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**United Nations Commission on
International Trade Law
Working Group V (Insolvency Law)
Forty-second session
Vienna, 26-30 November 2012**

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

I. Provisional agenda

1. Opening of the 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, Bahrain, Benin, Bolivia (Plurinational State of), Botswana, Brazil, Bulgaria, Cameroon, Canada, Chile, China, Colombia, Croatia, Czech Republic, Egypt, El Salvador, Fiji, France, Gabon, Georgia, Germany, Greece, Honduras, India, Iran (Islamic Republic of), Israel, Italy, Japan, Jordan, Kenya, Latvia, Malaysia, Malta, Mauritius, Mexico, Morocco, Namibia, Nigeria, Norway, Pakistan, Paraguay, Philippines, Republic of Korea, Russian Federation, Senegal, Singapore, South Africa, Spain, Sri Lanka, Thailand, Turkey, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela (Bolivarian Republic of).
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-second session of Working Group V (Insolvency Law) is scheduled to be held in Vienna from 26 to 30 November 2012. Meeting hours will be from 9:30 a.m. to 12:30 p.m. and from 2:00 p.m. to 5:00 p.m., except on Monday, 26 November 2012, when the session will commence at 10:00 a.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

5. At its forty-third session in 2010, the Commission had before it a series of proposals for future work on insolvency law (A/CN.9/WG.V/WP.93 and Add.1-6 and A/CN.9/582/Add.6). Those proposals had been discussed at the thirty-eighth session of Working Group V (see A/CN.9/691, paras. 99-107) and a recommendation on potential topics made to the Commission (A/CN.9/691, para. 104). An additional document (A/CN.9/709), submitted after that session of Working Group V, set forth material additional to the proposal of Switzerland contained in A/CN.9/WG.V/WP.93/Add.5.

6. After discussion, the Commission endorsed the recommendation by Working Group V that activity be initiated on two insolvency topics, both of which were of current importance, where a greater degree of harmonization of national approaches would be beneficial in delivering certainty and predictability.¹

(a) Interpretation and application of selected concepts of the UNCITRAL Model Law on Cross-Border Insolvency relating to centre of main interests

7. The first of the two topics concerns the proposal by the United States, as described in A/CN.9/WG.V/WP.93/Add.1, paragraph 8, to provide 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-fifth Session, Supplement No.17 (A/65/17)*, para. 259.

8. Discussion of that topic commenced at the Working Group's thirty-ninth session (December 2010, Vienna) and continued at its fortieth (October-November 2011, Vienna) and forty-first sessions (April-May 2012, New York) on the basis of notes prepared by the Secretariat for those sessions (A/CN.9/WG.V/WP.95 and Add.1; A/CN.9/WG.V/WP.98 and A/CN.9/WG.V/WP.101; and A/CN.9/WG.V/WP.103 and Add.1 and A/CN.9/WG.V/WP.105 respectively).

(b) Directors' responsibilities and liabilities in insolvency and pre-insolvency cases

9. The second topic concerns the proposals by the United Kingdom (A/CN.9/WG.V/WP.93/Add.4), INSOL International (A/CN.9/WG.V/WP.93/Add.3) and the International Insolvency Institute (A/CN.9/582/Add.6) concerning the responsibility and liability of directors and officers of an enterprise in insolvency and pre-insolvency cases. In the light of concerns raised during extensive discussion, the Commission agreed that the focus of the work on that topic should only be upon those responsibilities and liabilities that arose in the context of insolvency, and that it was not intended to cover areas of criminal liability or to deal with core areas of company law.

10. Discussion of that topic commenced at the Working Group's thirty-ninth session (December 2010, Vienna) and continued at its fortieth (October-November 2011, Vienna) and forty-first sessions (April-May 2012, New York) on the basis of notes prepared by the Secretariat (A/CN.9/WG.V/WP.96; A/CN.9/WG.V/WP.100; and A/CN.9/WG.V/WP.104 respectively).

11. The deliberations and conclusions of the Working Group at its thirty-ninth, fortieth and forty-first sessions are set forth in the reports of those sessions (A/CN.9/715; A/CN.9/738 and A/CN.9/742 respectively).

12. At its forty-fifth session (2012), the Commission expressed its appreciation for the progress made by the Working Group with respect to these two topics as reflected in the report of its forty-first session (A/CN.9/742) and commended the Secretariat for the working papers and reports prepared for that session.

(c) Insolvency of large and complex financial institutions

13. At its forty-third session (2010), the Commission agreed that, in addition to the two topics noted above, 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 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.² Given the extensive international work being undertaken, the resulting volume of reports and the ongoing nature of the work, the Working Group has not yet taken up this topic.

² *Official Records of the General Assembly, Sixty-fifth Session, Supplement No.17 (A/65/17)*, para. 260.

2. Documentation for the forty- second session

14. The Working Group will have before it, and may wish to use as a basis for its consideration of the three topics indicated above, notes by the Secretariat concerning (a) interpretation and application of selected concepts of the UNCITRAL Model Law on Cross-Border Insolvency relating to centre of main interests (A/CN.9/WG.V/WP.107 and addenda); and (b) directors' obligations in the period approaching insolvency (A/CN.9/WG.V/WP.108); and (c) the insolvency of large and complex financial institutions (A/CN.9/WG.V/WP.109 and addenda, as applicable).

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.95 and Add.1, A/CN.9/WG.V/WP.96, 99, 100, 101, 103 and Add.1 and 105;

(b) A/CN.9/715, 738 and 742;

(c) The UNCITRAL Model Law on Cross-Border Insolvency (1997);

(d) The UNCITRAL Legislative Guide on Insolvency Law (2004);

(e) The UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation (2009); and

(f) The UNCITRAL Model Law on Cross-Border Insolvency: the Judicial Perspective (2011) available online at www.uncitral.org/uncitral/en/uncitral_texts/insolvency.html.

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.

Item 5. Other business

(a) Technical assistance

17. At its forty-fifth session (2012), the Commission stressed the importance of technical cooperation and assistance by the UNCITRAL Secretariat, as 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.

18. At that session, the Commission also 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.

Against that background, the Working Group might wish to devote some time to discussing possible ways to further the implementation of UNCITRAL texts in the field of insolvency law. The Working Group will have before it, and may wish to use as a basis for its consideration, a note by the Secretariat (A/CN.9/WG.V/WP.110).

Item 6. Adoption of the report

19. The Working Group may wish to adopt, at the close of its session, a report for submission to the forty-sixth session of the Commission planned to be held in Vienna, from 8 to 26 July 2013. The main conclusions reached by the Working Group at its ninth meeting (on Friday morning) will be summarily read out for the record at the tenth meeting and subsequently incorporated into the report.

IV. Scheduling of meetings

20. The Working Group's forty-second session will last for five working days. 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 during the first nine half-day meetings (that is, from Monday to Friday morning), with adoption of the report, as noted above, at the tenth and last meeting of the Working Group (on Friday afternoon).
