



General Assembly

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**United Nations Commission on
International Trade Law
Working Group V (Insolvency Law)
Forty-fourth session
Vienna, 16-20 December 2013**

Annotated provisional agenda for the forty-fourth session of Working Group V (Insolvency Law)

I. Provisional agenda

1. Opening of the Working Group session.
2. Election of officers.
3. Adoption of the agenda.
4. Consideration of insolvency topics.
5. Other business.
6. Adoption of the report of the Working Group.

II. Composition of the Working Group

1. The Working Group is composed of the following States: Algeria, Argentina, Armenia, Australia, Austria, Belarus, Botswana, Brazil, Bulgaria, Cameroon, Canada, China, Colombia, Côte d'Ivoire, Croatia, Denmark, Ecuador, El Salvador, Fiji, France, Gabon, Georgia, Germany, Greece, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Israel, Italy, Japan, Jordan, Kenya, Kuwait, Liberia, Malaysia, Mauritania, Mauritius, Mexico, Namibia, Nigeria, Pakistan, Panama, Paraguay, Philippines, Republic of Korea, Russian Federation, Sierra Leone, Singapore, Spain, Switzerland, Thailand, Turkey, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela (Bolivarian Republic of) and Zambia.
2. States not members of the Commission and international governmental organizations may attend the session as observers and participate in the



deliberations. In addition, invited international non-governmental organizations may attend the session as observers and represent the views of their organizations on matters where the organization concerned has expertise or international experience so as to facilitate the deliberations at the session.

III. Annotations to agenda items

Item 1. Opening of the session

3. The forty-fourth session of Working Group V (Insolvency Law) is scheduled to be held in Vienna in December 2013, in conjunction with a colloquium on insolvency law. The colloquium will be held between 16 and 18 December and the Working Group will convene on 19 and 20 December. Meeting hours for the colloquium will be from 9.30 a.m. to 12:30 p.m. and from 2:00 p.m. to 5:00 p.m. Details of the program will be available from the UNCITRAL website (see http://www.uncitral.org/uncitral/en/commission/colloquia_insolvency.html). Working Group meeting hours on 19 and 20 December will be from 9.30 a.m. to 12:30 p.m. and from 2:00 p.m. to 5:00 p.m.

Item 2. Election of officers

4. In accordance with its practice at previous sessions, the Working Group may wish to elect a Chairman and a Rapporteur.

Item 4. Consideration of insolvency topics

1. Previous deliberations on the current mandate

(a) Centre of main interests and directors' obligations

5. At its forty-sixth session in 2013, the Commission finalized and adopted¹ two texts on insolvency law: (a) the revised Guide to Enactment and Interpretation of the Model Law on Cross-Border Insolvency (set forth in A/CN.9/WG.V/WP.112, and revised by the Working Group at its forty-third session (A/CN.9/766) and by the Commission (A/68/17, para. 197)); and (b) part four of the Legislative Guide on Insolvency Law addressing the obligations of directors in the period approaching insolvency (set forth in A/CN.9/WG.V/WP.113, and revised by the Working Group at its forty-third session (A/CN.9/766) and by the Commission (A/68/17, para. 202)).

6. Those two texts were developed pursuant to a mandate² given to Working Group V in 2010 to initiate work on two insolvency topics: (a) providing guidance on the interpretation and application of selected concepts of the UNCITRAL Model Law on Cross-Border Insolvency (the Model Law) relating to centre of main interests (COMI) and possibly to develop a model law or provisions on insolvency law addressing selected international issues, including jurisdiction, access and recognition, in a manner that would not preclude the development of a convention;

¹ *Official Records of the General Assembly, Sixty-eighth Session, Supplement No.17 (A/68/17)*, paras. 198 and 204.

² *Official Records of the General Assembly, Sixty-fifth Session, Supplement No.17 (A/65/17)*, para. 259.

and (b) addressing the responsibility and liability of directors and officers of an enterprise in insolvency and pre-insolvency cases.

7. In recommending those two texts to the Commission for adoption, Working Group V noted that it had not yet completed its work on implementing the mandate received from the Commission and that there were pending issues to be addressed before the mandate was exhausted, specifically the concept of centre of main interests as it related to facilitating the conduct of cross-border insolvency proceedings concerning enterprise groups,³ and directors' obligations in the context of enterprise groups,⁴ together with that part of the mandate relating to the possible development of a model law or provisions on insolvency law addressing selected international issues, including jurisdiction, access and recognition, in a manner that would not preclude the development of a convention.⁵

8. At its forty-sixth session, after adopting the two texts noted above, the Commission decided that Working Group V should hold a colloquium in the first few days of the working group session scheduled for the second half of 2013 to clarify how it would proceed with the enterprise group issues and other parts of its current mandate and to consider topics for possible future work, including insolvency issues specific to micro, small and medium enterprises (MSMEs). The conclusions of that colloquium would not be determinative, but should be considered and evaluated by the Working Group in the remaining days of that session, in the context of the existing mandate. Topics identified for possible future work should be reported to the Commission in 2014.⁶

9. With respect to the insolvency of MSMEs, the Commission requested Working Group V to conduct, at its Spring 2014 session, a preliminary examination of relevant issues, and in particular to consider whether the UNCITRAL Legislative Guide on Insolvency Law provided sufficient and adequate solutions for MSMEs. If it did not, the Working Group was requested to consider what further work and potential work product might be required to streamline and simplify insolvency procedures for MSMEs. Its conclusions on those MSME issues should be included in its progress report to the Commission in 2014 in sufficient detail to enable the Commission to consider what, if any, future work might be required.⁷

10. At its forty-sixth session, the Commission also noted the updating of the UNCITRAL Model Law on Cross-Border Insolvency: the judicial perspective (A/CN.9/778).⁸

(b) Insolvency of large and complex financial institutions

11. At its forty-third session (2010), the Commission agreed that the study proposed by Switzerland on the insolvency of large and complex financial institutions (see A/CN.9/WG.V/WP.93/Add.5 and A/CN.9/709, particularly para. 7) should be undertaken by the Secretariat as resources permitted. It was noted in that

³ A/CN.9/766, paras. 103 and 105-107.

⁴ Ibid, paras. 104 and 105-107.

⁵ Ibid, paras. 105-107.

⁶ *Official Records of the General Assembly, Sixty-eighth Session, Supplement No.17 (A/68/17)*, para. 325.

⁷ Ibid, para. 326.

⁸ Ibid, para. 209.

regard that reports on work being undertaken by a number of other organizations on the same topic were expected by the end of 2010 and that those reports should be factored into the Secretariat's work. It was anticipated that coordination would be sought between the Secretariat and other interested international organizations.⁹

12. The Working Group first considered this topic at its forty-second session on the basis of a note prepared by the Secretariat (A/CN.9/WG.V/WP.109), reporting on the activities being undertaken by other organizations. The deliberations and conclusions of the Working Group on this topic are included in the report of that session (A/CN.9/763, paras. 95-96).

2. Topics for possible future work

13. The colloquium will discuss a number of topics for possible future work, including issues relating to creditors and claims, the insolvency treatment of financial contracts, the regulation of insolvency practitioners, enforcement of insolvency-derived judgements, choice of law, the insolvency treatment of intellectual property and expedited proceedings, including pre-packs and other mechanisms suitable for the insolvency of MSMEs. A report of the colloquium proceedings will be made available to the Working Group to facilitate its deliberations.

3. Documentation for the forty-fourth session

14. The Working Group will have before it notes by the Secretariat outlining (a) a summary of the previous discussions with respect to the remaining elements of its existing mandate, as well as proposals for possible future work (A/CN.9/WG.V/WP.117); and (b) recent developments with respect to the insolvency of large and complex financial institutions (A/CN.9/WG.V/WP.118).

15. In planning the attendance of their representatives, States and interested organizations may wish to note the following background documents:

- (a) A/CN.9/WG.V/WP.114;
- (b) A/CN.9/WG.V/WP.109;
- (c) The UNCITRAL Legislative Guide on Insolvency Law (2004), including parts three (2010) and four (2013); and
- (d) The UNCITRAL Model Law on Cross-Border Insolvency (1997).

16. UNCITRAL documents are posted on the UNCITRAL website (www.uncitral.org) upon their issuance in all the official languages of the United Nations. Delegates may wish to check the availability of the documents by accessing the Working Group's page in the "Working Groups" section of the UNCITRAL website.

⁹ *Official Records of the General Assembly, Sixty-fifth Session, Supplement No.17 (A/65/17)*, para. 260.

Item 6. Adoption of the report

17. The Working Group may wish to adopt, at the close of its session, a report for submission to the forty-seventh session of the Commission planned to be held in New York, from 7 to 25 July 2014. The report will include a summary of the discussion in the colloquium and the main conclusions reached by the Working Group. The substance of the Working Group's deliberations at its meeting on Friday morning will be summarily read out for the record and subsequently incorporated into the report.

IV. Scheduling of meetings

18. The Working Group's forty-fourth session will last for five working days: 3 days will be taken up by the colloquium as noted above and 2 days for the Working Group. The Working Group may wish to note that, consistent with decisions taken by the Commission at its thirty-fourth session, the Working Group is expected to hold substantive deliberations in the allocated time. The report, including the colloquium and the Working Group meeting, is to be adopted at the last meeting of the Working Group (on Friday afternoon).
