which had been prepared by it’s Working Group V.

On 29 May 2000, the European Council adopted the *Regulation on Insolvency Proceedings* (‘EC Regulation’).<sup>17</sup> This followed ‘almost forty years’ efforts to establish a framework within which insolvency proceedings taking place in any Member State of the [European Union (EU)] could be recognised and enforced throughout the rest of the Union’.<sup>18</sup>

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<sup>11</sup>United Nations Commission on International Trade Law, *Report on UNCITRAL-INSOL Colloquium on Cross Border Insolvency* (Vienna, 17–19 April 1994) UN Doc A/CN.9/398 (19 May 2014) 2 [1].

<sup>12</sup>Ibid [15].

<sup>13</sup>See United Nations Commission on International Trade Law, *Report on UNCITRAL-INSOL Colloquium on Cross Border Insolvency* (Toronto, 22–23 March 1995) UN Doc A/CN.9/413 (19 May 2014) 2 [1].

<sup>14</sup>See Paul J Omar, *The European Insolvency Regulation 2000: A Paradigm of International Cooperation* (2003) 15 *Bond Law Review* 215, 215–7.

<sup>15</sup>Miguel Virgos & Etienne Schmidt, *Report on the Convention on Insolvency Proceedings* [1996] OJ L 6500/96 (3 May 1996) <[http://aei.pitt.edu/952/01/insolvency\\_report\\_schmidt\\_1988.pdf](http://aei.pitt.edu/952/01/insolvency_report_schmidt_1988.pdf)>.

<sup>16</sup>See Omar, see footnote 25, 218, 232.

<sup>17</sup>*Regulation EC No 1346/2000 of the European Council on Insolvency Proceedings* [2000] OJ L 160/1, preamble 13.

<sup>18</sup>Ian Fletcher, ‘The European Union Regulation on Insolvency Proceedings’ as published in ‘Cross-Border Insolvency A Guide to Recognition and Enforcement’, *Insol International* (2003).

In 2003 in North America, the American Law Institute published *Transnational Insolvency: Cooperation Among the NAFTA Countries, Principles of Cooperation Among The NAFA Countries* in an attempt to develop principles and procedures for managing cross-border insolvency within NAFTA countries.<sup>19</sup> This report, amongst other things, recommended that both the United States and Canada adopt the UNCITRAL Model Law.<sup>20</sup> An amended version of these principles has recently been adopted by the International Insolvency Institute and the American Law Institute with a view to them being used more widely.<sup>21</sup> These principles have been developed to encourage discussion on a wider acceptance of these principles to be used in conjunction with the Model Law, as it is the case in Australia.<sup>22</sup>

## 2.2 Model Law

On 30 May 1997, UNCITRAL adopted the Model Law which was subsequently adopted by the General Assembly of the United Nations in January 1998.<sup>23</sup> Subsequently in 1997, UNCITRAL also adopted the *Guide to Enactment of The UNCITRAL Model Law on Cross-Border Insolvency* (UNCITRAL Guide) which has been varied over time. The Model Law has adopted several concepts such as COMI and ‘establishment’ similar to those contained in the EC Regulation

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<sup>19</sup>The American Law Institute, *Transnational Insolvency: Cooperation Among the NAFTA Countries, Principles of Cooperation Among The NAFA Countries* (Jirus Publishing, 2003).

<sup>20</sup>Ibid Sec V Recommendation 1.

<sup>21</sup>See American Law Institute and International Insolvency Institute, ‘Global Principles for Cooperation in International Insolvency Cases and Global Guidelines for Court to Court Communications in International Insolvency Cases’ (10 January 2012) <<http://iiiglobal.org/component/jdownloads/viewdownload/36/5897.html>>; Ian F Fletcher and Bob Wessel, ‘Global Principles for Cooperation in International Insolvency Cases (1 January 2013)’ <[www.bobwessels.nl/wordpress](http://www.bobwessels.nl/wordpress)>.

<sup>22</sup>Federal Court of Australia *Cross Border insolvency Practice Note: Cooperation with Foreign Courts of Foreign Representatives (GPN-XBDR)* (25 October 2016) <<http://www.fedcourt.gov.au/law-and-practice/practice-documents/practice-notes/gpn-xbdr>>New South Wales Supreme Court, *Practice Court SC Eq 6, Supreme Court Equity Division—Cross-Border Insolvency: Cooperation with Foreign Courts or Foreign Representatives* (11 March 2009) <[http://www.lawlink.nsw.gov.au/practice\\_notes/nswsc\\_pc.nsf/a15f50afb1aa22a9ca2570ed000a2b08/db2a09ee87866a04ca257577007983ae?OpenDocument](http://www.lawlink.nsw.gov.au/practice_notes/nswsc_pc.nsf/a15f50afb1aa22a9ca2570ed000a2b08/db2a09ee87866a04ca257577007983ae?OpenDocument)>; Supreme Court of Victoria, *Cross-Border Insolvency Applications and Cooperation with Foreign Courts or Foreign Representatives and Coordination Agreements* (30 January 2017), <<http://assets.justice.vic.gov.au/supreme/resources/77e1a5a7-3748-4131-a7d4-ddd5cd72b881/cc6crossborderinsolvency.pdf>>.

<sup>23</sup>*Model Law on Cross-Border Insolvency of the United Nations Commission on Trade Law*, GA Res 52/158, UN GAOR, 6th Comm, 52nd sess, Agenda Item 148, UN Doc A/RES/52/158 (30 January 1998).

and it was envisaged that a similar interpretation would apply to such concept and that the Model Law would complement the EC Regulation.<sup>24</sup>

The Model Law was established as a result of work done and pressure exerted by a number of groups including the IBA and the INSOL.<sup>25</sup> During its development, the working group took into account other international regulations and proposals from various non-government bodies including the Model International Insolvency Act and the Cross-Border Insolvency Concordat which had been developed by Committee J of the IBA.<sup>26</sup>

The Model Law was created out of the necessity to have some uniformity in the way multinational companies were dealt with when they experience insolvency or require restructuring and to avoid having multiple insolvency administrations over different States as had been experienced during the recessions of the early 1990s.<sup>27</sup> The Model Law does not attempt to substantively unify the insolvency laws of States.<sup>28</sup> UNCITRAL recognised that national laws have generally not kept pace with the trend of cross-border insolvency; nor have they been able to deal with cross-border cases adequately, which in part has arisen out of insolvent debtors concealing assets in foreign jurisdictions.<sup>29</sup> The Model Law is not a treaty and does not contain any requirement of reciprocity, although some countries have incorporated this requirement into their domestic enactment of the same.<sup>30</sup> The Model Law is premised on four primary concepts: access, recognition, relief and cooperation.<sup>31</sup>

The Model Law in general has three key elements:

- (a) It provides for expedited control of the debtors' local assets and their protection from unilateral actions by creditors.
- (b) It then gives the local court considerable discretion to grant all sorts of relief to an administrator from a foreign main proceeding.

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<sup>24</sup>United Nations Commission on International Trade Law, *Guide to Enactment of The UNCITRAL Model Law on Cross-Border Insolvency*, UN Doc A/CN.9/442 (19 December 1997) as approved by GA Res A/RES/52/158 (1997) (30 January 1998) and amended by GA Res A/RES/68/107 (2013) (16 December 2013) [11, 81, 82, 83, 87 88, 141].

<sup>25</sup>*Ibid* [10, 12].

<sup>26</sup>*Ibid* [18].

<sup>27</sup>For a history of the introduction of the Model Law see Rosalind Mason 'Cross-border insolvency: Adoption of CLERP 8 as an evolution of Australian insolvency law' (2003) 11 *Insolvency Law Journal* 62, 63–5.

<sup>28</sup>United Nations Commission on International Trade Law, *Guide to Enactment of The UNCITRAL Model Law on Cross-Border Insolvency*, UN Doc A/CN.9/442 (19 December 1997) as approved by GA Res A/RES/52/158 (1997) (30 January 1998) and amended by GA Res A/RES/68/107 (2013) (16 December 2013) [3].

<sup>29</sup>*Ibid* [5].

<sup>30</sup>Eg, *Cross Border Insolvency Act 2000* (South Africa) s 2.

<sup>31</sup>Ian F Fletcher, 'Insolvency in Private International Law, National and International Approaches' (Oxford University Press, 2nd ed, 2005), 453, [8.17].

- (c) The discretion is accompanied by a statutory mandate to cooperate subject to ensuring that the debtor and its creditors are adequately protected.<sup>32</sup>

The UNCITRAL Guide states that the purpose of the Model Law is to assist States ‘to equip their insolvency laws with a modern, harmonized and fair framework to address more effectively instances of cross-border insolvency’.<sup>33</sup> It reflects practices in cross-border insolvency matters that are characteristic of ‘modern, efficient insolvency systems’.<sup>34</sup> The UNCITRAL Guide also acknowledges that fraud by insolvent debtors is an increasing problem and indicates that the cross-border co-operation mechanisms established by the Model Law are ‘designed to confront such international fraud’.<sup>35</sup> The UNCITRAL Guide provides that the Model Law may exist as an integral part of a State’s legislation when dealing with cross-border insolvency issues.<sup>36</sup> It was not designed to replace all of a State’s existing legislation dealing with cross-border insolvency.<sup>37</sup>

The UNCITRAL Guide has been described as ‘less specific’ and ‘less binding’ than the Model Law.<sup>38</sup> The purpose of the UNCITRAL Guide is to provide background and explanatory information about the Model Law and while the information would primarily be used by legislators and government; it may provide insights to judges, practitioners and academics.<sup>39</sup> It is argued that the UNCITRAL Guide pursuant to Article 8 may be consulted as extrinsic material when interpreting a section within the Model Law which is not clear.

The UNCITRAL Guide recognises that the Model Law is only a recommendation rather than a convention. It also recognises ‘that the degree of and certainty about, harmonization achieved through a model law is likely to be lower than in the case of a convention’.<sup>40</sup> Therefore, in order to achieve a satisfactory degree of

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<sup>32</sup>Rosa M Lastra (ed) *Cross-Border Bank Insolvency* (Oxford University Press, 2011) 189 [8.12].

<sup>33</sup>United Nations Commission on International Trade Law, *Guide to Enactment of The UNCITRAL Model Law on Cross-Border Insolvency*, UN Doc A/CN.9/442 (19 December 1997) as approved by GA Res A/RES/52/158 (1997) (30 January 1998) and amended by GA Res A/RES/68/107 (2013) (16 December 2013) [1].

<sup>34</sup>*Ibid* [2].

<sup>35</sup>*Ibid* [6].

<sup>36</sup>United Nations Commission on International Trade Law, *Guide to Enactment of The UNCITRAL Model Law on Cross-Border Insolvency*, UN Doc A/CN.9/442 (19 December 1997) as approved by GA Res A/RES/52/158 (1997) (30 January 1998) and amended by GA Res A/RES/68/107 (2013) (16 December 2013) [21].

<sup>37</sup>See generally, *Re HIH Casualty & General Insurance Ltd* [2007] 1 All ER 177.

<sup>38</sup>Susan Block-Lieb and Terence C Halliday, ‘Incrementalisms in Global Lawmaking’ (2007) 32 *Brooklyn Journal of International Law* 851, 886.

<sup>39</sup>United Nations Commission on International Trade Law, *Guide to Enactment of The UNCITRAL Model Law on Cross-Border Insolvency*, UN Doc A/CN.9/442 (19 December 1997) as approved by GA Res A/RES/52/158 (1997) (30 January 1998) and amended by GA Res A/RES/68/107 (2013) (16 December 2013) [9].

<sup>40</sup>*Ibid* [20].

harmonisation and consistency between States, States must make as few changes as possible.<sup>41</sup>

The UNCITRAL Guide accepts that the Model Law was drafted to take into account that the EC Regulation on Insolvency was to come into effect to ‘establish a cross-border insolvency regime within the European Union for cases where the debtor has the centre of its main interests in a State member of the Union’. The guide goes on to note that it ‘offers to States members of the European Union a complementary regime of considerable practical value that addresses the many cases of cross-border cooperation not covered by the EC Regulation’.<sup>42</sup>

In 2005, UNCITRAL adopted its Legislative Guide which was designed to foster and encourage the adoption of effective national insolvency regimes. The text of the Legislative Guide represented a five-year effort to derive a best practice guide to the enactment of a modern insolvency law and as an aid to countries engaged in that task.<sup>43</sup> In the Legislative Guide, UNCITRAL makes several comments about the Model Law and how it should be interpreted and its interrelationship with the EC Regulation,<sup>44</sup> whilst acknowledging that the Model Law is used for a purpose different from that of the Legislative Guide.<sup>45</sup>

On 1 July 2009, UNCITRAL adopted a *Practice Guide on Cross-Border Insolvency Cooperation*<sup>46</sup> which was designed to provide information for practitioners and judges on the practical aspects of cooperation and communication as was envisaged in Article 27 of the Model Law.<sup>47</sup>

Subsequently on 1 July 2010, UNCITRAL adopted the *Legislative Guide on Insolvency Law—Part Three* which dealt with the treatment of enterprise groups in insolvency. This guide was developed as an aid to States looking to legislate in respect of enterprise groups. As the Model Law requires debtor company’s to be dealt with individually and not as a group, the legislative guide does not deal with enterprise groups’ interrelationship with the Model Law.<sup>48</sup>

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<sup>41</sup>Ibid.

<sup>42</sup>Ibid 188 [19].

<sup>43</sup>Clark & Goldstein, see footnote 8, 541.

<sup>44</sup>See, eg, Legislative Guide, 41 [13].

<sup>45</sup>Ibid 1 [2].

<sup>46</sup>United Nations Commission on International Trade Law, UNGOAR, 64th sess, 890th mtg, Supp No 17, UN Doc A/64/17 (1 July 2009), [24].

<sup>47</sup>See United Nations Commission on Trade Law, *UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation*, GA Res 64/112, (16 December 2009) UN Publication Sales No E.10.V.6 (June 2010), [1–3].

<sup>48</sup>United Nations Commission on International Trade Law, ‘*Legislative Guide on Insolvency Law, Part three: Treatment of enterprise groups in insolvency*’ UN Publication Sales No E.12.V.16, GA Res 65/24 (6 December 2010).



In December 2011, the UN General Assembly adopted the UNCITRAL publication relating to a judicial prospective on the Model Law.<sup>49</sup> This paper discusses the Model from a judge's perspective and offers to judges a guide to its interpretation.<sup>50</sup>

The Model Law is designed to provide a system of procedural recognition in part under the principles of comity and court intervention to assist any recognised foreign insolvency proceeding with a view to achieving a more efficient disposition of cases and distribution of the assets of an insolvent debtor.<sup>51</sup>

In July 2013, UNCITRAL adopted a number of amendments to the UNCITRAL Guide with a view to further clarifying some of the central concepts within the Model Law. Most importantly, the amendments sought to address the meaning and interpretation of the phrase 'centre of main interest' and the applicability of the rebuttable presumption contained in Article 16. On 16 December 2013 these amendments were adopted by the UN General Assembly.<sup>52</sup>

Despite the recommendations made in the UNCITRAL Guide and because of several variations allowed under the Model Law itself, the law has not been uniformly enacted into the domestic law of the five States examined in this book. This has led to States interpreting differently the provisions of the Model Law because of the differences in their domestic legislation. This issue is addressed in more detail in Chaps. 8–10 and Sect. 13.2.

## 2.3 Summary

The Model Law was created as a result of difficulties arising from the recessions in the early 1990s. This experience showed the need for some uniformity or harmonisation in the way multinational companies are dealt with when they experience some form of insolvency, with a view to avoiding multiple insolvency administrations and allowing creditors in one State access to the assets of the insolvent entity in another.

The Model Law is designed to provide a system of procedural recognition in part under the principles of comity and court intervention to assist any recognised foreign insolvency proceeding to achieve a more efficient disposition of cases and distribution of the an insolvent debtor's assets whilst protecting the interests of all

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<sup>49</sup>United Nations Commission on International Trade Law 'The UNCITRAL Model Law on Cross-Border Insolvency: the judicial perspective' UN Doc A/CN.9/732 (21 December 2011).

<sup>50</sup>Ibid 1.

<sup>51</sup>Whilst the Model Law is designed to be enacted into the domestic law of each country, it is not a convention that is adopted by countries and as such there may be variations.

<sup>52</sup>United Nations Information Service Press Release *UN Commission on International Trade Law Concludes 46th Session in Vienna* UNIS/L/189 (31 July 2013); United Nations Commission on International Trade Law, *Report of Working Group V (Insolvency Law) on the work of its 42nd session* (Vienna, 26–30 November 2012) UN Doc A/CN.9/763 (7 December 2012) adopted UN GOAR 68th sess, 68th plen mtg, UN Doc A/RES/68/107 A–B (16 December 2013).

creditors and other parties including the debtor. The Model Law is also designed to assist in the maximisation of the debtor's assets and to create greater legal certainty for trade and investment.<sup>53</sup>

It was envisaged that essential concepts such as COMI and 'establishment' would be interpreted consistently since similar terms were contained in the EC Regulation.

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<sup>53</sup>See *UNCITRAL Model Law on Cross-Border Insolvency*, UN Doc A/CN.9/442 (19 December 1997), Preamble.

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