

UNCITRAL PRESENTATION

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1. It is a privilege to be able to speak directly to you today. I intend to speak briefly of my own experience.
2. The key UNCITRAL documents (such as the Model Law on Cross-border Insolvency (1997) itself and the Guide to the Enactment and Interpretation of the Model Law (2013)) are addressed primarily to policymakers and legislators. They seek to secure the adoption of a global framework.
3. The preamble to the Modern Law itself says that amongst its objectives is greater legal certainty for trade and investment. Certainty means “predictability of outcome”. At a recent conference I attended a poll of delegates demonstrated that 46.67% of attendees thought that a track record of successful reorganization was the most significant factor in the choice of jurisdiction and law.
4. Predictability of outcome requires a uniform interpretation and a uniform implementation of the relevant law. As one speaker at the conference said: “Only having the law does not bring you to having a commercial and creative legal [system]” (*Sigrid Jansen: A&O Head of Global Restructuring*). Another speaker said: “You need an ecosystem, not a law” (*Anurag Das: Harvard Business School*). UNCITRAL seeks to create such an ecosystem supporting its recommended law in four ways.

5. The first way of developing an ecosystem is by ensuring that judges really understand the law. This is the programme of judicial capacity building. The Model Law is often introduced in the context of wholesale modernisation of the domestic insolvency law. It is vital that judges are introduced to and enabled to understand the whole of this new structure. This capacity-building work is often undertaken in partnership with other organisations. I have recently been involved in judicial training in India, Malawi, Mauritius, Zambia and the Eastern Caribbean. Of course, in the past two years this teaching has had to be done on a digital platform which both shortens the training courses and limits engagement. But such training is still valued. Attendees are taken from basic insolvency concepts through the practical application of those concepts in case studies and discussion scenarios (analysed by both lawyers and accountants) and then onto the Model Law itself. One of the most fruitful techniques is role play, where groups of judges assume the role of individual interested parties to gain insight into what the interests of that group are and how they are affected by the insolvency or restructuring process. Of course, that is technically difficult to achieve digitally.
6. The second way of creating an ecosystem is by making accumulated knowledge accessible to working judges, both in relation to the interpretation of the Model Law and in relation to its practice and supporting procedures. Here UNCITRAL provides two useful tools.
7. The first tool is a legal database of relevant cases (Case Law on UNCITRAL Texts or “CLOUT”). This largely depends upon individual judges offering judgments for inclusion: so, this year I uploaded what I thought might be a useful model “recognition” judgment (designed to demonstrate that in a straightforward case it is

possible to give reasons for a recognition decision without writing a doctoral thesis). One consequence of this is that the database has grown in an unstructured way, but it has now been supplemented by the Digest of Case Law on the Model Law published in 2021/22 and I anticipate that this will afford improved access.

8. The second tool is the very recently up-dated *Judicial Perspective*, a book written by judges for judges and containing both analysis of legal issues and advice on practical issues. It is certainly used in England and Wales, the US and Singapore as an aid to decisions. I have this year been involved with other judges in updating it by reviewing UK and European cases.
9. The third way of creating an ecosystem is by sharing experiences together face-to-face. We have just finished the Judicial Roundtable held in London and co-sponsored by UNCITRAL. In one year, the colloquium is by invitation only and does a “deep dive” into complex issues encountered by judges who are highly involved in insolvency and restructuring work. 2022 was such a colloquium. 30 judges discussed issues of fairness in restructuring; group insolvencies (noting both the recent EU Recast law and the UNCITRAL Model law on Enterprise Group Insolvency); recognition under private international law in non-Model Law jurisdictions; and crypto-currencies (an overlap with an UNCITRAL Working Group). It was especially pleasing that many judges from civil law jurisdictions accepted invitations and took a prominent part in discussions. The next colloquium will be an open one considering more basic and common issues and attended by a much larger number and broader cross-section of judges
10. The fourth means of creating an ecosystem to implement the law is by examining specific issues together. October 2021 saw the first UNCITRAL/World Bank Judicial

Workshop. Judge Nastasie has already referred to this; it was a pleasure to work with her. The workshop concerned setting aside pre-insolvency dealings in order to increase the size of the estate that is distributable between creditors. On 27 October we lead in discussion approximately 120 participants drawn from Africa Asia and the Pacific region; and on the following day slightly fewer from the rest of the world. It was pleasing to have a large attendance from North African/Middle Eastern jurisdictions to bring an Islamic perspective to our discussions.

11. Those are the four ways UNCITRAL seeks to achieve predictability within and across jurisdictions. I am grateful for the opportunity to participate in each of these programmes.