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Insolvency Law

Technical assistance and cooperation

Note by the Secretariat

Introduction

1. At its forty-fourth session (2011), the Commission stressed the importance of technical cooperation and assistance provided by the UNCITRAL Secretariat, on the basis that legislative technical assistance, in particular to developing countries, was no less important than the formulation of uniform rules itself. It had been noted that, while UNCITRAL had prepared a number of legislative standards, their rate of adoption varied significantly and therefore the promotion of the adoption and use of those standards seemed to call for specific attention.¹

2. At its forty-fifth session (2012), the Commission noted that the continuing ability to respond to requests from States and regional organizations for technical cooperation and assistance activities was dependent upon the availability of funds to meet associated costs. The Commission further noted that, despite efforts by the Secretariat to solicit new donations, funds available in the UNCITRAL Trust Fund for Symposia were very limited. It was suggested that UNCITRAL delegates and experts might be in a position to further contribute to the mandate of UNCITRAL, for example, by assisting in identifying decision makers on trade law reform.²

¹ *Official Records of the General Assembly, Sixty-sixth Session, Supplement No.17 (A/66/17)*, paras. 253-254.

² *Official Records of the General Assembly, Sixty-seventh Session, Supplement No.17 (A/67/17)*, para. 146.



3. Against that background, Working Groups have been requested to devote some time in each session to discussing possible ways to further the implementation of UNCITRAL texts. At its forty-first session in 2012, the Working Group had an informal discussion on recent activities undertaken by a number of States with respect to enactment and use of UNCITRAL insolvency texts. A brief summary of that discussion was included in the report of that session (A/CN.9/742, paras. 102-104).

4. To facilitate discussion at its forty-second session (November 2012), the Working Group may wish to consider, inter alia, the following issues and share its views. To the extent the discussion leads to suggestions for further activity or work to be undertaken by the Secretariat, it should be noted that it would have to be accommodated within existing resource constraints:

(a) UNCITRAL instruments on insolvency law are often referred to in the literature written about insolvency law and reform. In some cases, they are referred to as establishing international standards that it is recommended States should follow or have reference to in revising and modernizing their insolvency regimes. In other cases, they are listed as one of the many instruments available for reference by States; those lists often place them on a par with instruments developed by other international organizations and non-governmental organizations. The Working Group may wish to consider how it could assist the Secretariat in better promoting UNCITRAL insolvency texts and disseminating information on them more widely;

(b) General Assembly resolutions endorsing texts adopted by the Commission often ask the Secretariat to bring them to the attention of States to ensure they become generally known and available. While some texts, such as model laws and legislative guides, are directed primarily at States (Governments and legislators), other texts have been developed with judges and practitioners in mind. These might become more known if promoted differently, such as to national judicial colleges, judicial groups and other such institutions. The Working Group might wish to consider how it could assist the Secretariat in identifying appropriate means of promoting these texts;

(c) The discussion at the forty-first session of the Working Group brought to light information on technical assistance activities being conducted both by States and international organizations involving the use of UNCITRAL insolvency texts. The Working Group might wish to consider whether it would be useful to share more of that information and, if so, how that might be achieved.