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## **Report of Working Group I (MSMEs) on the work of its thirty-sixth session (Vienna, 4–8 October 2021)**

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## I. Introduction

### Consideration of issues on access to credit for micro, small and medium-sized enterprises (MSMEs)

1. At its forty-sixth session, in 2013, the Commission agreed that work on reducing the legal obstacles faced by MSMEs throughout their life cycle, in particular, in developing economies, should be added to the work programme of the Commission, and that such work should begin with a focus on the legal questions surrounding the simplification of incorporation. This has resulted in two texts adopted by the Commission in 2018 and 2021 respectively: the *UNCITRAL Legislative Guide on Key Principles of a Business Registry* and the *UNCITRAL Legislative Guide on Limited Liability Enterprises*.

2. At its fifty-second session, in 2019, the Commission agreed to strengthen and complete the work on reducing the legal obstacles faced by MSMEs throughout their life cycles by requesting the Secretariat to start preparing draft materials on MSMEs' access to credit, drawing, as appropriate, on the relevant recommendations and guidance contained in the *UNCITRAL Model Law on Secured Transactions (2016)* (the Model Law), with a view to their consideration by Working Group I.<sup>1</sup> At its thirty-sixth session, the Working Group considered the topic for the first time.

## II. Organization of the session

3. Working Group I, which was composed of all States members of the Commission, held its thirty-sixth session in Vienna from 4 to 8 October 2021. The session was held in line with the decision by the Commission during its fifty-fourth session to extend the arrangements for the sessions of UNCITRAL working groups during the COVID-19 pandemic as contained in documents [A/CN.9/1078](#) and [A/CN.9/1038](#) (Annex I) until its fifty-fifth session. Arrangements were made to allow delegations to participate in person and remotely.

4. The session was attended by representatives of the following States members of the Working Group: Algeria, Argentina, Australia, Austria, Belarus, Belgium, Brazil, Burundi, Canada, China, Colombia, Croatia, Czechia, Dominican Republic, Ecuador, France, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Italy, Japan, Lebanon, Libya, Malaysia, Mali, Mexico, Nigeria, Pakistan, Peru, Philippines, Poland, Republic of Korea, Russian Federation, Singapore, Spain, Sri Lanka, Switzerland, Thailand, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela (Bolivarian Republic of) and Zimbabwe.

5. The session was attended by observers from the following States: Angola, Burkina Faso, Cambodia, Democratic Republic of the Congo, El Salvador, Equatorial Guinea, Jordan, Kuwait, Mauritania, Montenegro, Morocco, Mozambique, Netherlands, Nicaragua, Panama, Qatar, Senegal, Sierra Leone, Slovakia and Uruguay.

6. The session was further attended by observers from the following international organizations:

(a) *Organizations of the United Nations system*: United Nations Environment Programme (UNEP) and World Bank Group (WB);

(b) *Intergovernmental organizations*: Cooperation Council for the Arab States of the Gulf (GCC) and International Institute for the Unification of Private Law (Unidroit); and

<sup>1</sup> *Official Records of the General Assembly, Seventy-fourth Session, Supplement No. 17 (A/74/17)*, para. 192 (a).

(c) *Invited international non-governmental organizations*: Alumni Association of the Willem C. Vis International Commercial Arbitration Moot (MAA), American Bar Association (ABA), Association for the Promotion of Arbitration in Africa (APAA), Barreau de Paris, Centro de Estudios de Derecho, Economía y Política (CEDEP), China Council for the Promotion of International Trade (CCPIT), European Law Students' Association (ELSA), Inter-Pacific Bar Association (IPBA), International Chamber of Commerce (ICC), International Union of Notaries (UINL), Inter-Pacific Bar Association (IPBA), Kozolchyk National Law Center (NatLaw), Law Association for Asia and the Pacific (LAWASIA), Union Internationale des Huissiers de Justice et Officiers Judiciaires (UIHJ) and World Union of Small and Medium Enterprises (WUSME).

7. According to the decision made by the Commission (see para. 3 above), Ms. Beulah Li (Singapore) continued her role as Rapporteur. The Working Group agreed to elect Professor Siniša Petrović (Croatia) as Chair.

8. The Working Group had before it the following documents:

- (a) Annotated provisional agenda (A/CN.9/WG.I/WP.123); and
- (b) Note by the Secretariat on access to credit for micro, small and medium-sized enterprises (MSMEs) ([A/CN.9/WG.I/WP.124](#)).

9. The Working Group adopted the following agenda:

- 1. Opening of the session.
- 2. Adoption of the agenda.
- 3. Consideration of issues on access to credit for micro, small and medium-sized enterprises.

### III. Deliberations and decisions

10. The Working Group engaged in discussions on access to credit for MSMEs based on a Note by the Secretariat ([A/CN.9/WG.I/WP.124](#)). The deliberations of the Working Group on this topic are reflected in the paragraph below.

### IV. Access to credit for micro, small and medium-sized enterprises (MSMEs)

#### A. Presentation of [A/CN.9/WG.I/WP.124](#)

11. The secretariat introduced document [A/CN.9/WG.I/WP.124](#) highlighting its scope and structure and the working methods adopted in drafting the document. It was noted that MSMEs faced different challenges in accessing credit at different stages of their development and for this reason they needed different sources of financing during their life cycle. As explained in document [A/CN.9/WG.I/WP.124](#), it was further noted that the challenges in accessing credit could not be removed by legal measures only, but they required also regulatory and policy measures. The secretariat briefly presented the measures discussed in Part II of [A/CN.9/WG.I/WP.124](#) and highlighted several issues a legal framework should address in order to promote MSMEs' access to credit. The importance of strengthening MSMEs' financial literacy and developing the capacity of financiers to deal with the financial needs of small businesses was also emphasized and examples of policies and programmes in this field were provided.

## B. Purpose

12. As general remarks, several national policies and legislative reforms focusing on access to credit for MSMEs were mentioned, including COVID-19 pandemic rescue and assistance programmes and reforms on secured transactions. The importance of business formation (i.e. reducing the number of MSMEs in the informal sector), support for women and youth-run small businesses, as well as international assistance in terms of providing credit to MSMEs were also highlighted.

13. As regards the purpose and scope of the Future Text, the Working Group agreed to focus on micro- and small enterprises (excluding medium-sized enterprises) in line with the principle of “think-small-first”. It was noted that medium-sized enterprises often faced different and less challenges when accessing credit compared with micro- and small enterprises. The Working Group also agreed not to limit the discussion on COVID-19 related measures but only to include a section addressing emergency situations in general. As regards the broad range of topics addressed in the Note by the Secretariat ([A/CN.9/WG.I/WP.124](#)), suggestions were made to narrow the list of relevant topics, to focus on a particular transaction often carried out by MSMEs (e.g. a farmer) and related challenges for access to credit, and to provide implementable guidance to States on how to apply existing instruments to a particular transaction.

14. Divergent views were expressed as to the nature of the Future Text, given the very broad range of legal and non-legal issues addressed in the Note by the Secretariat ([A/CN.9/WG.I/WP.124](#)). Suggestions were made that the Future Text could be a document prepared by the secretariat, with assistance from a group of experts. Delegations discussed whether the Future Text could be approved by the Commission with or without prior review by the Working Group. While some delegations stated that the Working Group should focus on the substance of the Future Text and address the format of the document (e.g. Model Law, Legislative Guide) at a later stage, other delegations preferred to discuss the suitable format of the Future Text at the outset. It was emphasized that, unlike a traditional UNCITRAL document, the Note by the Secretariat ([A/CN.9/WG.I/WP.124](#)) presented a wide range of topics touching upon legislative and non-legislative aspects and a shared view of the Working Group on the most suitable format of the Future Text would help to better address those topics.

15. Concerns were expressed regarding the composition of the expert group and the need to ensure geographical representation. Queries were also raised about the role of the Working Group if the secretariat would prepare the Future Text mainly with the assistance of a group of experts, including what would be the topics for discussion at the thirty-seventh session of the Working Group in May 2022, and delegations asked about any examples of past UNCITRAL instruments which were developed by the secretariat with assistance from an expert group. In response, the example of the *UNCITRAL Legislative Guide on Public-Private Partnerships* and the *UNCITRAL Model Legislative Provisions on Public-Private Partnerships*, adopted by the Commission in 2019, was provided. Those texts resulted from the thorough revision of the *UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects* (2000) and the *UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects* (2003) that the secretariat undertook in broad consultation with international experts and relevant intergovernmental and non-governmental organizations upon request of the Commission in 2015.

16. After discussion, the prevailing view of the Working Group was that, after its second reading of the draft Future Text at its thirty-seventh session, the Working Group could consider requesting the Commission, at its fifty-fifth session in 2022, to ask the secretariat to prepare the Future Text on access to credit with the assistance from experts. No agreement was reached on the issue whether the Future Text would be approved by the Commission with or without prior review by the Working Group. The Working Group also agreed to provide detailed guidance to the secretariat on the scope and the topics of that document on the basis of the Note by the Secretariat ([A/CN.9/WG.I/WP.124](#)). Further, the Working Group suggested that the Commission

could request the secretariat to prepare and make available on the UNCITRAL website a list of relevant legal instruments as well as regional and global initiatives on access to credit for MSMEs, which could be updated by the secretariat in the future, as necessary.

## **C Structure of the text**

17. The Working Group heard concerns that Parts I and II of the Note by the Secretariat ([A/CN.9/WG.I/WP.124](#)) did not form a coherent text and that more consistency was required among the different sections and subsections. It was said that it should be made clearer in Part II how the relevant legal, regulatory and policy measures discussed therein could address the challenges identified in Part I, Section B. It was also suggested that new measures could be added in Part II in order to address all challenges identified in Part I (e.g. high costs of crowdfunding, gender gap, lack of transparency, etc.). Another suggestion was that the discussion on technological innovation (e.g. distributed ledger technology) currently placed in different sections of document [A/CN.9/WG.I/WP.124](#) could be presented together in a short section and with more emphasis on the technological neutrality.

18. After discussion, the Working Group agreed that, while providing detailed guidance on the final structure of the Future Text was premature, in the next iteration of the Future Text sections and subsections should be more consistent and coherent and more reader-friendly. It also agreed that, in order to assist the secretariat in its tasks, delegations would send to the secretariat examples of national legislative and policy instruments concerning the topics discussed in the Note by the Secretariat ([A/CN.9/WG.I/WP.124](#)).

## **D. Part I: Access to credit for MSMEs and related challenges**

### **1. Section A: MSMEs and the importance of access to credit**

19. The Working Group agreed that the best way to consider document [A/CN.9/WG.I/WP.124](#) would be to look at the scope and structure of each section rather than discussing individual paragraphs, unless there were specific concerns or need to correct inaccurate information in a given paragraph. With respect to Part I of the Future Text, it was observed that micro and small enterprises may face different challenges to access credit depending on their legal forms. It was thus suggested that Section A could clarify that the applicable policy measures and legal provisions to facilitate access to credit may vary according to the form of the small business, for example, whether a natural or legal person, and that such clarification should also be made in other parts of the Future Text as appropriate. There was wide support in the Working Group for this suggestion. The Working Group did not take up a suggestion that Section A could emphasize that a State should adopt similar thresholds for each regulatory measure implemented to promote access to credit for micro and small enterprises.

20. The Working Group agreed that Part I should clarify that certain types of financing are applicable to all micro, small and medium-sized businesses (e.g. secured transaction), while others have limitations on who is eligible (e.g. credit guarantee schemes). In response to a concern that the meaning of formal sector and informal sector in Section A was unclear, the Working Group also agreed that such terms should be clarified. It was suggested that such clarification could be made in the context of how access to credit may be affected by the different legal form of the business (see para. 19 above). It was also noted that the Future Text could refer to the importance of facilitating the formalization of micro and small enterprises. Another suggestion, to which an objection was voiced at a later stage (see para. 44), was to include reference to SDG 5 (Gender equality) in this section.

21. Previous discussions of the Working Group on the difficulty to have a common definition of MSEs were recalled. In this regard, it was explained that the definition

for micro and small enterprises may vary depending on national circumstances and the sector(s) in which they operate and it was suggested that the secretariat could clarify this point in Section A of Part I. It was noted that finding a common definition for micro and small enterprises in the technology sector might be feasible. After discussion, the Working Group reiterated the conclusion reached during its previous deliberations that it would be for States to define micro and small enterprises.

## **2. Section B: Challenges faced by MSMEs to access credit**

22. With regard to Section B of Part I, the importance to ensure a balance between the needs of financiers and those of micro and small enterprises was emphasized and it was suggested that this section should place a greater focus on the challenges faced by financiers who lend to MSMEs as in other sections of document [A/CN.9/WG.I/WP.124](#). The Working Group supported those views and it further requested the secretariat that such balance should be also ensured throughout the Future Text.

23. Some delegations noted that Section B could be improved with references to other informal credit mechanisms (e.g. credit associations or mobile bankers), additional sources of credit such as debt purchase, and tools available to micro and small businesses that lost access to credit under certain circumstances (e.g. crisis). The Working Group supported those views.

24. With regard to subsection B.1 (Start-up), it was noted that the examples on crowdfunding referring to China (paras. 24 and 26) were outdated and the secretariat was requested to delete such references since as of November 2020 all P2P platform in the country ceased operations. It was further observed that crowdfunding platforms could be useful tools, although their use involves risks. In particular, it was said that the lack of crowdfunding regulation can leave investors and borrowers unprotected, while excessive regulation can make implementation of the platform difficult. A suggestion was made to replace the references to “start-up” by “initial stages”.

25. With regard to subsection B.3 (Maturity), the Working Group observed that sources of credit presented in the subsection were more suitable for medium-sized enterprises than for micro and small enterprises. It was also noted that public listing on the stock market as a source of financing for MSMEs presented several limitations for example, undervaluation of the enterprises, lack of financial literacy (i.e. very few MSMEs are equipped to access financing beyond the traditional methods), lack of specific regulations for MSMEs; as well as cultural aspects, for instance the fact that certain States are more oriented to financing through the banking sector than through capital markets.

26. In its discussion of whether to maintain and modify or delete the subsection, the Working Group reconsidered its previous deliberation that the Future Text should focus exclusively on micro and small enterprises (see para. 13 above). The prevailing view was that while the Future Text should mainly focus on micro and small enterprises it should not completely exclude medium-sized ones. It should thus clarify, as appropriate, the different provisions and policy measures applicable to this latter group. That is, this subsection could be revised to address issues relevant for medium-sized enterprises, such as those in document [A/CN.9/WG.I/WP.124](#), and credit instruments more suitable for micro and small enterprises in their maturity stage. A suggestion that tax treatment applicable to different sources of credit should be further elaborated in the Future Text was not taken up by the Working Group.

## **E. Part II: Improving access to credit through enhanced legal and other infrastructure**

### **1. An overview of initiatives to improve access to credit for MSMEs**

27. Support was expressed for the suggestion to make this section a separate stand-alone section not included in Part II.



28. A suggestion was made to summarize the types of regulations which might affect various financing instruments relevant for MSMEs as listed throughout the Note by the Secretariat ([A/CN.9/WG.I/WP.124](#)) and to remind legislators of the relevance of such regulatory issues. In this respect, the strict distinction between legal aspects and regulatory aspects was questioned. In response, it was clarified that guidance on regulatory matter would not fall under the mandate of UNCITRAL. After discussion, the Working Group requested the secretariat to include a paragraph to explain the relationship between regulatory and private law instruments related to access to credit for MSMEs.

29. In addition, the following suggestions were heard by the Working Group:

- Including reference to Russia's Federal Law No. 259-FZ of 2 August 2019 which deals with investment platforms and is effective in ensuring financing (including innovative means of financing) for MSMEs; and
- Replace the last sentence of paragraph 62 with "by the end of 2020, the balance loans to small and micro enterprises in China amounted to 31.7 trillion yuan and the inclusive loans to small and micro businesses totalled 15.1 trillion yuan."

## 2. Secured lending

### *Movable assets as collateral*

30. As general remarks, it was said that this section should cross refer to other relevant UNCITRAL instruments, it should not be a primer of secured transactions and should be written in a simple and clear manner, bearing in mind that the readers of the Future Text may not be experts in UNCITRAL's work on secured transactions. The need to ensure structural consistency among different sections and subsections (such as secured lending, personal guarantee etc.) was also emphasized.

31. While some delegations were of the view that key features of the Model Law would merit more detailed discussion, other delegations cautioned against this approach noting that this section should focus on the implications of secured lending for micro and small enterprises and issues that may arise. In this respect, reference was made to the UNCITRAL Practice Guide to the Model Law on Secured Transactions (2020) (the Practice Guide). It was also mentioned that this section could include references to the relevant work of other international organizations, such as the UNIDROIT best practices for electronic collateral registries.

32. With respect to subsection (a) concerning types of assets, a suggestion was made for this subsection to focus on three criteria for a secured transaction regime that facilitates credit for MSMEs. In such a regime, it should be: (a) easy to create security rights, (b) easy to enforce security rights, and (c) easy to assess the ranking of claims. A suggestion for the title of this subsection to be revised accordingly was heard. Suggestions were also made to expand the types of assets to include digital assets, intellectual property rights and to further elaborate on future receivables.

33. With respect to subsection (b) concerning security rights registries, a suggestion was made for this subsection to highlight: (a) the need for registration of non-possessory security rights, (b) explanation of the priority rules, (c) guidance on how to design an efficient registry system, and for the title of this subsection to be revised accordingly. A concern was expressed that this subsection did not take into account the reality of how registry systems would operate in practice in some federal States (e.g. in a non-centralized manner).

34. With respect to subsection (c) concerning obstacles faced by MSMEs, it was suggested that the discussion on asset valuation could be revised to reflect: (a) creditors need to be able to make rational predictions as to how much can be realized from collateral(s) in the event of a default, and (b) the assessment of the value of asset is risky and expertise is thus essential and required. In the context of overcollateralization, the need to facilitate different sources of financing for MSMEs was emphasized, noting the concern that overcollateralization might prevent other

financers from extending credit to MSMEs. In this regard, it was stated that granting security over all assets should not be interpreted negatively, which was not the intention of the Model Law.

*Immovable assets as collateral*

35. A comment was made whether the application of the principles underpinning the Model Law to immovable assets was feasible. It was suggested that the three points raised in paragraph 32 above could in principle apply to immovable assets. It was observed that this subsection should address creating security rights over immovable assets (e.g. mortgage). It was further suggested that this subsection should highlight the need for a legal framework which enables using immovable assets as collaterals, rather than immovable registries. The Working Group agreed that this subsection could discuss that in a legal framework which enables using immovable assets as collaterals it should be: (a) easy to create security rights, (b) easy to enforce security rights, and (c) easy to assess the ranking of claims.

### **3. Personal guarantees for MSMEs' loans**

36. Recalling the Working Group's prior discussion on secured lending (see paras. 31 to 35 above) and the suggested improvements to that section, it was suggested that the section on Personal guarantees could be presented in a similar way and could discuss the criteria for an effective and efficient regime on personal guarantees. It was observed that the section could clarify the role of personal guarantees in reducing the risks of financers thus lowering the cost of access to credit for micro and small enterprises. Several delegations noted the importance to ensure that the regime be balanced and provided adequate protection to both guarantors and financers and suggested that this should be further stressed in the text. With regard to independent guarantees, the *United Nations Convention on Independent Guarantees and Stand-by Letters of Credit* (New York, 1995) was recalled as an example of a predictable and effective legal regime that could be better highlighted in the text. It was also noted that the title of the section, as well as of other sections, could reflect what the Future Text would advocate for (e.g. effective regimes, effective protection of weak parties etc.). There was support in the Working Group to reflect these comments in the Future Text.

37. In the light of the prior deliberations of the Working Group that the Future Text should focus on micro and small enterprises without excluding medium-sized ones, a comment was also taken up by the Working Group that this section should clarify the difference in the practical use of personal guarantees by micro and small enterprises and by medium-sized ones. It was said, for example, micro and small enterprises would commonly use suretyship while independent guarantees (e.g. letters of credit) would mainly be used by medium-sized enterprises.

38. The secretariat was requested to revise the reference to French legislation in paras. 105 and 106 since the principle of proportionality was only applicable in certain cases and French law would not deem a guarantee granted by a legal person to be a guarantee granted by a natural person.

39. In regard to consumer protection, a concern was also heard that reference to consumer protection in the context of personal guarantees for loans to micro and small enterprises was confusing and it was suggested to focus instead on the protection of weaker parties. In response, it was noted that in certain States individual guarantors for loans to micro and small enterprises were treated as consumers. It was suggested that reference to these aspects could be addressed in a footnote rather than in the main text.

40. Finally, suggestions were made to address additional issues in the section, such as the use of post-dated cheques and cheques drawn on an insufficient balance which were required by financial institutions instead of personal guarantees and might inhibit reforms leading to access to market credit and the use of personal guarantees provided by a micro and small enterprise to another small business.



#### 4. Credit guarantee schemes

41. Concerns were expressed about the need to provide a balanced view on the positive and negative aspects of public credit guarantee schemes. It was noted that those negative aspects may include: (a) disincentives for lenders to carry out proper due diligence, especially when the coverage ratio is 100 per cent; (b) potential improper use of taxpayers' money which funds such guarantee schemes; and (c) disincentives for micro and small borrowers to grow into medium-sized enterprises given that they may no longer be eligible for public credit guarantee schemes. In this respect, the need to address how to protect public funds through eligibility criteria for public credit guarantee schemes (e.g. size of the enterprise, certain industries) was highlighted. A suggestion was made for the secretariat to compile information on State practices regarding such eligibility criteria (see para. 18 above). The Working Group supported those views.

42. The Working Group agreed to include references to other public support mechanisms for small businesses, such as mechanisms to refinance certain types of loans set up by central banks, and also to include examples of international credit guarantee schemes such as those provided by the World Bank and USAID.

43. Several examples of national public credit guarantee schemes for small businesses were provided. It was noted that international assistance may be needed in countries where public credit guarantee schemes do not exist for small businesses. A query was also raised as to why this section only focused on public schemes.

#### 5. Credit reporting

44. There was support for the suggestion to highlight particular challenges faced by women in the context of credit reporting and beyond, either in a new stand-alone section or throughout the Future Text or both. A view was expressed against highlighting those challenges related to non-legal factors (e.g. economic or social factors). Another suggestion to address specific challenges faced by vulnerable minority groups (e.g. indigenous people, rural communities, ethnic minorities and youth) was objected by a delegation.

45. As regards the terms "credit registry" and "credit bureau", the Working Group agreed to request the secretariat to replace these terms with terms expressly indicating public or private credit registry service providers. A comment was made regarding the Chinese translation for the term "financial information". A suggestion was made to delete reference to the World Bank's Doing Business report in the light of the World Bank's recent decision to discontinue that report.

46. A distinction was made between the relevance of credit reporting for transaction-based banking and that for relationship banking. In the context of relationship banking, it was observed that credit reporting could only play a supplementary role as banks would need to gather information and carry out their own credit evaluation. In this regard, the need for capacity-building to enhance banks' ability to gather credit information was emphasized.

47. With respect to the subsection on reporting obligations, a suggestion was made to clarify that no reporting obligations on micro and small enterprises imposed by States would necessarily prevent such businesses from engaging in good credit reporting practices.

48. With respect to the subsection on alternative data, while some delegations suggested deleting it based on the negative implications of its use, other delegations preferred retaining it noting that alternative data has already been widely used in practice in some States and its use could be properly supervised and regulated. The Working Group agreed to retain this subsection and to revise it so that both positive and negative aspects are adequately addressed.

49. With respect to the subsection on access to credit reporting services, support was expressed for the suggestion to introduce a more balanced view taking into

account the interests of all stakeholders. It was pointed out that public and private credit reporting service providers may put in place different rules regarding their access (i.e. open v. limited).

50. With respect to the subsection on dispute resolution in the context of credit reporting, the Working Group agreed to merge it into section H (*Financial ombudsman and other redress mechanisms*) or elsewhere as appropriate.

## **6. Safeguards for MSMEs, in particular micro and small enterprises**

51. A concern was expressed that references to extending rules applicable to consumers might cause confusion. A suggestion was made to avoid such references and to refer to rules for the purpose of protecting weaker parties instead (e.g. prohibition of abusive clauses).

52. The need for this section to strike a balance between interests of financiers and that of MSME borrowers was emphasized. It was also noted that lower interest rates would not necessarily reduce the cost of financing due to high commission fees imposed by some financial institutions.

## **7. Restructuring support for MSMEs in financial distress**

53. Divergent views were expressed regarding the relevance of this section to access to credit for micro and small enterprises. It was pointed out that some issues seemed relevant for building a general efficient support system for micro and small enterprises and could fall under the discussion on public support mechanisms (see para. 42 above).

54. Suggestions were made to expand the discussion on informal restructuring and new financing (e.g. bridge loans) given the importance and relevance of these topics. In addition to the reference to the work of Working Group V (Insolvency Law), it was mentioned that the Future Text could focus on direct State support and national examples of such initiatives sent to the secretariat could be reflected in this section. A concern was expressed about the relevance of corporate rescue and rehabilitation to small businesses.

55. Another suggestion was made for this section to focus on crisis situations in general, including the impact of climate change on access to credit. Introducing merger and acquisition as a means of financing distressed MSMEs and promoting the use of technology (e.g. artificial intelligence and big data) as a means of reducing costs in insolvency proceedings were highlighted. It was also noted that a special legal framework should be put in place by States to assist small businesses with early rescue mechanisms. Support was expressed for those suggestions.

56. Several examples of national measures to address the effect of COVID-19 pandemic on small businesses were also provided. A view was expressed that the COVID-19 related measures could be better addressed in a separate UNCITRAL project examining the impact of COVID-19 pandemic on international trade law.

## **8. Financial ombudsman and other redress mechanisms**

57. The Working Group agreed to include more national examples of financial ombudsman and other similar redress mechanisms dedicated to small businesses and invited delegations to send such examples to the secretariat.

## **9. Digital financial services**

58. It was observed that references to banking products and challenges identified in this section could apply to all kinds of lending services and not be limited to digital financial services. A suggestion was made to explain in detail what FinTech and Big Tech firms are and how they provide financial services, and to focus on unique FinTech products rather than general banking products which could be provided electronically. Another suggestion was made to elaborate on the use of platforms to

provide financial services concerning, for example, receivables and warehouse receipts.

59. A concern was expressed that digital financial services might increase the cost of credit due to the high cost of Internet services in some regions.

#### **10. Other additional topics**

60. The issue of transparency was identified as particularly relevant to banking services, noting the challenges faced by small businesses to access information. Support was expressed for including a new stand-alone section to address transparency related issues. It was explained that greater transparency could reduce the cost of credit as it would allow comparison of prices and affect the competition among financiers.

61. Support was also expressed for including a new stand-alone section on business formation and registration (see para. 20), given that operating in the informal sector was considered as one of the main challenges for small businesses in some regions to access credit. References were made to the *UNCITRAL Legislative Guide on Key Principles of a Business Registry* and the *UNCITRAL Legislative Guide on Limited Liability Enterprises*.

62. The attention of the Working Group was also drawn to issues of microcredit, enforcement actions, and crowdfunding (including the use of Islamic financing) and the importance to further elaborate on them in the Future Text through, for example, new stand-alone sections.

### **F. Part III: Capacity-building for MSMEs and financiers**

63. Several delegations observed that Part III of the Future Text was a core aspect of the document and should be maintained therein. A suggestion was also heard that that Part could be placed elsewhere to better highlight its relevance and importance. While it was noted that formalization of micro and small enterprises was essential for capacity-building programmes to succeed, it was also observed that these two topics should not be mixed and that Part III should only focus on capacity-building.

64. The importance to ensure a balanced approach in the Future Text equally considering the needs of financiers and those of the small businesses was again emphasized, and in this regard it was suggested that the subsection on capacity-building of financiers could be further improved. In particular it was observed that emphasis should be put on enhancing the capacity of the financiers to enter into profitable transactions with small businesses. The Practice Guide was cited as an example of a text that, among others, well explains to lenders and borrowers how secured transactions would allow access to credit at a reasonable cost.

65. Other suggestions were also heard on additional issues that could be included or further emphasized in Part III such as: (a) establishing channels to facilitate capacity-building and exchange of information between financiers and small businesses; (b) improving the financial literacy and management skills of small businesses (not only their knowledge of credit products); (c) awareness-raising of informal mechanisms to access credit used by the small businesses so as to draw lessons from them; and (d) capacity-building of regulators to help them familiarize with new laws and regulations concerning access to credit. National examples of capacity-building programmes were also provided and the invitation to send country examples to the secretariat was reiterated.

66. After discussion, the Working Group agreed to retain Part III in the Future Text and further improve its content in accordance with its deliberations.

## **G. Next session of the Working Group**

67. The Working Group recalled that its thirty-seventh session was scheduled to be held in New York from 9 to 13 May 2022 and it confirmed that at that session it would consider the revised version of document [A/CN.9/WG.I/WP.124](#).

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