



# General Assembly

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**United Nations Commission on  
International Trade Law  
Working Group V (Insolvency Law)  
Sixtieth session  
New York, 18–21 April 2022**

## Annotated provisional agenda

### I. Provisional agenda

1. Opening of the session.
2. Adoption of the agenda.
3. Consideration of legal issues arising from civil asset tracing and recovery in insolvency proceedings.
4. Consideration of the topic of applicable law in insolvency proceedings.
5. Consideration of an update of the publication “*UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective*”.
6. Other business.

### II. Composition of the Working Group

1. The Working Group is composed of the following States: Algeria (2025), Argentina (2022), Australia (2022), Austria (2022), Belarus (2022), Belgium (2025), Brazil (2022), Burundi (2022), Cameroon (2025), Canada (2025), Chile (2022), China (2025), Colombia (2022), Côte d’Ivoire (2025), Croatia (2025), Czechia (2022), Dominican Republic (2025), Ecuador (2025), Finland (2025), France (2025), Germany (2025), Ghana (2025), Honduras (2025), Hungary (2025), India (2022), Indonesia (2025), Iran (Islamic Republic of) (2022), Israel (2022), Italy (2022), Japan (2025), Kenya (2022), Lebanon (2022), Lesotho (2022), Libya (2022), Malaysia (2025), Mali (2025), Mauritius (2022), Mexico (2025), Nigeria (2022), Pakistan (2022), Peru (2025), Philippines (2022), Poland (2022), Republic of Korea (2025), Romania (2022), Russian Federation (2025), Singapore (2025), South Africa (2025), Spain (2022), Sri Lanka (2022), Switzerland (2025), Thailand (2022), Turkey (2022), Uganda (2022), Ukraine (2025), United Kingdom of Great Britain and Northern Ireland (2025), United States of America (2022), Venezuela (Bolivarian Republic of) (2022), Viet Nam (2025) and Zimbabwe (2025).

2. Member States not members of the Working Group, non-member States having received a standing invitation to participate as observers in the sessions and the work of the General Assembly, 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 sixtieth session of the Working Group will be held at the United Nations Headquarters, in New York, from Monday, 18 April, to Thursday, 21 April 2022,<sup>1</sup> with arrangements in place to allow for in-person and online participation. Meeting hours and other arrangements for the session will be announced on the web page of the Working Group in due course.

#### **Item 3. Consideration of legal issues arising from civil asset tracing and recovery in insolvency proceedings**

##### **Background**

4. At its fifty-second session (Vienna, 18–22 December 2017), the Working Group received a proposal by the United States ([A/CN.9/WG.V/WP.154](#)) that the Working Group should prepare model legislative provisions on civil asset tracing and recovery in insolvency proceedings using a toolbox approach, i.e. a set of options to choose from for enactment as domestic law in jurisdictions that are interested in enhancing cross-border cooperation in this area. It was noted in that proposal that some jurisdictions did not have adequate tools for asset tracing and recovery; where they existed, there were no uniform procedures to facilitate access by foreign parties to them. The proposal linked the subject to commercial fraud, powers of the insolvency representative and UNCITRAL model laws on cross-border insolvency. The Working Group exchanged preliminary views on the proposal, with a view to having a more considered discussion at a future session ([A/CN.9/931](#), para. 95). At its following session (New York, 7–11 May 2018), the Working Group heard further information with respect to the proposal. There was support in the Working Group for suggesting to the Commission that it might wish to consider that topic for possible future work. The understanding was that, if the Commission were to find the proposal interesting, it might wish to request the Secretariat to research the topic and prepare a study for future consideration ([A/CN.9/937](#), paras. 121–122).

5. At its fifty-first session, in 2018, the Commission considered the proposal. It was suggested that it would be relevant not only to insolvency but also to treatment of commercial fraud and other topics. It was emphasized that the proposed work was not intended to address criminal law or cross-border issues and that coordination and cooperation with other relevant organizations would be a key element, in order to avoid potential overlap and duplication. The Commission requested the Secretariat to prepare a background study on the relevant issues.<sup>2</sup>

6. At its fifty-second session, in 2019, the Commission received another proposal by the United States on the topic ([A/CN.9/996](#)). That proposal called for a colloquium to expand the inventory of asset tracing and recovery tools from common and civil law jurisdictions and delineate the relationship between civil and criminal procedures. It was proposed that, after the colloquium, the Working Group should begin work on a toolbox of model legislative provisions in the context of insolvency proceedings.

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<sup>1</sup> Shortened by one day. 22 April 2022 falls on the United Nations' floating holiday (Orthodox Good Friday). The General Assembly in its resolutions [53/208](#), in particular paragraph 11, and [76/237](#), paragraphs 5 and 6, invites United Nations bodies to avoid holding meetings on the United Nations' floating holidays.

<sup>2</sup> *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17 (A/73/17)*, paras. 250 and 253 (d).

The proposal noted that, although the project would be complementary to criminal procedures, its focus should remain on the recovery of assets for creditors and civil asset tracing and recovery tools. The Commission agreed on the importance of the topic and on the usefulness of providing further guidance for States to equip themselves with effective tools for asset recovery. For that purpose, the Commission requested the Secretariat to organize a colloquium, in cooperation with other relevant international organizations, to further clarify and refine various aspects of the Commission's possible work in that area, for consideration by the Commission at its fifty-third session, in 2020. The Commission envisaged that the colloquium would consider the elements of a possible toolkit on asset tracing and recovery and supplement the existing background study with information on the practices of civil law jurisdictions and it would also: (a) examine both criminal and civil law tracing and recovery, with a view to better delineating the topic while benefiting from the available tools; (b) consider tools developed for insolvency law and for other areas of law; and (c) discuss proposed asset tracing and recovery tools and other international instruments.<sup>3</sup>

7. At its fifty-third session, in 2020, the Commission considered the report of the Colloquium on Civil Asset Tracing and Recovery (Vienna, 6 December 2019) ([A/CN.9/1008](#)). The Commission agreed on the importance of the issues raised in the report as well as on the usefulness of offering guidance to States in the area of civil asset tracing and recovery in order to facilitate the use of asset tracing and recovery mechanisms in the cross-border context. Support was expressed for the development of a flexible, non-prescriptive text, possibly along the lines of a toolkit, and limiting the scope of work to insolvency, at least at the outset. In the light of another proposal for a possible future work in the area of insolvency law, on applicable law in insolvency proceedings (see paras. 12 and 13 below), the Commission decided to delay its final decision in respect of possible future work on asset tracing and recovery, including the form and scope that such work might take, until it was possible to convene the International Colloquium on Applicable Law in Insolvency Proceedings and report on its outcome to the Commission.<sup>4</sup>

8. At its fifty-fourth session, in 2021, after considering the reports of both colloquiums, the Commission agreed to refer both topics to the Working Group, noting that the work on the topic of civil asset tracing and recovery should be limited to insolvency proceedings but could be helpful in other areas of law where asset tracing and recovery were relevant and that it would be unwise at the present stage to categorically exclude the possibility for UNCITRAL to decide to expand that project to other areas of its work. The Commission also agreed that the form of the work would be decided at a later stage.<sup>5</sup>

9. At its fifty-ninth session (Vienna, 13–17 December 2021), the Working Group commenced consideration of the topic on the basis of a note by the Secretariat ([A/CN.9/WG.V/WP.175](#)) and the report of the Colloquium on the topic referred to in paragraph 7 above. The Working Group considered the objective, scope and nature of the project and elements for a text to be prepared ([A/CN.9/1088](#), paras. 19–55). It requested the secretariat to compile provisions from UNCITRAL insolvency texts related to asset tracing and recovery. The resulting compilation was considered necessary for identification by the Working Group of any missing provisions in the best practice guidance already provided by UNCITRAL. It was noted that many terms found in the Glossary of the *UNCITRAL Legislative Guide on Insolvency Law* would be helpful in the context of the project. Providing an illustrative list of tools was considered useful ([A/CN.9/1088](#), paras. 31, 32, 50 and 54).

<sup>3</sup> Ibid., *Seventy-fourth Session, Supplement No. 17* ([A/74/17](#)), paras. 200–203.

<sup>4</sup> Ibid., *Seventy-fifth Session, Supplement No. 17* ([A/75/17](#)), part two, paras. 62–65.

<sup>5</sup> Ibid., *Seventy-sixth Session, Supplement No. 17* ([A/76/17](#)), paras. 215–217.

### Documentation for the sixtieth session

10. The Working Group will have before it a note by the Secretariat on civil asset tracing and recovery in insolvency proceedings ([A/CN.9/WG.V/WP.178](#)).

11. States and interested organizations may wish to note the following background documents:

(a) The UNCITRAL Legislative Guide on Insolvency Law (2004), including parts three (2010), four (2013, as amended in 2019) and five (2021, currently found in document [A/CN.9/WG.V/WP.174](#) as amended by the Working Group at its fifty-ninth session (see [A/CN.9/1088](#), paras. 12–18));

(b) The UNCITRAL Model Law on Cross-Border Insolvency (1997), the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-related Judgments (2018) and the UNCITRAL Model Law on Enterprise Group Insolvency (2019), with their guides to enactment;

(c) Report of the Working Group on the work of its fifty-ninth session (Vienna, 13–17 December 2021) ([A/CN.9/1088](#));

(d) Note by the Secretariat on civil asset tracing and recovery in insolvency proceedings ([A/CN.9/WG.V/WP.175](#));

(e) Reports of the Commission on the work of its fifty-first to fifty-fourth sessions ([A/73/17](#), paras. 250 and 253 (d), [A/74/17](#), paras. 200–203, [A/75/17](#), part two, paras. 62–65, and [A/76/17](#), paras. 215–217);

(f) The report of the Colloquium on Civil Asset Tracing and Recovery (Vienna, 6 December 2019) ([A/CN.9/1008](#)); and

(g) The proposals by the United States for possible future work by UNCITRAL on civil asset tracing and recovery ([A/CN.9/WG.V/WP.154](#) and [A/CN.9/996](#)).

### Item 4. Consideration of the topic of applicable law in insolvency proceedings

#### Background

12. At the fifty-first session of the Commission, in 2018, the European Union presented a proposal to dedicate future work in the area of insolvency law to applicable law related to insolvency, as an alternative to the proposal of the United States (see para. 5 above).<sup>6</sup> At its fifty-second session, in 2019, the Commission received a proposal by the European Union on behalf of its member States for possible future work by UNCITRAL on harmonizing applicable law in insolvency proceedings ([A/CN.9/995](#)). The proposal pointed out that the existing UNCITRAL model laws did not address that topic and that divergent approaches in national laws were undermining consistency and predictability in cross-border insolvency cases, hence impacting negatively trade and commerce. The Commission agreed on the importance of the topic but stressed that it required a high level of expertise in various subjects of private international law, as well as on choice of law in areas such as contract law, property law, corporate law, securities and banking and other areas on which the Commission had not worked recently. It also insisted on a careful delineation of the scope and nature of the work that it could undertake and requested the Secretariat to organize a colloquium with a view to submitting more concrete proposals for consideration by the Commission at its fifty-third session.<sup>7</sup>

13. At its fifty-fourth session, in 2021, after consideration of the report of the Colloquium on Applicable Law in Insolvency Proceedings (Vienna, 11 December

<sup>6</sup> Ibid., *Seventy-third Session, Supplement No. 17* ([A/73/17](#)), para. 251.

<sup>7</sup> Ibid., *Seventy-fourth Session, Supplement No. 17* ([A/74/17](#)), paras. 204–206.

2020) ([A/CN.9/1060](#)), the Commission agreed to refer the topic to the Working Group together with the topic of civil asset tracing and recovery in insolvency proceedings.<sup>8</sup>

14. At its fifty-ninth session (Vienna, 13–17 December 2021), the Working Group commenced consideration of the topic on the basis of a note by the Secretariat ([A/CN.9/WG.V/WP.176](#)) and the report of the Colloquium on the topic referred to in paragraph 13 above ([A/CN.9/1088](#), paras. 56–95). The Working Group agreed to take a step-by-step approach to the project and use recommendations 30–34 of the *UNCITRAL Legislative Guide on Insolvency Law* as the starting point ([A/CN.9/1088](#), para. 58). In the light of unresolved issues as regards the form of a future instrument on the topic and its content, the Working Group left flexibility to the secretariat to decide on how materials reflecting deliberations on the topic at the fifty-ninth session of the Working Group should be presented to the Working Group for its consideration at the sixtieth session. The understanding was that the consideration of the topic at the sixtieth session of the Working Group would continue being limited to issues related to the first stage of the project ([A/CN.9/1088](#), paras. 92–95).

#### **Documentation for the sixtieth session**

15. The Working Group will have before it a note by the Secretariat on applicable law in insolvency proceedings ([A/CN.9/WG.V/WP.179](#)).

16. States and interested organizations may wish to note the following background documents, in addition to those listed in paragraph 11 (a) to (c) above:

(a) Note by the Secretariat on applicable law in insolvency proceedings ([A/CN.9/WG.V/WP.176](#));

(b) Reports of the Commission on the work of its fifty-first, fifty-second and fifty-fourth sessions ([A/73/17](#), para. 251, [A/74/17](#), paras. 204–206, and [A/76/17](#), paras. 215–217);

(c) The report of the Colloquium on Applicable Law in Insolvency Proceedings (Vienna, 11 December 2020) ([A/CN.9/1060](#)); and

(d) The proposal by the European Union on behalf of its member States for possible future work by UNCITRAL on applicable law in insolvency proceedings ([A/CN.9/995](#)).

#### **Item 5. Consideration of an update of the publication *UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective***

17. *UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective* was finalized and adopted by the Commission at its forty-fourth session, in 2011.<sup>9</sup> It was prepared by the secretariat<sup>10</sup> in consultation with judges, insolvency practitioners and other experts pursuant to the mandate given to it by the Commission and in response to a request by judges for assistance with respect to questions arising from cross-border insolvency and in particular from the application and interpretation of the UNCITRAL Model Law on Cross-Border Insolvency.<sup>11</sup> When adopting the text, the Commission requested the Secretariat to establish a mechanism for updating the publication on an ongoing basis in the same flexible manner in which it was

<sup>8</sup> Ibid., *Seventy-sixth Session, Supplement No. 17* ([A/76/17](#)), paras. 215–217.

<sup>9</sup> Ibid., *Sixty-sixth session, Supplement No. 17* ([A/66/17](#)), para. 198. See also General Assembly resolution [66/96](#), in which the General Assembly expressed its appreciation to the Commission for completing and adopting that text.

<sup>10</sup> See [A/CN.9/732](#) and Add. 1–3. The draft text was circulated to Governments for comment. The comments were before the Commission in document [A/CN.9/733](#) and Add.1.

<sup>11</sup> *Official Records of the General Assembly, Sixty-fifth session, Supplement No.17* ([A/65/17](#)), para. 261.

developed, ensuring that its neutral tone was maintained and that it continued to meet its stated purpose.<sup>12</sup>

18. Since then, the publication was updated once, in 2013, to reflect the revisions to the Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency, adopted by the Commission in 2013 as the Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross-Border Insolvency,<sup>13</sup> and jurisprudence applying and interpreting the Model Law between July 2011 and 15 April 2013. At its forty-sixth session, in 2013, the Commission took note of the updates<sup>14</sup> and authorized publication of the updated text.<sup>15</sup>

19. At its fifty-third session, in 2020, the Commission noted a significant amount of jurisprudence on the Model Law on Cross-Border Insolvency and the finalization of the Digest of Case Law on the UNCITRAL Model Law on Cross-Border Insolvency. In that light, the Commission requested the secretariat to prepare and publish an update of the publication as soon as practicable, as both a paper and electronic booklet, in the six official languages of the United Nations, using a mechanism along the lines of that used for the 2013 update.<sup>16</sup> At its fifty-fourth session, in 2021, the Commission encouraged the secretariat's efforts to prepare and publish that update as soon as practicable.<sup>17</sup>

20. The Working Group considered both the initial draft of that publication and the 2013 updates before they were transmitted to the Commission.<sup>18</sup> In the light of the Commission's request to the secretariat to update the publication in the same manner in which it was developed, the secretariat will bring to the attention of the Working Group updates to the 2013 edition of that publication. They reflect developments in the jurisprudence applying and interpreting the UNCITRAL Model Law on Cross-Border Insolvency and align the text with the Digest of Case Law on the UNCITRAL Model Law on Cross-Border Insolvency completed in 2020.

#### Documentation for the sixtieth session

21. The Working Group will have before it a note by the Secretariat setting out updates to *UNCITRAL Model Law on Cross-Border Insolvency: the Judicial Perspective* (A/CN.9/WG.V/WP.180).

22. States and interested organizations may wish to note the following background documents:

(a) UNCITRAL Model Law on Cross-Border Insolvency: the Judicial Perspective (2013 edition);

(b) Digest of Case Law on the UNCITRAL Model Law on Cross-Border Insolvency (2020) (advance copy, available only in English).

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23. The UNCITRAL documents and publications referred to under agenda items 3 to 5 above are posted on the UNCITRAL website ([uncitral.un.org](http://uncitral.un.org)) upon their issuance in all the official languages of the United Nations. The publications are available on the "Texts and Status" section of the UNCITRAL website. The reports, proposals and notes by the Secretariat are available either on the web page of the Commission or

<sup>12</sup> Ibid., *Sixty-sixth session, Supplement No. 17* (A/66/17), para. 198 (decision of the Commission, para. 2).

<sup>13</sup> Ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), paras. 195–198.

<sup>14</sup> A/CN.9/778.

<sup>15</sup> *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), paras. 205–209.

<sup>16</sup> Ibid., *Seventy-fifth Session, Supplement No. 17* (A/75/17), part one, paras. 20 (c) and 63.

<sup>17</sup> Ibid., *Seventy-sixth Session, Supplement No. 17* (A/76/17), para. 351.

<sup>18</sup> A/CN.9/715, paras. 110–116 and working papers A/CN.9/WG.V/WP.97 and Add.1 and 2, and A/CN.9/766, para. 103



the Working Group or both in the “Working Documents” section of the UNCITRAL website.

#### **Item 6. Other business**

24. The Working Group may wish to consider other issues within its mandate. It may in particular wish to note that its sixty-first session is tentatively scheduled to be held at the Vienna International Centre, from 28 November to 2 December 2022.<sup>19</sup> Alternative days that may be made available for the Working Group’s sixty-first session are 12–16 December 2022. At its fifty-fifth session, in 2022, the Commission is expected to confirm the dates for sessions of its Working Groups to be held in the second half of 2022.

25. In addition, the Working Group may wish to recall that, at its fifty-fourth session (Vienna, 10–14 December 2018), it was unanimous in supporting the preparation by the secretariat of materials that would explain to enacting States how the UNCITRAL model laws in the area of insolvency law could be enacted by States alongside each other ([A/CN.9/966](#), para. 109). At its fifty-second and fifty-third sessions, in 2019 and 2020, respectively, the Commission requested the Secretariat to proceed with the preparation of explanatory materials on the enactment of three UNCITRAL model laws in the area of insolvency law and publish them as a note by the Secretariat in the six official languages of the United Nations.<sup>20</sup> The Working Group may wish to note that the requested materials were published and made available in the six official languages of the United Nations under “Explanatory texts” of the “Insolvency” part of the “Texts and Status” section of the UNCITRAL website.

<sup>19</sup> *Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 17* ([A/76/17](#)), table after para. 389.

<sup>20</sup> *Ibid.*, *Seventy-fourth Session, Supplement No. 17* ([A/74/17](#)), para. 222 (b); and *ibid.*, *Seventy-fifth Session, Supplement No. 17* ([A/75/17](#)), part one, paras. 20 (b), 60 and 61.