



# General Assembly

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**United Nations Commission on  
International Trade Law  
Working Group V (Insolvency Law)  
Sixty-second session  
New York, 17–20 April 2023**

## Annotated provisional agenda

### I. Provisional agenda

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Consideration of insolvency topics:
  - (a) Legal issues arising from civil asset tracing and recovery in insolvency proceedings; and
  - (b) Applicable law in insolvency proceedings.
5. Other business.
6. Adoption of the report.

### II. Composition of the Working Group

1. The Working Group is composed of the following States: Afghanistan (2028), Algeria (2025), Argentina (2028), Armenia (2028), Australia (2028), Austria (2028), Belarus (2028), Belgium (2025), Brazil (2028), Bulgaria (2028), Cameroon (2025), Canada (2025), Chile (2028), China (2025), Colombia (2028), Côte d'Ivoire (2025), Croatia (2025), Czechia (2028), Democratic Republic of the Congo (2028), Dominican Republic (2025), Ecuador (2025), Finland (2025), France (2025), Germany (2025), Ghana (2025), Greece (2028), Honduras (2025), Hungary (2025), India (2028), Indonesia (2025), Iran (Islamic Republic of) (2028), Iraq (2028), Israel (2028), Italy (2028), Japan (2025), Kenya (2028), Kuwait (2028), Malawi (2028), Malaysia (2025), Mali (2025), Mauritius (2028), Mexico (2025), Morocco (2028), Nigeria (2028), Panama (2028), Peru (2025), Poland (2028), Republic of Korea (2025), Russian Federation (2025), Saudi Arabia (2028), Singapore (2025), Somalia (2028), South Africa (2025), Spain (2028), Switzerland (2025), Thailand (2028), Türkiye (2028), Turkmenistan (2028), Uganda (2028), Ukraine (2025), United Kingdom of Great



Britain and Northern Ireland (2025), United States of America (2028), Venezuela (Bolivarian Republic of) (2028), Viet Nam (2025) and Zimbabwe (2025).<sup>1</sup>

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 organizations concerned have 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 sixty-second session of the Working Group will be held in New York, from 17 to 20 April 2023.<sup>2</sup> This is a four-day session: 21 April 2023 is an official United Nations holiday (Eid-al-Fitr) in the United Nations Headquarters, in New York. The United Nations Headquarters will be closed on that day.<sup>3</sup>

4. The session will be opened on 17 April 2023, at 10.30 a.m. (see below, section IV, for more details about the schedule of meetings). The Working Group is expected to hold substantive deliberations during eight half-day meetings (that is, from Monday to Thursday). As agreed by the Working Group at its sixty-first session (Vienna, 12–16 December 2022),<sup>4</sup> because of the shortened session, the report of the session will be adopted through a written procedure (see para. 23 below).

#### Item 2. Election of officers

5. In accordance with its usual practice, the Working Group may wish to elect a Chair and a Rapporteur.

#### Item 4. Consideration of insolvency topics

##### Background information

6. 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 and that, 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 several past and ongoing UNCITRAL projects. The Working Group exchanged preliminary views on the proposal, with a view to having

<sup>1</sup> By its resolution [76/109](#) of 9 December 2021, the General Assembly increased the membership of UNCITRAL from 60 to 70 States. Five additional members were elected during the seventy-sixth session of the General Assembly. The remaining five additional members are to be elected during the seventy-ninth session of the General Assembly.

<sup>2</sup> *Official Records of the General Assembly, Seventy-seventh Session, Supplement No. 17* (A/77/17), a table after para. 321.

<sup>3</sup> [A/CN.9/1126](#), para. 85. A conference to celebrate the fifth anniversary of the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments (2018), organized by the International Insolvency Institute and the United States Bankruptcy Court for the Southern District of New York, with the official support of UNCITRAL, will be held on Friday, 21 April 2023, from 9 a.m. to 12.30 p.m. The form to register for the event is at <https://form.jotform.com/230193380267152>. The event is not part of the sixty-second session of the Working Group and will be held in English.

<sup>4</sup> [A/CN.9/1126](#), para. 85.

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).

7. The Commission considered the proposal at its fifty-first session, in 2018. It was suggested that the topic would be relevant not only for insolvency but also for treatment of commercial fraud and for 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>5</sup>

8. At the same session, the European Union presented a proposal for future work on applicable law related to insolvency, as an alternative to the proposal of the United States. It was stressed that the issue of applicable law was an important matter that warranted consideration.<sup>6</sup> At that session, the Commission found that the preparatory work on that topic was less mature.<sup>7</sup>

9. At its fifty-second session, in 2019, the Commission received another proposal by the United States on the topic of civil asset tracing and recovery in insolvency proceedings ([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. 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>8</sup>

10. At the same session, 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

<sup>5</sup> *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17* ([A/73/17](#)), paras. 250 and 253 (d).

<sup>6</sup> *Ibid.*, para. 251.

<sup>7</sup> *Ibid.*, para. 253.

<sup>8</sup> *Ibid.*, *Seventy-fourth Session, Supplement No. 17* ([A/74/17](#)), paras. 200–203.

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>9</sup>

11. 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, limiting the scope of work to insolvency, at least at the outset. In the light of the other proposal for a possible future work in the area of insolvency law, on applicable law in insolvency proceedings, 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>10</sup>

12. At its fifty-fourth session, in 2021, after considering the report of the Colloquium on Applicable Law in Insolvency Proceedings (Vienna, 11 December 2020) ([A/CN.9/1060](#)), the Commission agreed to refer topics on civil asset tracing and recovery in insolvency proceedings and on applicable law in insolvency proceedings to the Working Group. It noted 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 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 on both topics would be decided at a later stage.<sup>11</sup>

13. At its fifty-fifth session, in 2022, the Commission: took note of the progress achieved by the Working Group with respect to both topics; reiterated that both topics touched upon a broad range of issues, many of which were complex and required careful consideration; congratulated the Working Group and the secretariat for identifying the key issues involved in both projects and for organizing the work, treating both topics equally; and underscored the importance of close coordination and cooperation in that work with other international organizations, in particular UNIDROIT, whose current work touched upon several issues discussed in the Working Group. Close cooperation and coordination among all concerned was considered important to avoid inconsistent results, unnecessary duplication of efforts and inefficient use of resources. A view was expressed that preparing a separate set of rules on applicable law in insolvency proceedings would be particularly important because of the lack of such rules in many jurisdictions.<sup>12</sup>

**(a) Legal issues arising from civil asset tracing and recovery in insolvency proceedings**

14. At its fifty-ninth session (Vienna, 13–17 December 2021), the Working Group commenced work on 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 11 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 the Working Group to identify any missing provisions in the best

<sup>9</sup> Ibid., paras. 204–206.

<sup>10</sup> Ibid., *Seventy-fifth Session, Supplement No. 17* ([A/75/17](#)), part two, paras. 62–65.

<sup>11</sup> Ibid., *Seventy-sixth Session, Supplement No. 17* ([A/76/17](#)), paras. 215–217.

<sup>12</sup> Ibid., *Seventy-seventh Session, Supplement No. 17* ([A/77/17](#)), para. 190.

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).

15. At its sixtieth session (New York, 18–21 April 2022), the Working Group continued considering the topic on the basis of a note by the Secretariat (A/CN.9/WG.V/WP.178), reviewing relevant provisions of UNCITRAL insolvency texts and suggesting points for reflection in a future text on the topic (A/CN.9/1094, chapter V). The Working Group noted that an inventory of civil asset tracing and recovery tools being used across different jurisdictions in insolvency proceedings would be before the Working Group at its sixty-first session, and that that inventory would reflect submissions by States received by the secretariat in response to its request of 29 December 2021 (A/CN.9/1094, paras. 16–17).

16. At its sixty-first session (Vienna, 12–16 December 2022), the Working Group considered the inventory of civil asset tracing and recovery tools used in insolvency proceedings across jurisdictions (A/CN.9/WG.V/WP.182) and took note with appreciation of submissions by States (A/CN.9/WG.V/WP.182/Add.1) and other contributions to the inventory. It agreed with a suggestion by the Secretariat that, for further consideration of the topic by the Working Group, it would be helpful to have a text that would consolidate the inventory with the parts that were before the Working Group at its earlier sessions (A/CN.9/1126, para. 36 and A/CN.9/WG.V/WP.182, para. 5).

17. At its sixty-second session, the Working Group will have before it a consolidated draft in the form of a descriptive, informational and educational text (A/CN.9/WG.V/WP.186).

#### **(b) Applicable law in insolvency proceedings**

18. At its fifty-ninth session (Vienna, 13–17 December 2021), the Working Group commenced work on 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 12 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, chapter VI).

19. At its sixtieth session (New York, 18–21 April 2022), the Working Group continued considering the topic on the basis of a note by the Secretariat (A/CN.9/WG.V/WP.179), reaching agreement on some issues and deferring others (A/CN.9/1094, chapter VI). The Working Group requested the secretariat to present materials on which agreement was reached in the form of draft legislative provisions with accompanying commentary and other materials in a form that would facilitate their consideration and resolution of outstanding issues (A/CN.9/1094, para. 99).

20. At its sixty-first session, the Working Group took up first issues listed in a note by the Secretariat (A/CN.9/WG.V/WP.183/Add.1) and subsequently, draft legislative provisions with accompanying commentary found in a note by the Secretariat (A/CN.9/WG.V/WP.183). The Working Group considered, among others, draft provisions related to the purpose and objectives, the scope of application, definitions, primacy of international obligations, public policy exception, interpretation, avoidance and the law governing effects of insolvency proceedings on the treatment of intellectual property, set-off, labour contracts and relationships, rights and obligations of participants in payment and settlement systems and regulated financial markets, arbitration matters and causes of action against directors (A/CN.9/1126, paras. 38, 41–44, 50, 53–55, 57–66, 73 and 79). It deferred consideration of other aspects, including the law governing effects of insolvency proceedings on the treatment of digital assets, secured creditors, contracts relating to immovable property and litigations (A/CN.9/1126, paras. 39, 48, 49 and 81).

21. At its sixty-second session, the Working Group will have before it a note by the Secretariat containing draft legislative provisions with accompanying commentary ([A/CN.9/WG.V/WP.187](#)).

#### **Item 5. Other business**

22. The Working Group may wish to consider other issues within its mandate. It may wish to note that its sixty-third session is tentatively scheduled to take place at the Vienna International Centre from 11 to 15 December 2023, subject to confirmation by the Commission at its fifty-sixth session, in 2023.<sup>13</sup>

#### **Item 6. Adoption of the report**

23. At its sixty-first session, the Working Group, with reference to the Commission's decision on the matter taken at its fifty-fifth session, in 2022,<sup>14</sup> agreed that the report of its sixty-second session would be adopted through a written procedure ([A/CN.9/1126](#), para. 85). That agreement was reached in the light of the need to shorten the sixty-second session of the Working Group because of the change made in November 2022 in the date of observance of Eid-al-Fitr in the United Nations Headquarters in New York (from 24 to 21 April 2023). It was considered that those circumstances justified utilizing a written procedure for the adoption of the report of that session since it would allow the Working Group to hold deliberations during the full four days left available for the session.

24. Accordingly, the Chair and the Rapporteur of Working Group V will prepare a summary reflecting the deliberations and any conclusions reached during the session, which would be circulated for comments by delegations to the sixty-second session of the Working Group. In the absence of comments that would necessitate making any substantive changes to the summary, the summary will be considered adopted as the report of the session. Otherwise, a summary as revised by the Chair and the Rapporteur in response to the substantive comments received would be circulated to the delegates of the UNCITRAL member States at the sixty-second session of the Working Group for adoption by the Working Group as its report. In case of objections to the adoption of the revised summary as the report of the Working Group, it will be presented as the summary of the Chairperson and the Rapporteur for consideration and action by the Commission as it deems appropriate. The summary may be adopted by the Working Group as its report at the following session.<sup>15</sup>

### **IV. Schedule of meetings and documentation**

25. Meetings will be held in Conference Room 2 at the United Nations Headquarters, in New York, from 10 a.m. to 1 p.m. and 3 to 6 p.m., except for the first day of the session, Monday, 17 April 2023, when the meeting will commence at 10.30 a.m.

26. The Working Group may wish to take up agenda items in the order they are listed in this provisional agenda. In the light of the Commission's request to the Working Group to treat both substantive topics equally,<sup>16</sup> the Working Group may wish to allocate the equal amount of time for their consideration. These suggestions intend to assist States and invited organizations to plan the attendance of the session by their representatives. The actual scheduling will be determined by the Working Group itself.

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<sup>13</sup> Ibid., a table after para. 321.

<sup>14</sup> Ibid., para. 236.

<sup>15</sup> Ibid. Also, [A/CN.9/1103](#), para. 19; and the decision on the format, officers and methods of work of the UNCITRAL working groups during the coronavirus disease 2019 (COVID-19) pandemic, adopted by the UNCITRAL member States on 19 August 2020 (see [A/CN.9/1038](#), annex I, available at <https://uncitral.un.org/en/commission>) and extended by the Commission at its fifty-fourth session ([A/76/17](#), para. 248).

<sup>16</sup> Ibid., *Seventy-sixth Session, Supplement No. 17* ([A/76/17](#)), para. 217.

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

(a) The UNCITRAL Legislative Guide on Insolvency Law, including parts one and two (2004), part three (2010), part four (2013, as amended in 2019) and part five (2021);

(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) Reports of the Working Group on the work of its fifty-ninth to sixty-first sessions (Vienna, 13–17 December 2021; New York, 18–21 April 2022; and Vienna, 12–16 December 2022) ([A/CN.9/1088](#), [A/CN.9/1094](#) and [A/CN.9/1126](#), respectively);

(d) Notes by the Secretariat on civil asset tracing and recovery in insolvency proceedings ([A/CN.9/WG.V/WP.175](#), [A/CN.9/WG.V/WP.178](#) and [A/CN.9/WG.V/WP.182](#) and Add.1);

(e) Notes by the Secretariat on applicable law in insolvency proceedings ([A/CN.9/WG.V/WP.176](#), [A/CN.9/WG.V/WP.179](#) and [A/CN.9/WG.V/WP.183](#) and Add.1);

(f) Reports of the Commission on the work of its fifty-first to fifty-fifth sessions ([A/73/17](#), paras. 250, 251 and 253 (d), [A/74/17](#), paras. 200–206, [A/75/17](#), part two, paras. 62–66, [A/76/17](#), paras. 215–217, and [A/77/17](#), para. 190);

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

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

(i) 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](#)); and

(j) 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](#)).

28. The UNCITRAL documents and publications 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 are available either on the web page of the Commission or the Working Group or both, in the “Working Documents” section of the UNCITRAL website.