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Kirkland Alert

UK to Implement UNCITRAL Model Law on Enterprise Group Insolvency; Decision on “Article X” of Judgments Model Law to Follow

10 July 2023

At a Glance

The Insolvency Service today [announced](#) the outcome of the Government’s consultation on implementing two model laws in the field of insolvency, which have been adopted by the United Nations Commission on International Trade Law (‘UNCITRAL’) – namely, the Model Law on Enterprise Group Insolvency (‘Group Model Law’) and the Model Law on Recognition and Enforcement of Insolvency-Related Judgments (‘Judgments Model Law’).

The Government intends to legislate to implement the Group Model Law “at the earliest opportunity”. The Group Model Law provides tools to manage and co-ordinate insolvencies within corporate groups, while respecting that each company within the group remains a separate legal entity. The UK may be the first jurisdiction to implement the Group Model Law into its national law, taking the lead as an early adopter. In the short term, the practical impact of the Group Model Law will be limited, until it is adopted in multiple jurisdictions.

In contrast, the Government will not yet proceed with its proposal to adopt “Article X” of the Judgments Model Law, which is designed to facilitate the cross-border recognition and enforcement of insolvency-related judgments. Instead, in order to address issues raised in certain consultation responses (including the response to which Kirkland contributed), the Government plans to undertake further work to

determine how legal certainty can be maintained. We welcome this more measured approach.

For background on the consultation and the two Model Laws, see our [Alert](#) from July 2022.

Group Model Law

Nature/purpose: This Model Law is designed to facilitate insolvencies affecting multiple members of the same group, via various provisions for co-operation, communication and efficient administration. It is designed to maximise the value of the group's assets and operations, whilst seeking to protect the (potentially divergent) interests of creditors of different group members.

Procedural co-ordination, not substantive consolidation: The Group Model Law provides for procedural co-ordination. It would not usually involve substantive consolidation (i.e., combining the assets and liabilities of related companies as if they were part of a single insolvency estate).

Protection of creditors' interests: In considering relief under the Group Model Law, the court must be satisfied that the interests of the creditors of each enterprise group member subject to a planning proceeding (and other interested persons) are adequately protected.

Formal framework: As the consultation response acknowledges, there is already considerable scope for voluntary co-operation between insolvency officeholders. However, the Group Model Law creates a formal framework for co-operation in a predictable and internationally recognised form.

Impact: The Group Model Law will principally apply to complex group insolvencies. While the consultation response acknowledged that the possibility of expanding the model law to include all restructuring proceedings (as suggested in the response to which Kirkland contributed) is "attractive", the Government does not propose to do so at present.

As noted, the impact of the UK's adoption of the Group Model Law will be limited in the short term, until it is adopted in multiple jurisdictions.

Judgments Model Law

Nature/purpose: The consultation proposed to add Article X to the UK's version of the Model Law on Cross-Border Insolvency, so as to expressly provide that the recognition of insolvency-related judgments is a form of assistance that can be granted under that model law. This would include a plan of reorganisation / restructuring plan.

Areas of concern in consultation responses: The consultation response notes concerns that, without clarification on certain other points, the impact of implementing Article X may be unpredictable and hence detrimental. In particular, further development of policy questions will first be required, including:

- settling the UK's stance on the "rule in Gibbs" (historic case-law which holds that where a contract is governed by a particular country's law, it cannot be compromised or discharged by insolvency proceedings under a different law); and
- choice of law rules as to when the foreign insolvency law should not apply (at UNCITRAL, work is underway on the topic of applicable law in insolvency proceedings).

The Government will now "consider how to facilitate debate on the surrounding topics such as [the rule in] Gibbs, to enable our implementation of the [Judgments Model Law] to be clear, effective, and work to benefit the UK".

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Suggested Reading

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- 05 July 2023 Award Bankruptcy Tax Specialists in the Nation's Major Law Firms 2023
- 05 July 2023 Kirkland Alert English Court Crams Down Tax Authority in Prezzo’s Restructuring Plan; Ability to Zero “Out of the Money” Classes

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