

**Sixty-eighth session****Sixth Committee**

Agenda item 79

**Report of the United Nations Commission on International
Trade Law on the work of its forty-sixth session****Draft resolution****Revision of the Guide to Enactment of the UNCITRAL Model Law
on Cross-Border Insolvency and part four of the UNCITRAL
Legislative Guide on Insolvency Law****A. Revision of the Guide to Enactment of the UNCITRAL Model Law on
Cross-Border Insolvency***The General Assembly,*

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Recalling also its resolution [52/158](#) of 15 December 1997 recommending the use of the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law¹ (the UNCITRAL Model Law on Cross-Border Insolvency),

Noting that legislation based upon the UNCITRAL Model Law on Cross-Border Insolvency has been enacted in some 20 States,

Noting also the widespread increase in the incidence of cross-border insolvency proceedings and, accordingly, the growing opportunities for use and application of the UNCITRAL Model Law on Cross-Border Insolvency in cross-border insolvency proceedings and the development of international jurisprudence interpreting its provisions,

¹ Resolution 52/158, annex.



Noting further that courts frequently have reference to the Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency² for guidance on the background to the drafting and interpretation of its provisions,

Recognizing that some uncertainty with respect to the interpretation of certain provisions of the UNCITRAL Model Law on Cross-Border Insolvency has emerged in the jurisprudence arising from its application in practice,

Convinced of the desirability, in the interpretation of those provisions, of regard to the international origin of the UNCITRAL Model Law on Cross-Border Insolvency and the need to promote uniformity in its application,

Convinced also of the desirability of providing additional guidance through revision of the Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency with respect to the interpretation and application of selected aspects of the Model Law to facilitate uniform interpretation,

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for revising the Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency;

2. *Requests* the Secretary-General to publish, including electronically, the text of the Guide to Enactment and Interpretation of the Model Law, together with the text of the UNCITRAL Model Law on Cross-Border Insolvency, and to transmit it to Governments and interested bodies, so that it becomes widely known and available;

3. *Recommends* that the Guide to Enactment and Interpretation of the Model Law be given due consideration, as appropriate, by legislators, policymakers, judges, insolvency practitioners and other individuals concerned with cross-border insolvency laws and proceedings;

4. *Also recommends* that all States continue to consider implementation of the UNCITRAL Model Law on Cross-Border Insolvency, and invites States that have enacted legislation based upon the Model Law to advise the Commission accordingly.

B. Part four of the *UNCITRAL Legislative Guide on Insolvency Law*

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Recalling also its resolutions 59/40 of 2 December 2004 recommending the use of the *Legislative Guide on Insolvency Law of the United Nations Commission on International Trade Law* (the *UNCITRAL Legislative Guide on Insolvency Law*) and 65/24 of 6 December 2010 recommending the use of part three of the

² A/CN.9/442, annex.

UNCITRAL Legislative Guide on Insolvency Law on the treatment of enterprise groups in insolvency,

Considering that effective insolvency regimes, in addition to providing a predictable legal process for addressing the financial difficulties of troubled enterprises and the necessary framework for their efficient reorganization or orderly liquidation, should also permit an examination to be made of the circumstances giving rise to insolvency, and in particular the conduct of directors of such an enterprise in the period before insolvency proceedings commence,

Noting that the *UNCITRAL Legislative Guide on Insolvency Law*, while addressing the obligations of directors of an enterprise once insolvency proceedings commence, does not address the conduct of directors in the period approaching insolvency and the obligations that might be applicable to directors in that period,

Considering that providing incentives for directors to take timely action to address the effects of financial distress experienced by an enterprise may be key to its successful reorganization or liquidation and that such incentives should be part of an effective insolvency regime,

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for developing and adopting part four of the *UNCITRAL Legislative Guide on Insolvency Law*, addressing the obligations of directors of an enterprise in the period approaching the insolvency of that enterprise;

2. *Requests* the Secretary-General to publish, including electronically, the text of part four of the *UNCITRAL Legislative Guide on Insolvency Law* and to transmit it to Governments and other interested bodies;

3. *Recommends* that all States utilize the *UNCITRAL Legislative Guide on Insolvency Law* to assess the economic efficiency of their insolvency law regimes and give favourable consideration to the Legislative Guide when revising or adopting legislation relevant to insolvency, and invites States that have used the Guide to advise the Commission accordingly.
