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**MEDIA STATEMENT BY THE SOUTH AFRICAN LAW REFORM COMMISSION
CONCERNING ITS INVESTIGATION INTO CONSOLIDATED LEGISLATION
PERTAINING TO INTERNATIONAL CO-OPERATION IN CIVIL MATTERS (PROJECT
121)**

The South African Law Reform Commission (the SALRC) hereby releases its report on its investigation into *Consolidated Legislation Pertaining to International Co-Operation in Civil Matters* (Project 121). This investigation was prompted by the need to end South Africa's legal isolation so that the country could begin to participate more actively in global attempts to improve judicial co-operation. In order to achieve this goal, our law needs to be clarified and amended. The key findings and recommendations of the report include the following:

As a starting point, gaps and ambiguities in the common law must be remedied. These reforms will obviously benefit litigants seeking to serve process, take evidence or enforce judgments locally, but urgent attention must also be paid to the plight of South African litigants who wish to perform the same acts abroad. Unless an international agreement is negotiated in advance to secure an accelerated procedure under one of our domestic statutes, the judgment creditor is at the mercy of the domestic law of the state in which enforcement is sought.

In any legal action, the alleged debtor is unlikely to be a willing party in the proceedings. Procedures for serving process, obtaining evidence from witnesses or executing judgments are therefore critical to the success of the proceedings. If the debtor is living abroad, however, there is every chance of these procedures being frustrated, because considerations of sovereignty preclude direct execution of judicial process outside the territory of the rendering state. Service and enforcement procedures in foreign countries therefore require international co-operation. An increase in cross-border trade inevitably leads to an increase in international civil disputes. These disputes, in turn, generate new disputes about jurisdiction, service of process and the recognition and enforcement of foreign judgments. South Africa is not alone in acknowledging the need for clear rules to govern these problems. Most states are now committed to providing fast and inexpensive judicial facilities, especially for the business community, so as to contribute to the flow of wealth, skills and people across state lines in a fair and orderly manner.

At present, the scope of application of the following Acts is far too limited: the Foreign Courts Evidence Act 80 of 1962; Enforcement of Foreign Civil Judgments Act 32 of 1988; the Reciprocal Enforcement of Maintenance Orders (Countries in Africa) Act 6 of 1989 and the Reciprocal Service of Civil Process Act 12 of 1990. Steps should be taken to make our statutory procedures more widely available, and to ensure reciprocal treatment from foreign states. The most practical method for achieving this aim is the negotiation of bilateral treaties with our immediate neighbours and major trading partners, an initiative that will require action by the Department of Justice and Constitutional Development, together with the Department of Foreign Affairs. A key part of this commitment to international judicial co-operation is South Africa's accession to certain multilateral conventions. The two conventions which are of immediate importance in this regard are the United Nations Convention on the Recovery Abroad of Maintenance of 1957 and the Hague Convention on the Recognition and Enforcement of Maintenance Obligations of 1973. Moreover, in order to keep abreast of global developments, South Africa should continue to participate actively in the Hague Conferences on international law.

The Report concludes that there is no pressing need to consolidate all legislation governing international judicial co-operation into a single instrument. In particular, legislation governing enforcement of maintenance orders and other civil judgments should be kept separate. Essentially, what is required, are amendments to existing Acts to improve their scope of application; amendments to the common law because of gaps and ambiguities and the repeal of the Protection of Businesses Act 99 of 1978.

The principal aim of the Protection of Businesses Act 99 of 1978 was to protect South Africans from the draconian effects of certain foreign laws, in particular those allowing awards of penal or multiple damages. To this end, the Act prohibits any form of international judicial co-operation by South African courts, whether service of process, taking of evidence or enforcement of a judgment. In exceptional circumstances, however, the Minister of Trade and Industry may, subject to such conditions as the Minister may deem fit, give permission for compliance with a request for judicial co-operation.

All the respondents to the Issue and Discussion Papers published for general information and comment supported the goal of international judicial co-operation. This topic is attracting growing support world-wide, giving rise to an increasing number of international conventions. The Protection of Businesses Act is a major obstacle to this principle. The Act frustrates what are, in the majority of cases, uncontentious requests for serving process, taking evidence or enforcing foreign judgments. The convoluted and over-detailed language

of the Act has led to ambiguity and non-compliance. The Act could be interpreted as signaling a hostile and defensive attitude to the international community.

The South African Law Reform Commission was established by the South African Law Reform Commission Act 19 of 1973. It is an advisory body whose aim is the renewal and improvement of the law of South Africa on a continuous basis.

The Report will be made available on the Internet at the following site:
<http://www.doj.gov.za/salrc/reports.htm>

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