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## Draft legislative guide on insolvency law

### Note by the Secretariat

#### Contents

*[The Introduction and Part One of the draft Guide appear in document A/CN.9/WG.V/WP.63; Part Two, Chapter I appears in documents A/CN.9/WG.V/WP.63/Add.1 and Add.2; Chapter II.A and B appear in documents A/CN.9/WG.V/WP.63/Add.3 and Add.4; Chapter III.A-F appear in documents A/CN.9/WG.V/WP.63/Add.5-9; Chapter IV.A-D appear in documents A/CN.9/WG.V/WP.63/Add.10-11; Chapter V appears in document A/CN.9/WG.V/WP.63/Add.12; Chapter VI.B-E and Chapter VII appear in subsequent Addenda]*

	<i>Paragraphs</i>	<i>Page</i>
Part Two (continued)		
VI. Management and proceedings . . . . .	376-411	2
A. Treatment of creditor claims . . . . .	376-411	2
1. Introduction. . . . .	376	2
2. Submission of creditor claims . . . . .	377-394	2
3. Procedure for verification and admission. . . . .	395-411	6
Recommendations. . . . .	(146)(160)	11

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*Paragraph numbers in [...] refer to relevant paragraph numbers in A/CN.9/WG.V/WP.58, the previous version of the text of the Guide.*

*Recommendation numbers in [...] refer to relevant recommendations in A/CN.9/WG.V/WP.61 and A/CN.9/WG.V/WP.61/Add.1, the previous version of the recommendations. Additions to the recommendations are indicated in this document by underlined text.*

## **Part Two (continued)**

# **VI. Management of proceedings**

## **A. Treatment of creditor claims**

### **1. Introduction**

376. [215] Claims by creditors operate at two levels in insolvency proceedings—firstly, for purposes of determining which creditors may vote in the proceedings and how they may vote (according to the class of creditor into which they fall) and secondly, for purposes of distribution (see Part two, chapter VI.C). The procedure for submission of claims and their admission or non-admission is therefore a key part of the insolvency procedure and consideration should be given to determining which creditors should be required to submit claims, the procedures applicable to the submission of claims, the procedure for verification and admission (or non-admission) of claims, the consequences of failure to make a claim, and review of decision concerning the admission or non-admission of claims. An insolvency law should also address the effect of submission and admission of claims, as this will be key to creditor participation. For example, submission of a claim may entitle a creditor to participate at the first meeting of creditors, while admission, or at least provisional admission, may be essential to enable a creditor to vote on various matters in the proceedings.

### **2. Submission of creditor claims**

#### **(a) Creditors who may be required to submit claims**

377. The principal issue with regard to deciding which creditors will be required to submit a claim relates to the treatment of secured creditors, since unsecured creditors (irrespective of whether the debt is contingent or liquidated) are generally required to submit a claim (unless of course, the claims procedure provides that not all creditors are required to file claims).

378. Under those insolvency laws which do not include secured assets in the insolvency estate and allow secured creditors to freely enforce their secured interest against the secured assets, secured creditors may be excluded from the requirements to submit a claim to the extent that their claim will be met from the value of the sale of the secured asset. To the extent that the value of the secured asset is less than the amount of the secured creditor's claim, the creditor may be required to submit a claim as an ordinary unsecured creditor. The value of the unsecured claim depends upon the value of the secured asset and the time at which that value is determined and the method of valuation used, and unless clear rules apply to valuation, there is the potential for some uncertainty, particularly in terms of deciding voting rights.

379. Other insolvency laws allow secured creditors to surrender the security to the insolvency representative and to submit a claim for the total value of the secured interest. A further approach requires secured creditors to submit a claim for the total value of the secured interest (irrespective of the surrender of the security), a requirement which in some laws is limited to the holders of certain types of security, such as floating charges, bills of sale, or security over chattels. Where secured creditors are required to submit a claim, the procedures for submission and verification are generally the same as for unsecured creditors. The approach of requiring secured creditors to submit claims has the advantage of providing information to the insolvency representative as to existence of all claims and the amount of the outstanding debt. Whichever approach is chosen, it is desirable that an insolvency law includes clear rules on the treatment of secured creditors for the purposes of submission of claims.

**(b) Limitations on claims that can be submitted**

*(i) Post-commencement debt*

380. [234] As a general principle, claims can only be submitted in respect of debt incurred prior to commencement. How debt incurred after commencement is treated will depend on the nature of the proceedings and what is provided in the insolvency law—many laws provide that they are payable in full as costs of the proceedings (see Part two, chapter VI.C.1(b)).

*(ii) Types of excluded claims*

381. [246] For a variety of public policy reasons, an insolvency law may seek to exclude certain types of claims. Examples include foreign tax claims, fines and penalties, claims relating to personal injury, claims relating to negligence and gambling debts. Other insolvency laws provide that such claims can be submitted but they may be subject to special treatment, such as subordination to other unsecured claims. It is highly desirable that an insolvency law identifies those claims that are to be excluded from the insolvency process (or subjected to special treatment—see Part two, chapter VI.C).

382. [247] Foreign tax claims are currently excluded by many countries, and it is generally recognized that such an exclusion does not violate the objective of equal treatment of foreign and domestic creditors. Despite this general view, however, there are no compelling reasons why such claims cannot be admitted if a country wishes to do so. Where foreign tax claims are admitted, they can be treated in the same manner as domestic tax claims or as ordinary unsecured claims. Article 13(2) of the UNCITRAL Model Law on Cross-Border Insolvency recognizes these different approaches, providing that the requirement of equal treatment of foreign and domestic creditors is not affected by the exclusion of foreign tax and social security claims or by their ranking on the same level as general non-preference claim or lower if equivalent local claims have that lower ranking.

383. [248] Where gambling debts are treated as excluded claims it is generally on the basis that they arise from an activity that is itself illegal. Rather than focusing upon the specific types of claims that may be excluded as illegal, an insolvency law may exclude, as a general category, those claims that arise from illegal activity and are thus unenforceable.

384. [249] With respect to fines and penalties, an insolvency law may distinguish between those which are of a strictly administrative or punitive nature (such as a fine imposed as the result of an administrative or criminal violation) and those of a compensatory nature. It may be argued that the first category should be excluded on the basis that they arise from some wrongdoing on the part of the debtor and unsecured creditors should not be made to bear the burden of that wrongdoing by seeing a reduction in the assets available for distribution. In comparison, there would seem to be no compelling reason for excluding the second category, particularly where it relates to recompense for damage suffered by another party, except to the extent that exclusion may also be justified as a means of increasing the assets available to unsecured creditors. An alternative approach would be to admit claims based on fines and penalties because otherwise they will remain uncollected [*other reasons?*].

**(c) Procedure for submission of claims**

*(i) Timing of submission of claims*

385. [236] To ensure that claims are submitted in a timely fashion and that the insolvency proceedings are not unnecessarily prolonged, deadlines for submission of claims can be included in an insolvency law, or be determined by the court or by the insolvency representative. Some insolvency laws provide, for example, that the court, when deciding to commence proceedings, will establish a deadline for the making of claims; in some cases that deadline is to be within a range established by the insolvency law, and examples range from 10 days to three months. Other insolvency laws do not establish any deadlines for submission, and may provide for the insolvency representative to determine the timing of submission of claims, or provide for claims to be filed at any time up until the final report and accounting by the insolvency representative. Some insolvency laws provide for different time limits depending upon the method of notification of commencement; where the creditor is a known creditor and receives personal notification of the commencement of proceedings the time limit may be shorter than where the creditor has to rely on public notification of commencement.

386. While these deadlines may assist in ensuring that the claims process does not impose unnecessary delay on the proceedings, they [236] may operate to disadvantage foreign creditors who in many cases may not be able to meet the same deadlines as domestic creditors. To ensure the equal treatment of domestic and foreign creditors, and to take account of the international trend of abolishing discrimination based upon the nationality of the creditor, it may be possible to adopt an approach that either allows claims to be submitted at any time prior to distribution, or sets a time limit which can be extended or waived where a creditor has good reason for not complying with the deadline, or where the deadline operates as a serious impediment to a creditor. Where the claim is submitted late and causes costs to be incurred, those costs could be borne by the creditor.

*(ii) Burden of submitting and proving claims*

387. [235] Many insolvency laws place the burden of submitting and proving their claim upon creditors. Generally they will be required to produce evidence as to the amount of the claim, the basis of the debt and any preferences or security claimed. In some cases this information is to be provided by way of a standard claim form,

but in any event the claim generally is to be accompanied by supporting documentation. Many laws provide that the insolvency representative is entitled to request the creditor to provide more information or documentation to prove their claim. Some insolvency laws provide that creditors do not have to prove their claim in all cases, such as where the insolvency representative is able to ascertain, from the debtor's books and records, which creditors are entitled to payment. Those creditors may be required, however, to notify the insolvency representative of their claim.

388. [253] An approach which does not require creditors to submit a claim in all cases may be facilitated where the insolvency law requires, as an initial step in the proceedings, that a list of creditors and claims is prepared, either by the court or by the debtor, with the assistance of the insolvency representative. Preparation of such a list by the debtor takes advantage of the debtor's knowledge about its creditors and their claims and gives the insolvency representative an early indication of the state of the business. An alternative would be to require the insolvency representative to prepare that list, an approach that may serve to reduce the formalities associated with the process of verification of claims, but may add to expense and delay, as it would rely upon the insolvency representative obtaining accurate and relevant information from the debtor. Once the list is prepared, it could be used to assess which creditors should be invited to make their claims to the insolvency representative for purposes of verification or for the purposes of ensuring that all relevant creditors have submitted claims. The list can also be revised and updated over time to provide an accurate indication of the level of the debtor's indebtedness.

(iii) *Formalities for submission of foreign claims*

389. [238] An issue of particular importance to foreign creditors is whether the claim must be submitted in the language of the jurisdiction in which the insolvency proceedings have commenced, and whether the claim is subject to certain formalities, such as notarization and translation. To facilitate the access of foreign creditors, consideration may be given to whether these requirements are essential or may be relaxed as in the case of other procedural formalities discussed in respect of article 14 of the UNCITRAL Model Law on Cross-Border Insolvency (see Part two, chapter VIII).

(iv) *Conversion of foreign currency claims*

390. [250] The valuation of claims is of particular relevance to foreign creditors who will generally make their claims in currencies other than that of the country of the insolvency proceedings. For verification and distribution purposes, these claims are normally converted into the domestic currency. The date of conversion may have been agreed in the contract between the debtor and creditor, or it may be set by reference to the stages of the proceedings, such as commencement or some later time. If the date of conversion is set at the date of commencement of the insolvency proceedings, and the currency depreciates or appreciates in the period before distribution (which could occur at a significantly later time), the amount of the claim will also fluctuate. An alternative approach is to make a provisional conversion at the time of commencement for the purposes of voting, but if the exchange rate fluctuates more than a given percentage (which may be stipulated in

the insolvency law) in the period before distribution, then the conversion can be made at the time of distribution or an appropriate adjustment made to the earlier calculation.

(v) *Party authorized to receive claims*

391. Insolvency laws generally adopt one of two approaches to this question. Some laws require the claim to be submitted to the court, while others provide for claims to be submitted to the insolvency representative. The reason for the difference generally relates to the process of verification and whether it is conducted by the court or the insolvency representative.

**(d) Failure to submit claims**

(i) *Failure to submit within a stipulated time period*

392. Different approaches are taken in respect of those claims not submitted within the specified time limit (where the insolvency law, the court or the insolvency representative imposes such a limit). Some insolvency laws adopt a flexible approach providing that notwithstanding the application of a deadline, claims still can be filed at any time up to the insolvency representative's final report and accounting in liquidation, but the creditor must bear any additional costs associated with submitting a claim at such a late stage. One consequence of late submission may be that the creditor cannot participate in interim distributions occurring before submission (or admission) of the claim, although there are examples of laws which provide for the creditor to receive previous interim dividends once the claim has been admitted. A further consequence is the loss of the right to vote at meetings of creditors.

393. Another approach is to adhere strictly to submission deadlines, and some laws provide that failure to file a claim may result in the debt being extinguished or security rights being waived or forfeited. It should be noted, however, that in the case of one law which follows this approach, the law requires creditors protected by registered security rights and leasing agreements to be personally notified of commencement of proceedings and of the need to submit a claim. Other laws require the creditor who has failed to submit its claim to petition the court to admit its claim. Where admitted, the creditor will only share in future dividends.

(ii) *Failure to submit a claim before conclusion of the proceedings*

394. The failure of a creditor to submit a claim before the final report and accounting may lead to different results depending upon other provisions of the insolvency law. Where the insolvency law provides for a discharge of the debtor upon conclusion of the insolvency proceedings, some of those laws provide that unsubmitted claims are forfeited [*are there other approaches?*]

**3. Procedure for verification and admission**

**(a) List of submitted claims**

395. Many insolvency laws require the court or the insolvency representative, depending upon requirements for submission, to prepare a list of submitted claims, either after expiry of the deadline for submission of claims or on a continuing basis

in cases where there is no deadline. Where the insolvency law requires preparation of a list of creditors (see para. 388), the list of claims would update that earlier list of creditors. The list of claims can be used as the basis of verification and admission of claims and for notification as to the receipt, admission or non-admission of claims, depending upon the applicable admission procedure. [239] Many insolvency laws provide that all identified and identifiable creditors are entitled to receive notice of claims that have been made. This will enable creditors to see what claims have been submitted and to object to the claims of other creditors (where this is permitted under the insolvency law). The notification may be given personally, by publishing notices in appropriate commercial publications or by filing the list with the court.

**(b) Procedures for verification and admission**

396. [241] Verification involves not only an assessment of the underlying legitimacy and amount of the claim, but also classification of a claim for purposes of voting and distribution (e.g. secured or unsecured claims; pre-commencement or post-commencement claims, priority and so on).

*(i) Deadline for verification and admission*

397. A number of insolvency laws impose time limits for verification and admission of claims, requiring that a decision be provided to creditors within a short period such as 30 days after the expiry of the deadline for submission. Other laws make no provision for time limits.

*(ii) Admission procedure*

398. Where claims are submitted to the insolvency representative, insolvency laws provide that those claims will be admitted by the insolvency representative, or the insolvency representative will be required to convene a meeting of creditors to scrutinize those claims. Where claims are submitted to the court, the court will convene that meeting or hearing. One issue that may be of concern to foreign creditors is the requirement in some insolvency laws for them to attend such meetings in person in order for their claims to be admitted. Such a requirement has the potential to frustrate the goal of equal treatment of similarly situated creditors, and it is desirable that claims of foreign creditors can be admitted on the basis of documentary evidence without the additional formality of personal appearance.

399. [242] Many insolvency laws provide that where the claim is to be submitted to the insolvency representative, it is for the insolvency representative to verify the claims and decide whether or not the claims should be admitted, whether in whole or in part. The creditor will be notified of the insolvency representative's decision and where the claim is not admitted, or admitted only in part, the insolvency representative is generally required to provide reasons for that decision (often required to be given in writing). Such a requirement is likely to enhance the transparency of the procedure and potentially its predictability for creditors. Some insolvency laws provide that the insolvency representative's decisions on admission of claims are to be updated on the list of claims that is filed with the court or made public in some other way in order to facilitate consideration by other creditors and the debtor. Where following appropriate notification the insolvency representative

does not receive any objections to claims proposed to be admitted, a number of insolvency laws provide that the claim is deemed to be admitted.

400. Under some insolvency laws the insolvency representative is required to convene a meeting of creditors to consider submitted claims on the basis of the list prepared by the insolvency representative. That list may be required to include recommendations as to admission, value and priority of individual claims. Where no objections to admission of claims are made at that meeting, the insolvency representative's recommendations may be deemed under the insolvency law to be approved or the claims admitted. A similar procedure is followed where claims are submitted to the court.

401. [243] With a view to minimizing the formalities required for verification and admission of claims, an alternative approach to those outlined above may be to provide that claims outstanding at the time of commencement do not require verification and can be admitted on an automatic basis unless the claim is challenged. This approach will require some mechanism for determining the existence of claims, and it may not be sufficient to rely upon the books and records of the debtor to identify all claims as these may not provide a sufficiently reliable or complete source of information. If an approach of automatic admission is adopted, it may be desirable to combine it with a mechanism aimed at ensuring that adequate information as to the claims admitted on that basis is available to all interested parties. Automatic admission of claims may avoid many of the difficulties associated with the insolvency representative having to make a precise assessment of the situation at the outset of the proceedings to enable creditors to participate in and vote at meetings held at an early stage of the proceedings. Automatic admission of claims may be assisted by requiring claims to be submitted in the form of a declaration, such as an affidavit, to which sanctions would attach in the event of fraud. It could also be assisted by admitting claims that are supported by properly maintained accounting records or allowing creditors to accept as correct the amount of their claim as shown in the records of the debtor that are kept in the ordinary course of business. It may be desirable for an insolvency law to address the question of false claims and the applicable sanctions.

(iii) *Provisional admission of claims*

402. [240] Creditors claims may be of two types: those that involve a determined amount and those where the amount owed by the debtor has not been or cannot presently be determined. Such claims may be either contractual or non-contractual in nature and may arise in respect of both secured and unsecured claims. Claims may also be conditional, contingent and not mature at the time of commencement (the latter would generally be subject to a deduction for the unexpired period of time before maturity).

403. [240] Where the amount of the claim cannot be or has not been determined at the time the claim is to be submitted, many insolvency laws provide for a claim to be admitted provisionally or to be given a provisional value. Admission of provisional claims raises a number of issues. These concern valuation of the claim and the party to undertake that valuation (the insolvency representative, the court or some other appointed person); voting of provisional creditors on important issues such as determining whether the case is one of liquidation or reorganization or approval of the reorganization plan; and whether, as minority creditors, they can be



bound by a plan to which they have not agreed (see Part two, chapter V). Where an insolvency law provides for provisional admission of claims, it may be necessary to consider whether such claims will be subject, in the first instance, to the same procedure as other claims. For example, where admission involves a hearing before the court or a meeting of creditors to be called, claims that might be provisionally admitted could be subject to that procedure, or they could first be admitted by the insolvency representative, without prejudice to the right of a dissenting party to dispute that claim, and be subject to some procedure for approval at a later stage.

**(c) Disputed claims**

404. [245] Where an insolvency law allows a claim submitted in the insolvency proceedings to be disputed, whether as to its value, priority, or basis, it may also indicate which parties are entitled to initiate such a challenge. Some laws allow claims to be disputed only by the insolvency representative, while other laws permit other interested parties, including creditors and the debtor, to dispute a claim. Depending upon the procedures for submission and admission of claims, the dispute may be raised with the insolvency representative, or before or at the court hearing or creditors meeting held to examine claims. Where such a meeting or hearing is held, the preparation of a provisional list of admissions, either by the court or by the insolvency representative and the provision of that list to all creditors before the hearing or meeting will facilitate the consideration of claims. Where claims are the subject of a dispute outside of the insolvency proceedings, they may generally fall into one or other of the categories of claims that may be provisionally admitted in the insolvency proceedings, depending upon the nature of the claim.

405. [245] Where claims are disputed, whether by a creditor, the insolvency representative or the debtor, a mechanism for a quick resolution of the dispute is essential to ensure efficient and orderly progress of the proceedings. If disputed claims cannot be quickly and efficiently resolved, the ability to dispute a claim may be used to frustrate the proceedings and create unnecessary delay. Most insolvency laws provide for disputes to be resolved by the court to ensure finality of the decision.

**(d) Effect of admission of a claim**

406. [244] Admission of a claim of a creditor will establish the right of the creditor to attend a meeting of creditors, and the amount for which the creditor is entitled to vote at such a meeting, whether on the election of an insolvency representative or approval of a reorganization plan. It will also fix the amount that the insolvency representative must take into account in making a distribution to creditors. Provisional admission of a claim will generally entitle the creditor to participate in the proceedings to the same extent as other creditors, except that they may not be entitled to participate in distributions until the value of the claim is finally fixed and the claim admitted. Where, however, the claim is not ultimately fully admitted, any previous votes by the creditor in the proceedings may be discounted.

**(e) Setoff of mutual claims** *[to be coordinated with chapter III.F]*

407. As noted above in chapter III.F, a number of insolvency laws make provision for mutual money obligations between the debtor and creditors to be set off in insolvency proceedings, provided certain conditions are met. These may include, for

example, requirements that the claims existed and were due and payable at the time of commencement of the proceedings; that the creditor acquired the claim without fraud or was not aware of the financial situation of its debtor; that the creditor did not acquire the claim during the suspect period; that the creditor has declared its intention to seek a set-off to the insolvency representative; and that the claims were related. A very few insolvency laws provide for mandatory set-off in insolvency, while a number of other laws do not permit set-off on the basis that it violates the *pari passu* principle.

**(f) Claims requiring special treatment**

*(i) Administrative claims*

408. [220] Insolvency proceedings often require the assistance of professionals, such as the insolvency representative and advisors to the debtor or insolvency representative. Expenses may be incurred by creditor committees and also for the purposes of operating the business and carrying out the proceedings, including many or all post-commencement debts, such as claims of employees, lease costs and similar claims.

409. [221] Notwithstanding the importance of providing appropriate remuneration to those involved in the conduct of the insolvency proceedings, administrative expenses have the potential for a significant impact on the value of the insolvency estate. While to some extent that impact will depend upon the design of an insolvency law and its supporting infrastructure, consideration of how that impact can be minimized may be desirable. An insolvency law can provide, for example, precise but flexible criteria relating to the allowance of those expenses. These criteria may include providing that allowance of the expenses is conditional upon the utility of the expense to increasing the value of the estate for the general benefit of all constituents, or that the expenses be not only reasonable and necessary, but also consistent with the key objectives of the process. Reasonableness of the expense may be assessed by reference to the amount of resources available to the proceedings and to the possible effect of the expense on the proceedings. [*Note to the Working Group: Are there examples of laws which include such criteria?*]

410. [222] Different approaches may be taken to conducting that assessment. One approach may be to require authorization by the court prior to the cost being incurred, or authorization by the court of all costs falling outside the scope of the ordinary course of business. A second approach may be to provide that the assessment be made by creditors, to facilitate the transparency of the proceedings, subject to recourse to the court in the event that the assessment of the creditors is disputed.

*(ii) Related persons*

411. [233] A category of creditors that may require special consideration is those persons related to the debtor, whether in a familial or business capacity (discussed above, see Part two, chapter III.E.3(e)). Special treatment of the claims of these persons is often justified on the basis that they are more likely to have been favoured and tend to have had early knowledge of the financial difficulties of the debtor and [*other?*]. While they do not properly fall within classes of excluded claims, it may be appropriate to consider whether they should be admitted and

treated in the same way as other creditors or be admitted subject to special treatment. The mere fact of a special relationship with the debtor, however, may not be sufficient in all cases to justify special treatment of a creditor's claim. In some cases these claims will be entirely transparent and should be treated in the same manner as similar claims made by creditors who are not related persons, in other cases they may give rise to suspicion and will deserve special attention. An insolvency law may need to include a mechanism to identify those types of conduct or situations in which claims will deserve additional attention, such as where the debtor is undercapitalized or where there has been self-dealing. In those cases, the claim may be restricted in the amount allowed or the claim may be subordinated, or the voting rights of the related creditor restricted (such as in selection of the insolvency representative).

(iii) *Claims for interest* (see Part two, chapter VI.C.1(g))

## Recommendations

### Purpose of legislative provisions

The purpose of provisions on treatment of creditor claims is to:

- (a) Define the claims that can be submitted and the treatment to be accorded to those claims;
- (b) Enable persons who have a claim against a debtor to make claims against the insolvency estate;
- (c) Establish a mechanism for verification and admission or non-admission (in full or in part) of claims;
- (d) Provide for review of disputed claims.
- (e) ~~Establish the treatment of particular claims, including those of secured creditors, foreign creditors, creditors whose claims are in a foreign currency, conditional or non-monetary claims, claims for interest, and claims in respect of non-mature liabilities.~~

### Content of legislative provisions

(146) The insolvency law should establish a mechanism for creditors to file claims, for the admission or non-admission of claims and for the treatment of claims.<sup>1</sup> The insolvency law may also provide a mechanism by which undisputed claims can be automatically admitted, by reference to for example [the books and records of the debtor...]. The insolvency law should minimize the formalities associated with submitting a claim.

(147) [(99)] The insolvency law should provide that claims that may be submitted should include all rights to payment which arise from acts or omissions of

<sup>1</sup> The insolvency law should address claims that may require special treatment, for example claims of foreign and other creditors where they are denoted in foreign currency, conditional or non-monetary claims, claims for interest, and claims in respect of immature liabilities.

the debtor prior to commencement of the insolvency proceedings, whether mature or not, whether of a determined [liquidated] or undetermined [unliquidated] amount, whether fixed or contingent. The insolvency law should identify claims, if any, that will not be affected by the insolvency proceedings.<sup>2</sup>

*Secured claims*

(148) The insolvency law should clearly indicate the treatment of secured claims—whether all secured creditors are required to make claims or only where they are undersecured—and specify the consequences of making or failing to make a claim.<sup>3</sup>

*Equal treatment of similarly situated creditors*

(149) [(100)] The insolvency law should provide that all similarly situated creditors, including foreign creditors, are treated equally with respect to the submission and treatment of claims.

*Timing of claims*

(150) [(101)] The insolvency law should establish the time in which claims can be submitted, either:

(a) Within a specified time after [the commencement of proceedings] [notice of commencement of proceedings]; or

(b) At any time prior to final distribution or at a specified time prior to the consideration of a reorganization plan.<sup>4</sup>

*Consequences of failure to claim*

(151) [(102)] The insolvency law should address the consequences that apply where a claim is not submitted within the specified time, or is not submitted before a final distribution is made and the proceedings concluded.

*Foreign currency claims*

(152) [(103)] In respect of foreign currency claims, the insolvency law should indicate the time at which the claim will be converted into local currency. This time may be determined by reference to any agreement in a contract between the debtor and the claiming creditor as to the date of conversion or by reference to the time of the application for, or the commencement of, insolvency proceedings [or some other time in the insolvency proceedings].

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<sup>2</sup> Some insolvency laws provide, for example, that claims such as [government] fines and penalties and taxes will not be affected by the insolvency proceedings. Where a claim was to be unaffected by the insolvency proceedings it would continue to exist and would not be included in any discharge.

<sup>3</sup> See UNCITRAL Model Law on Cross-Border Insolvency, art. 14(3) and para. 111 of the Guide to Enactment. See also recommendation (24), chapter II.B

<sup>4</sup> Where the insolvency law adopts option (b), and a claim is not filed until late in the proceedings, the creditor may be required to accept that it may not participate in any distributions made prior to the filing of the claim.

*Evidence of claims*

(153) [(104)] The insolvency law should provide that a creditor may be required to provide evidence of its claim to the court or alternatively, to the insolvency representative without having to personally appear.

*Admission or non-admission of claims*

(154) [(105)] The insolvency law should provide for admission or [non-admission] of any claim, in full or in part, by the insolvency representative. Where the insolvency representative does not admit a claim it should be required to give reasons.

(155) [(105)] The insolvency law should provide that creditors whose claims have not been admitted or which are disputed in the insolvency proceedings should have a right to review of their claim by the court. The insolvency law should also provide that an interested party may seek review by the court of the admission of any claim.

(156) The insolvency law should permit the insolvency representative, in verifying claims, to decide on the question of set-off.

*Provisional admission*

(157) [(106)] The insolvency law should provide that, to facilitate the conduct of the proceedings and in particular the voting of creditors, claims of undetermined value, secured claims and claims disputed in the insolvency proceedings can be provisionally admitted by the insolvency representative pending valuation of the claim, or resolution of the dispute by the court.

(158) [(107)] The insolvency law should provide that the valuation of a claim may be undertaken by the insolvency representative or by the court. Where the valuation is made by the insolvency representative, it should be subject to review by the court where disputed by an interested party.

*Effects of admission*

(159) [(108)] The insolvency law should establish the effect of admission, including provisional admission, of a claim. These effects may include:

- (a) Permitting the creditor to vote at a meeting of the general body of creditors, including on approval or disapproval of a reorganization plan;
- (b) Determining the ~~[class in which the creditor is entitled to vote]~~ the priority to which the creditor's claim is entitled;
- (c) Determining the amount for which the creditor is entitled to vote;
- (d) Except in the case of provisional admission of a claim, permitting the creditor to participate in a distribution.<sup>5</sup>

<sup>5</sup> However, when making a distribution, the insolvency representative may be required to take account of claims which have been provisionally admitted, or submitted but not yet admitted: see recommendation (171).

*Claims by related parties*

(160) [(109)] The insolvency law should specify that claims by related parties should be subject to scrutiny and where justified by reference, for example, to undercapitalization of the debtor or self-dealing, then:

- ~~(a) Subjection of the claim to careful scrutiny;~~
  - (b) The voting rights of the related party may be restricted;
  - ~~(c) Subordination of the claim;~~
  - (d) The amount of the claim of the related party may be restricted.
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