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## **Facilitating the cross-border insolvency of multinational enterprise groups: draft legislative provisions**

**Note by the Secretariat**

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## I. Introduction

1. At its forty-fourth session in December 2013, following a three-day colloquium, the Working Group agreed to continue its work on the cross-border insolvency of multinational enterprise groups<sup>1</sup> by developing provisions on a number of issues that would extend the existing articles of the UNCITRAL Model Law on Cross-Border Insolvency (the MLCBI) and part three of the UNCITRAL Legislative Guide on Insolvency Law (the Legislative Guide), as well as involving reference to the UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation. While the Working Group considered that those provisions might, for example, form a set of model provisions or a supplement to the existing MLCBI, it noted that the precise form they might take could be decided as the work progressed.
2. At its forty-fifth (April 2014), forty-sixth (December 2014) and forty-seventh (May 2015) sessions, the Working Group considered the goals of a text that might be developed to facilitate the cross-border insolvency of multinational enterprise groups; the key elements of such a text, including those that might be based upon part three of the Legislative Guide and on the MLCBI; and the form that the text might take, noting that some of the key elements lent themselves to being developed as a model law, while others were perhaps more in the nature of provisions that might be included in a legislative guide ([A/CN.9/WG.V/WP.120](#), 124 and 128 respectively).
3. At its forty-eighth session (December 2015), the Working Group agreed a set of key principles for a regime to address cross-border insolvency in the context of enterprise groups ([A/CN.9/WG.V/WP.133](#)) and considered a number of draft provisions addressing three main areas ([A/CN.9/WG.V/WP.134](#)): (a) coordination and cooperation of insolvency proceedings relating to an enterprise group; (b) elements needed for the development and approval of a group insolvency solution involving multiple entities; and (c) the use of so-called “synthetic proceedings” in lieu of commencing non-main proceedings. Two additional supplemental areas were also considered. These might include (d) the use of so-called “synthetic proceedings” in lieu of commencing main proceedings, and (e) approval of a group insolvency solution on a more streamlined basis by reference to the adequate protection of the interests of creditors of affected group members.
4. At its forty-ninth session (May 2016), the Working Group considered a consolidated draft legislative text incorporating the agreed key principles and draft provisions addressing the five areas indicated in paragraph 3 ([A/CN.9/WG.V/WP.137](#) and Add.1). That draft text was further considered at the fiftieth (December 2016) and fifty-first (May 2017) sessions ([A/CN.9/WG.V/WP.142](#) and Add.1 and [A/CN.9/WG.V/WP.146](#) respectively).
5. The draft text below reflects the discussion and decisions taken at the fifty-first session and the revisions the Secretariat was requested to make, together with various suggestions and proposals arising from the Secretariat’s work on the draft text.
6. As a general issue applicable to the draft text, the Working Group agreed at its fifty-first session ([A/CN.9/903](#), para. 112) that the distinction between group members “subject to” and “participating in” insolvency proceedings should be carefully considered in the articles in which those phrases were used. The Working Group may wish to review that usage at the fifty-second session.
7. A further issue for consideration concerns the title of the document and the form in which it might be finalized. The title currently refers to “legislative provisions”, but several articles (e.g. preamble, articles 1, 2 bis, 2 ter, 2 quater and 19) include references to “this Law”, which would be consistent with a model law text. A related question concerns whether the division of the text into parts A and B should be

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<sup>1</sup> *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17 (A/65/17)*, subpara. 259 (a); [A/CN.9/763](#), paras. 13-14; *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17 (A/68/17)*, para. 326.

retained, part A being chapters 1-5 and part B being the supplemental provisions. An alternative approach might be to dispense with parts A and B and have 6 chapters, with the supplemental provisions set forth in chapter 6.

## II. Draft legislative provisions on facilitating the cross-border insolvency of multinational enterprise groups

[Part A]

### Chapter 1. General Provisions

#### Preamble

The purpose of this Law is to provide effective mechanisms to address cases of cross-border insolvency affecting the members of an enterprise group, in order to promote the objectives of:

(a) Cooperation between courts and other competent authorities of this State and foreign States involved in cases of cross-border insolvency affecting members of an enterprise group;

(b) Cooperation between insolvency representatives appointed in this State and foreign States in cases of cross-border insolvency affecting members of an enterprise group;

(c) Development of a group insolvency solution for the whole or part of an enterprise group and cross-border recognition and implementation of that solution in multiple States;

(d) Fair and efficient administration of cross-border insolvencies concerning enterprise group members that protects the interests of all creditors and other interested persons, including the debtors;

(e) Protection and maximization of the overall combined value of the operations and assets of enterprise group members affected by insolvency and of the enterprise group as a whole;

(f) Facilitation of the rescue of financially troubled enterprise groups, thereby protecting investment and preserving employment; and

(g) Adequate protection of the interests of the creditors of each group member participating in a group insolvency solution.

#### Article 1. Scope

##### *Variant 1*

This Law applies to cooperation and the conduct and administration of insolvency proceedings in the context of the cross-border insolvency of multinational enterprise groups.

##### *Variant 2*

This Law applies to the insolvency of members of a multinational enterprise group, including the conduct and administration of insolvency proceedings for those enterprise group members and cross-border cooperation between those proceedings.

#### Notes on article 1

1. Draft article 1 has been revised as in accordance with the report of the fifty-first session (A/CN.9/903, para. 87), with addition of the words “and the conduct and administration of insolvency proceedings” after the word “cooperation”.
2. Variant 1 reflects the previous drafting of the article; variant 2 is a proposal by the Secretariat. The drafting of variant 1 is somewhat inaccurate as it limits the scope to the context of cross-border insolvency of enterprise groups. Since chapter 3

concerns insolvency proceedings conducted in the enacting State, the reference to cross-border insolvency is not entirely accurate. The Working Group may wish to consider whether article 1 should reflect both of those elements.

## Article 2. Definitions

For the purposes of these provisions:

(a) “Enterprise” means any entity, regardless of its legal form, that is engaged in economic activities and may be governed by the insolvency law;

(b) “Enterprise group” means two or more enterprises that are interconnected by control or significant ownership;

(c) “Control” means the capacity to determine, directly or indirectly, the operating and financial policies of an enterprise;

(d) “Enterprise group member” means an enterprise [referred to] [as defined] in subparagraph (a), which forms part of an enterprise group as defined in subparagraph (b);

(e) “Group representative” means a person or body, including one appointed on an interim basis, authorized to act as a representative of a planning proceeding;

### *Variant 1 of subparagraph (f)*

(f) “Group insolvency solution” means a set of proposals developed in a planning proceeding:

(i) For the reorganization, sale, or liquidation of some or all of the operations or assets of one or more enterprise group members;

(ii) With the goal of preserving or enhancing the overall combined value of the enterprise group members involved;

### *Variant 2 of subparagraph (f)*

(f) “Group insolvency solution” means a set of proposals developed in a planning proceeding for the reorganization, sale, or liquidation of some or all of the operations or assets of one or more enterprise group members, with the goal of preserving or enhancing the overall combined value of the group members involved;

(g) “Planning proceeding” means a main proceeding:

(i) Commenced in respect of an enterprise group member, which is a necessary and integral part of a group insolvency solution;

(ii) In which one or more enterprise group members are participating for the purpose of developing and implementing a group insolvency solution; and

(iii) In which a group representative has been appointed.

## Notes on article 2

3. Variant 1 of subparagraph (f) (ii) of the definition of “group insolvency solution” has been revised in accordance with the report of the fifty-first session (A/CN.9/903, para. 89), including by deleting what was previously subparagraph (iii) (referring to approval of a group insolvency solution) on the basis that that issue is addressed in article 20.

4. Variant 2 of subparagraph (f) is proposed by the Secretariat on the basis that, with the deletion of what was formerly subparagraph (f)(iii), the remaining elements of the definition might be combined in a single paragraph to simplify the drafting.

**Article 2 bis. Jurisdiction of the enacting State**

Where the centre of main interests of an enterprise group member is located in this State, nothing in this Law is intended to:

- (a) Limit the jurisdiction of the courts of this State with respect to that enterprise group member;
- (b) Limit any process or procedure (including any permission, consent or approval) required in this State in respect of that enterprise group member's participation in a group insolvency solution being developed in another State;
- (c) Limit the commencement of insolvency proceedings in this State under [*identify laws of the enacting State relating to insolvency*], if required or requested to address the insolvency of that enterprise group member; or
- (d) Create an obligation to commence insolvency proceedings in this State when [there is no obligation to commence such proceedings] [no such obligation exists].

**Notes on article 2 bis**

5. Article 2 bis has been revised in accordance with the report of the fifty-first session (A/CN.9/903, para. 92), in particular revising the second sentence of subparagraph (c) to become new subparagraph (d). The alternative words at the end of subparagraph (d) are proposed in order to simplify the drafting.

**Article 2 ter. Public policy exception**

Nothing in this Law prevents the court from refusing to take an action governed by this Law if the action would be manifestly contrary to the public policy of this State.

**Article 2 quater. Competent court or authority**

The functions referred to in this Law relating to the recognition of an insolvency proceeding or a planning proceeding and cooperation with foreign courts shall be performed by [*specify the court, courts, authority or authorities competent to perform those functions in the enacting State*].

**Chapter 2. Cooperation and coordination****Article 3. Cooperation and direct communication between a court of this State and foreign courts, foreign representatives and a group representative**

1. In the matters referred to in article 1, the court shall cooperate to the maximum extent possible with foreign courts, foreign representatives and a group representative, where appointed, either directly or through a [*insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State*] or other person appointed to act at the direction of the court.
2. The court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts, foreign representatives or a group representative, where appointed.

**Article 4. Cooperation to the maximum extent possible under article 3**

For the purposes of article 3, cooperation to the maximum extent possible may be implemented by any appropriate means, including:

- (a) Communication of information by any means considered appropriate by the court;
- (b) Participation in communication with the foreign court, a foreign representative or a group representative, where appointed;

- (c) Coordination of the administration and supervision of the affairs of the enterprise group members;
- (d) Coordination of concurrent proceedings commenced with respect to enterprise group members;
- (e) Appointment of a person or body to act at the direction of the court;
- (f) Approval and implementation of agreements concerning the coordination of proceedings relating to two or more enterprise group members located in different States, including where a group insolvency solution is being developed;
- (g) Cooperation among courts as to how to allocate and provide for the costs associated with cross-border cooperation and communication;
- (h) Use of mediation or, with the consent of the parties, arbitration, to resolve disputes between enterprise group members concerning claims;
- (i) Approval of the treatment of claims between enterprise group members;
- (j) Recognition of the cross-filing of claims by or on behalf of enterprise group members and their creditors; and
- (k) [*The enacting State may wish to list additional forms or examples of cooperation*].

#### **Notes on article 4**

6. In accordance with the report of the fifty-first session ([A/CN.9/903](#), para. 95) article 4, the words “For the purposes of article 3” have been moved to the beginning of the chapeau, subparagraph (f) has been deleted on the basis that it could be addressed in chapter 5 and the subparagraphs have been renumbered.

#### **Article 5. Limitation of the effect of communication under article 3**

1. With respect to communication under article 3, the court is entitled at all times to exercise its independent jurisdiction and authority with respect to matters presented to it and the conduct of the parties appearing before it.
2. Participation by a court in communication pursuant to article 3, paragraph 2, does not imply:
  - (a) A waiver or compromise by the court of any powers, responsibilities or authority;
  - (b) A substantive determination of any matter before the court;
  - (c) A waiver by any of the parties of any of their substantive or procedural rights;
  - (d) A diminution of the effect of any of the orders made by the court;
  - (e) Submission to the jurisdiction of other courts participating in the communication; or
  - (f) Any limitation, extension or enlargement of the jurisdiction of the participating courts.

#### **Notes on article 5**

7. A cross-reference to article 3 has been added to article 5, paragraph 1 in accordance with the report of the fifty-first session ([A/CN.9/903](#), para. 96).

#### **Article 6. Coordination of hearings**

1. The court may conduct a hearing in coordination with a foreign court.

2. The substantive and procedural rights of the parties and the jurisdiction of the court may be safeguarded by the parties reaching agreement on the conditions to govern the coordinated hearing and the court approving that agreement.
3. Notwithstanding the coordination of the hearing, the court remains responsible for reaching its own decision on the matters before it.

#### **Notes on article 6**

8. Article 6 has been revised in accordance with the report of the fifty-first session (A/CN.9/903, para. 97), replacing the references to “each court” with the words “the court” in paragraphs 1 and 2 and in paragraph 2, adding the words “the parties” before the words “reaching agreement” and the words “and the court approving that agreement” at the end of the paragraph.

#### **Article 7. Cooperation and direct communication between a group representative, foreign representatives and foreign courts**

1. A group representative appointed in this State shall, in the exercise of its functions and subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts and foreign representatives of other enterprise group members to facilitate the development and implementation of a group insolvency solution.
2. A group representative is entitled, in the exercise of its functions and subject to the supervision of the court, to communicate directly with or to request information or assistance directly from foreign courts and foreign representatives of other enterprise group members.

#### **Article 7 bis. Cooperation and direct communication between a [insert the title of a person or body administering a reorganization or liquidation with respect to an enterprise group member under the law of the enacting State], foreign courts, foreign representatives and a group representative**

1. A [insert the title of a person or body administering a reorganization or liquidation with respect to an enterprise group member under the law of the enacting State] shall, in the exercise of its functions and subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts, foreign representatives of other enterprise group members and a group representative, where appointed.
2. A [insert the title of a person or body administering a reorganization or liquidation with respect to an enterprise group member under the law of the enacting State] is entitled, in the exercise of its functions and subject to the supervision of the court, to communicate directly with or to request information or assistance directly from foreign courts, foreign representatives of other enterprise group members and a group representative, where appointed.

#### **Notes on articles 7 and 7 bis**

9. The references in paragraph 1 of both articles 7 and 7 bis to article 1 have been deleted in accordance with the report of the fifty-first session (A/CN.9/903, paras. 98 and 99).

#### **Article 8. Cooperation to the maximum extent possible under articles 7 and 7 bis**

For the purposes of article 7 and article 7 bis, cooperation to the maximum extent possible may be implemented by any appropriate means, including:

- (a) Sharing and disclosure of information concerning enterprise group members, provided appropriate arrangements are made to protect confidential information;

(b) Negotiation of agreements concerning the coordination of proceedings relating to two or more enterprise group members located in different States, including where a group insolvency solution is being developed;

(c) Allocation of responsibilities between a [*insert the title of a person or body administering a reorganization or liquidation with respect to an enterprise group member under the law of the enacting State*], a foreign representative and a group representative, where appointed;

(d) Coordination of the administration and supervision of the affairs of the enterprise group members; and

(e) Coordination with respect to the development and implementation of a group insolvency solution, where applicable.

#### **Article 9. Authority to enter into agreements concerning the coordination of proceedings**

A [*insert the title of a person or body administering a reorganization or liquidation with respect to an enterprise group member under the law of the enacting State*] may enter into an agreement concerning the coordination of proceedings involving two or more enterprise group members located in different States, including where a group insolvency solution is being developed.

#### **Notes on article 9**

10. Draft article 9 has been revised in accordance with the report of the fifty-first session (A/CN.9/903, para. 101) in order to identify the parties that might enter into the types of agreement that are the subject of the draft article.

#### **Article 10. Appointment of a single or the same insolvency representative**

1. The court may coordinate with foreign courts with respect to the appointment and recognition of a single or the same insolvency representative to administer and coordinate insolvency proceedings concerning members of the same enterprise group in different States.

2. The appointment of an insolvency representative in this State and in another State under paragraph 1 does not diminish the obligations of the insolvency representative under the law of this State.

#### **Article 11. Participation by enterprise group members in a proceeding under [*identify laws of the enacting State relating to insolvency*]**

1. Subject to paragraph 2, if a proceeding under [*identify laws of the enacting State relating to insolvency*] has commenced with respect to an enterprise group member whose centre of main interests is located in this State, any other enterprise group member may participate in that proceeding, including for the purpose of developing and implementing a group insolvency solution.

2. An enterprise group member whose centre of main interests is located in another State may participate in a proceeding referred to in paragraph 1 unless a court in that other State prohibits it from so doing.

3. Participation in a proceeding referred to in paragraph 1 does not subject an enterprise group member to the jurisdiction of the courts of this State. Participation means that the enterprise group member has the right to appear, make written submissions and be heard in that proceeding on matters affecting that enterprise group member's interests and to take part in the development and implementation of a group insolvency solution.

4. Participation by any other enterprise group member in a proceeding referred to in paragraph 1 is voluntary. An enterprise group member may commence its participation or opt out of participation at any stage of such a proceeding.

5. A participating enterprise group member shall be notified of actions taken with respect to the development of a group insolvency solution.

#### Notes on article 11

11. In accordance with the report of the fifty-first session, article 11 has been moved from chapter 3 to chapter 2 of the draft text (A/CN.9/903, paras. 104 and 105). The word “including” has been added to paragraph 1; the word “prohibits” has been retained in paragraph 2; and the word “participate” in paragraph 3 has been replaced with the words “take part” (A/CN.9/903, paras. 103 and 105). Since the addition of the word “including” in paragraph 1 indicates that the development of a group insolvency solution is only one possible purpose for participation, paragraphs 3 and 5 might need to be revised to accommodate that change to paragraph 1, particularly in respect of references to a group solution in paragraphs 3 and 5. One solution might be to add to the second sentence of paragraph 3 the words “and, in particular” before the words “to take part in ...” and the words “where applicable” at the end of the provision. The second sentence of paragraph 3 would then read:

“Participation means that the enterprise group member has the right to appear, make written submissions and be heard in that proceeding on matters affecting that enterprise group member’s interests and, in particular, to take part in the development and implementation of a group insolvency solution, where applicable.”

The words “where applicable” might also be added at the end of paragraph 5.

### Chapter 3. Conduct of a planning proceeding in this State

#### Article 12. Appointment of a group representative

1. When one or more enterprise group members participate in a proceeding referred to in article 11, and the requirements of article 2, subparagraphs (g)(i) and (ii) are otherwise met, the court may appoint a group representative, by which the proceeding becomes a planning proceeding.
2. [*Specify the procedure for appointment of a group representative.*]
3. [A group representative is authorized to seek relief in this State to support the development and implementation of a group insolvency solution.]
4. A group representative is authorized to act in a foreign State on behalf of a planning proceeding [as permitted by the applicable foreign law] and, in particular, to:
  - (a) Seek recognition of the planning proceeding and relief to support the development and implementation of the group insolvency solution;
  - (b) Seek to participate in a foreign proceeding relating to an enterprise group member participating in the planning proceeding; and
  - (c) Seek to participate in a foreign proceeding relating to an enterprise group member not participating in the planning proceeding.

#### Notes on article 12

12. The chapeau of article 12 has been revised in accordance with the report of the fifty-first session (A/CN.9/903, para. 107), adding a cross-reference to article 2, subparagraph (g) and revising the closing words. The Working Group did not discuss the square brackets around paragraph 3 or included in paragraph 4.

13. The reference to subparagraph (g) may need to be limited to subparagraphs (g)(i) and (g)(ii), as subparagraph (g)(iii) refers to the appointment of the group representative, which is addressed in the following phrase of paragraph 1. In addition, the definition of “planning proceeding” refers only to the appointment of a group representative without specifying how that appointment is made, while article 12, paragraph 1 refers to appointment by the court. The Working Group may wish to

consider whether article 12, paragraph 1 should adopt the same approach as the definition of that term and thus delete the reference to appointment by the court. If the preference is to retain the reference to appointment by the court, paragraph 2 may not be required.

### **Article 13. Relief available to a planning proceeding**

1. To the extent needed to preserve the possibility of developing [or implementing] a group insolvency solution or to protect the assets of an enterprise group member subject to or participating in a planning proceeding or the interests of the creditors of such an enterprise group member, the court, at the request of the group representative, may grant any of the following relief:

- (a) Staying execution against the assets of the enterprise group member;
- (b) Suspending the right to transfer, encumber, or otherwise dispose of any assets of the enterprise group member;
- (c) Staying any insolvency proceedings concerning a participating enterprise group member;
- (d) Staying the commencement or continuation of individual actions or individual proceedings concerning the assets, rights, obligations, or liabilities of the enterprise group member;
- (e) Entrusting the administration or realization of all or part of the assets of the enterprise group member that are located in this State to the group representative or another person designated by the court, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation, or otherwise in jeopardy;
- (f) Providing for the examination of witnesses, the taking of evidence, or the delivery of information concerning the assets, affairs, rights, obligations, or liabilities of the enterprise group member;
- (g) Recognizing arrangements concerning the funding of enterprise group members participating in the planning proceeding where the funding entity is located in this State and authorizing the provision of finance under those funding arrangements, subject to any appropriate safeguards the court may apply; and
- (h) Granting any additional relief that may be available to [*insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State*] under the laws of this State.

2. Relief under this article may not be granted with respect to the assets and operations located in this State of any enterprise group member participating in a planning proceeding if that enterprise group member is not subject to insolvency proceedings [in any jurisdiction].

3. With respect to the assets or operations located in this State of an enterprise group member that has its centre of main interests in another State, relief under this article may only be granted if that relief does not interfere with the [conduct and] administration of insolvency proceedings taking place in that State.

### **Notes on article 13**

14. Article 13 has been revised in accordance with the report of the fifty-first session (A/CN.9/903, paras. 110-112).

#### *Paragraph 1*

15. The text formerly in square brackets in paragraph 1 has been retained so that the article applies to enterprise group members both subject to *and* participating in a planning proceeding. The phrase “solution and to protect” has been amended to “solution or to protect”. The Working Group noted that the distinction between

enterprise group members “subject to and participating in” a planning proceeding needed to be carefully considered throughout the text. To align articles 13, 15 and 17, the words “or implementing” a group insolvency solution might be added to article 13, paragraph 1.

#### *Subparagraphs 1(c) and (d)*

16. The word “temporarily” in reference to the stay in subparagraph (c) has been deleted and the word “insolvency” retained. The references to “the enterprise group member’s assets” in subparagraphs (d), (e) and (f) have been changed to refer to “the assets of the enterprise group member” to ensure consistency of usage in the draft text (this drafting has been revised throughout the text).

#### *Subparagraph 1(e)*

17. The Working Group may wish to consider whether subparagraph (e) raises the same concerns regarding the powers of the group representative as addressed at the last session (e.g. [A/CN.9/903](#), para. 116) and reflected in amendments made to articles 15, subparagraph 1(e) and 17, subparagraph 1(f) and paragraph 2 (see notes to articles 15 and 17 below).

#### *Subparagraph 1(g)*

18. The text formerly in square brackets in subparagraph (g) referring to enterprise group members participating in the planning proceeding has been retained. The relief available under article 13, subparagraph 1(g) appears to be limited to enterprise group members participating in the planning proceeding, whereas the chapeau refers to relief being available under article 13 in respect of group members both subject to and participating in a planning proceeding. The Working Group may wish to consider whether the limitation under subparagraph 1(g) is appropriate and whether the drafting needs to be clarified to ensure that the meaning of the provision is clear.

19. The proviso in article 13, subparagraph (g) “subject to any appropriate safeguards the court may apply” is already contained in article 19, paragraph 2 and thus may not be required in article 13. The guide to enactment of article 13 could draw attention to the relevance of article 19. This observation applies also to the same references in articles 15, subparagraph 1(g) and 17, subparagraph 1(h).

#### *Paragraph 2*

20. A new paragraph 2, based upon article 15, paragraph 4, has been added to this article and to article 17 in accordance with the report of the fifty-first session ([A/CN.9/903](#), para. 122) to preclude relief from being granted with respect to the assets of a “solvent” enterprise group member (here described as one not subject to insolvency proceedings) participating in the planning proceeding; square brackets remain around the words “[in any jurisdiction]” in this article, as well as the equivalent paragraphs of articles 15 and 17.

21. The Working Group may wish to consider whether the words “not subject to insolvency proceedings” would inadvertently prevent relief being granted with respect to an insolvent group member for which a court had decided, under articles 21 bis or 22 bis, not to commence an insolvency proceeding as part of the group insolvency solution. To address that concern, additional language might be added to article 13, paragraph 2 (and the equivalent paragraphs of articles 15 and 17) along the lines of “unless not commencing an insolvency proceeding is an element of the proposals being developed in the planning proceeding.” The guide to enactment could explain the relevance of articles 21 bis and 22 bis to this provision (and to the equivalent paragraphs of articles 15 and 17).

22. The Working Group may also wish to consider whether adding words to the effect that the group member was not eligible for insolvency proceedings to commence might further clarify the drafting.

*Paragraph 3*

23. The alternative text in paragraph 3, referring to interference with insolvency proceedings, has been retained in preference to the test of incompatibility with relief granted in insolvency proceedings. The Working Group may wish to consider adding the words “conduct and” before the word “administration” in paragraph 3 to reflect the drafting of article 1.

24. The Working Group may also wish to consider whether, in order to simplify the text, article 13, paragraphs 2 and 3, article 15, paragraphs 4 and 5 and article 17, paragraphs 3 and 4 might be set out in a separate article with appropriate cross-references.

**Chapter 4. Recognition of a foreign planning proceeding and relief****Article 14. Application for recognition of a foreign planning proceeding**

1. A group representative may apply in this State for recognition of the planning proceeding to which the group representative was appointed.

2. An application for recognition shall be accompanied by:

(a) A certified copy of the decision appointing the group representative;

(b) A certificate from the foreign court affirming the appointment of the group representative; or

(c) In the absence of evidence referred to in subparagraphs (a) and (b), any other evidence acceptable to the court of the appointment of the group representative.

3. An application for recognition shall also be accompanied by:

(a) Evidence identifying each enterprise group member participating in the planning proceeding;

(b) A statement identifying all members of the enterprise group and all proceedings commenced in respect of enterprise group members participating in the planning proceeding that are known to the group representative; and

(c) A statement to the effect that the enterprise group member subject to the planning proceeding has its centre of main interests in the jurisdiction where the planning proceeding is taking place and that that proceeding is likely to result in added overall combined value for the enterprise group members involved.

4. The court may require a translation of documents supplied in support of the application for recognition into an official language of this State.

**Notes on article 14**

25. Article 14 has been revised in accordance with the report of the fifty-first session ([A/CN.9/903](#), paras. 113 and 114). The references to evidence relating to the commencement of the proceeding designated as the planning proceeding have been deleted in subparagraphs 2(a), (b) and (c), so that the evidence required is limited to the appointment of the group representative. The second sentence of subparagraph 3(a), which referred to evidence of the approval for a group member to participate in the planning proceeding, has also been deleted. The square brackets have been removed from subparagraph 3(b).

26. The Working Group may wish to consider whether additional paragraphs might be required in draft article 14 to address: (i) the issue of legalization, along the lines of article 16, paragraph 2 of the MLCBI and article 10, paragraph 4 of the draft model law on the recognition and enforcement of insolvency-related judgments (see [A/CN.9/WG.V/WP.150](#)); and (ii) the presumption contained in article 16, paragraph 1 of the MLCBI. The requirement for such additions may depend, in part, on the form the draft instrument takes and whether articles of the MLCBI are to be incorporated by reference.

*Subparagraphs 3(a) and (b)*

27. The current drafting of subparagraphs (a) and (b) may require some further consideration, particularly with respect to the requirements for “evidence” in subparagraph (a) and “a statement” in subparagraph (b). The Working Group may also wish to consider whether the phrase “known to the group representative” applies to both elements of subparagraph (b).

*Subparagraph 3(c)*

28. The Working Group may wish to consider whether the first part of article 14, subparagraph 3(c) is required, in view of the requirement in article 12 that a proceeding can only become a planning proceeding if it is a proceeding commenced under article 11 at the centre of main interests (COMI) of a group member and that proceeding otherwise meets the requirements of article 2, subparagraph (g) (including that the group member is a necessary and integral part of a group insolvency solution). If the Working Group were to include in article 14 a presumption along the lines mentioned in paragraph 26 above, the court could rely upon the decision of the originating court and presume that the group member subject to the planning proceeding did have its COMI in the jurisdiction in which the planning proceeding was taking place, unless there was reason to seek further evidence on that point. The statement referred to in the first part of article 14, subparagraph 3(c) might then not be required.

29. The Working Group may wish to consider whether the reference in the second part of article 14, subparagraph 3(c) should be to the planning proceeding resulting in additional value or to the group insolvency solution. The definition of a group insolvency solution refers to the notion of preserving or enhancing overall combined value, whereas the definition of a planning proceeding includes no such notion. Moreover, while a group insolvency solution can be developed in a planning proceeding (in accordance with the definition of that term), there is no requirement for a planning proceeding to develop a group insolvency solution. As currently drafted, the reference to added value appears disconnected from the overall purpose of the text of the draft article.

30. The Working Group may wish to consider providing clearer drafting than the reference at the end of subparagraph 3(c) to group members “involved”, referring instead, for example, to group members “subject to or participating in” the planning proceeding.

**Article 15. [Interim] [Provisional] relief that may be granted upon application for recognition of a foreign planning proceeding**

1. From the time of filing an application for recognition until the application is decided upon, where relief is urgently needed to preserve the possibility of developing or implementing a group insolvency solution or to protect the assets of an enterprise group member subject to or participating in a planning proceeding or the interests of the creditors of such an enterprise group member, the court may, at the request of the group representative, grant [appropriate] relief of a provisional nature, including:

- (a) Staying execution against the assets of the enterprise group member;
- (b) Suspending the right to transfer, encumber, or otherwise dispose of any assets of the enterprise group member;
- (c) Staying any insolvency proceedings concerning the enterprise group member;
- (d) Staying the commencement or continuation of individual actions or individual proceedings concerning the assets, rights, obligations, or liabilities of the enterprise group member;
- (e) In order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation, or

otherwise in jeopardy, entrusting the administration or realization of all or part of the assets of the enterprise group member that are located in this State to an insolvency representative appointed in this State. Where that insolvency representative is not able to administer or realize all or part of the assets of the enterprise group member that are located in this State, the group representative or another person designated by the court may be entrusted with that task;

(f) Providing for the examination of witnesses, the taking of evidence, or the delivery of information concerning the assets, affairs, rights, obligations, or liabilities of the enterprise group member;

(g) Recognizing arrangements concerning the funding of enterprise group members participating in the planning proceeding where the funding entity is located in this State and authorizing the provision of finance under those funding arrangements, subject to any appropriate safeguards the court may apply; and

(h) Granting any additional relief that may be available to [*insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State*] under the laws of this State.

2. [*Insert provisions of the enacting State relating to notice.*]

3. Unless extended under article 17, subparagraph 1(a), the relief granted under this article terminates when the application for recognition is decided upon.

4. Relief under this article may not be granted with respect to the assets and operations located in this State of any enterprise group member participating in a planning proceeding if that group member is not subject to insolvency proceedings [in any jurisdiction].

5. The court may refuse to grant relief under this article if such relief would interfere with the administration of an insolvency proceeding taking place in the centre of main interests of an enterprise group member participating in the planning proceeding.

#### **Notes on article 15**

31. Article 15 has been revised in accordance with the report of the fifty-first session (A/CN.9/903, paras. 115-119).

#### *Title of article 15*

32. The Working Group may wish to consider whether the title of article 15 should refer to “Provisional relief” rather than to “Interim relief” to provide consistency with the chapeau of paragraph 1 of the article or whether it might refer only to “Relief that may be granted ...”. It might be noted that the term “provisional relief” is used in article 11 of the draft model law on the recognition and enforcement of insolvency-related judgments. Article 19 of the MLCBI refers to the relief that may be granted upon application for recognition.

#### *Paragraph 1*

33. The chapeau of article 1 has been aligned with the chapeau of article 13, paragraph 1 as noted above. The Working Group may wish to consider whether the word “appropriate” is required; it is not included in article 19 of the MLCBI, which deals with provisional relief, nor is it included in article 11 of the draft model law on recognition and enforcement of insolvency-related judgments, which also addresses provisional relief.

#### *Subparagraph 1(c)*

34. The word “temporarily” in reference to the stay has been deleted from subparagraph 1(c) and the word “insolvency” has been retained.

*Subparagraph 1(e)*

35. To reflect the concerns reported in [A/CN.9/903](#), paragraph 116, subparagraph 1(e) has been replaced with the text proposed. An issue to be considered with respect to subparagraph 1(e) is whether the existing language is sufficient to address the situation where no insolvency representative is appointed in the enacting State (e.g. because article 21 bis or 22 bis is applicable) and whether further language along the lines of “or no insolvency representative has been appointed” might be required, for example, in the second sentence.

*Subparagraph 1(g)*

36. The proviso in article 15, subparagraph 1(g) is already covered in article 19, paragraph 2 and thus may not need to be repeated in article 15. The guide to enactment of article 15 could ensure the relevance of article 19 is highlighted. As noted above with respect to article 13, this observation applies also to articles 13 and 17.

*Paragraph 4*

37. As noted above with respect to article 13, paragraph 2 (see para. 19), the square brackets have been removed from around paragraph 4, although they remain around the words “[in any jurisdiction]”.

*Paragraph 5*

38. The reference to a planning proceeding has been deleted after the words “administration of a” and the square brackets around the remainder of the paragraph have been removed.

**Article 16. Decision to recognize a foreign planning proceeding**

1. Subject to article 2 ter, a planning proceeding shall be recognized if:
  - (a) The application meets the requirements of article 14, paragraphs 2 and 3;
  - (b) The proceeding is a planning proceeding within the meaning of article 2, subparagraph (g); and
  - (c) The application has been submitted to the court referred to in article 2 quater.
2. An application for recognition of a planning proceeding shall be decided upon at the earliest possible time.
3. Recognition may be modified or terminated if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist.
4. For the purposes of paragraph 3, the group representative shall inform the court of [substantial] [material] changes in the status of the planning proceeding or in the status of its own appointment occurring after the application for recognition is made [and changes that might bear upon the relief granted on the basis of recognition].

**Notes on article 16**

39. Article 16, paragraph 4 has been revised in accordance with the report of the fifty-first session ([A/CN.9/903](#), para. 120). The Working Group may wish to consider whether a further requirement might be added, that the group representative applying for recognition is a group representative within the meaning of article 2, subparagraph (e), reflecting the drafting of article 17, subparagraph 1(b) of the MLCBI.

40. In paragraph 4, the words “[substantial] [material]” have been placed in square brackets for further consideration, as have the words at the end of the paragraph. The Working Group may wish to note that article 18 of the MLCBI, upon which article 16 is based, uses the word “substantial”.

41. The Working Group may wish to consider whether the changes referred to in square brackets at the end of paragraph 4 are additional to the substantial or material changes referred to at the beginning of paragraph 4. If so, the word “and” might be replaced with the words “as well as” for greater clarity.

#### **Article 17. Relief that may be granted upon recognition of a foreign planning proceeding**

1. Upon recognition of a planning proceeding, where necessary to preserve the possibility of developing or implementing a group insolvency solution or to protect the assets of an enterprise group member subject to or participating in the planning proceeding or the interests of the creditors of such an enterprise group member the court, at the request of the group representative, may grant any of the following relief:

- (a) Extending any relief granted under article 15, paragraph 1;
- (b) Staying execution against the assets of the enterprise group member;
- (c) Suspending the right to transfer, encumber, or otherwise dispose of any assets of the enterprise group member;
- (d) Staying any insolvency proceedings concerning the enterprise group member;
- (e) Staying the commencement or continuation of individual actions or individual proceedings concerning the assets, rights, obligations, or liabilities of the enterprise group member;
- (f) In order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation, or otherwise in jeopardy, entrusting the administration or realization of all or part of the assets of the enterprise group member that are located in this State to an insolvency representative appointed in this State. Where that insolvency representative is not able to administer or realize all or part of the assets of the enterprise group member that are located in this State, the group representative or another person designated by the court may be entrusted with that task;
- (g) Providing for the examination of witnesses, the taking of evidence, or the delivery of information concerning the assets, affairs, rights, obligations, or liabilities of the enterprise group member;
- (h) Recognizing arrangements concerning the funding of enterprise group members participating in the planning proceeding where the funding entity is located in this State and authorizing the provision of finance under those funding arrangements, subject to any appropriate safeguards the court may apply; and
- (i) Granting any additional relief that may be available to [*insert the title of a person or body administering a reorganization or liquidation under the law of the enacting State*] under the laws of this State.

2. In order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation, or otherwise in jeopardy, entrusting the distribution of all or part of the enterprise group member’s assets located in this State to an insolvency representative appointed in this State. Where that insolvency representative is not able to administer or realize all or part of the assets of the enterprise group member that are located in this State, the group representative or another person designated by the court may be entrusted with that task.

3. Relief under this article may not be granted with respect to the assets and operations located in this State of any enterprise group member participating in a planning proceeding if that enterprise group member is not subject to insolvency proceedings [in any jurisdiction].

4. The court may refuse to grant relief under this article if such relief would interfere with the administration of an insolvency proceeding taking place in the centre of main interests of an enterprise group member participating in the planning proceeding.

#### **Notes on article 17**

42. Article 17 has been revised in accordance with the report of the fifty-first session (A/CN.9/903, paras. 121-124). Paragraph 1 has been revised to align it with paragraph 1 of draft articles 13 and 15. The words “or at any time thereafter” have been deleted from paragraph 1, noting that the equivalent article in the MLCBI (article 21) does not include those words and that the words “upon recognition” should be interpreted to refer to any time following recognition. Subparagraph 1(d) has been aligned with articles 13, subparagraph 1(c) and 15, subparagraph 1(c). Subparagraph 1(f), dealing with administration and realization of assets, has been aligned with article 15, subparagraph 1(e). Subparagraph 1(i) has been deleted on the same basis as noted above with respect to article 4, subparagraph 1(f) i.e., that it should be addressed in article 21 (and possibly article 22).

43. Paragraph 2, albeit dealing with distribution of assets, rather than administration and realization of assets, has been aligned with the requirements of subparagraph 1(f). One issue to be considered with respect to both subparagraph 1(f) and paragraph 2 is whether the existing language is sufficient to address the situation where no insolvency representative is appointed in the enacting State (e.g. because article 21 bis or 22 bis are applicable) or whether further language along the lines of “or no insolvency representative has been appointed” might be required, for example, in the second sentence after the word “State”. Paragraph 3 has been aligned with articles 13, paragraph 2 and 15, paragraph 4. Paragraph 4 has been added to align article 17 with articles 13, paragraph 3 and 15, paragraph 5.

#### **Article 18. Participation of a group representative in a proceeding under [identify laws of the enacting State relating to insolvency]**

Upon recognition of a planning proceeding, the group representative may participate in any proceeding under [identify laws of the enacting State relating to insolvency] concerning enterprise group members that are participating in the planning proceeding.

#### **Notes on article 18**

44. Article 18 has been revised in accordance with the report of the fifty-first session (A/CN.9/903, para. 125), deleting any reference to the group representative having the ability to participate in proceedings concerning group members not participating in the planning proceeding.

#### **Article 19. Protection of creditors and other interested persons**

1. In granting, denying, modifying or terminating relief under this Law, the court must be satisfied that the interests of the creditors and other interested persons, including the enterprise group member subject to the relief to be granted, are adequately protected.

2. The court may subject relief granted under this Law to conditions it considers appropriate, including the provision of security.

3. The court may, at the request of the group representative or a person affected by relief granted under this Law, or at its own motion, modify or terminate such relief.

#### **Notes on article 19**

45. Article 19 has been revised in accordance with the report of the fifty-first session (A/CN.9/903, para. 126). Cross-references to other articles dealing with relief have been replaced with a general reference to the relief available under “this Law”.

## Article 20. Approval of local elements of a group insolvency solution

1. Where a group solution affects an enterprise group member participating in a planning proceeding that has its centre of main interests or establishment in this State and a proceeding under [*identify the laws of the enacting State relating to insolvency*] has commenced [in this State], the group insolvency solution shall be submitted to the court [in this State] for approval.
2. The court shall refer the portion of the group solution affecting the enterprise group member referred to in paragraph 1 for approval in accordance with [*identify the laws of the enacting State relating to insolvency*].
3. If the approval process referred to in paragraph 2 results in approval of the relevant portion of the group insolvency solution, the court shall [confirm and implement that portion relating to assets or operations in this State] [*specify the role to be played by the court in accordance with the law of the enacting State with respect to approval of a reorganization plan*].
- [4. Where a group solution affects an enterprise group member participating in the planning proceeding that has its centre of main interests or establishment in this State and no proceeding under [*identify the laws of the enacting State relating to insolvency*] has commenced in this State or article 21 applies, [*specify how, in those situations, the relevant elements of the group insolvency solution may be made binding and effective as required by the law of the enacting State*]. [No such proceeding needs to be commenced if unnecessary to implement the portion of the group insolvency solution affecting the enterprise group member.]]
- [4 bis. The group representative may request additional assistance under other laws of this State to implement the portion of the group insolvency solution affecting the enterprise group member.]
5. A group representative is entitled to apply directly to a court in this State to be heard on issues related to approval and implementation of the group insolvency solution.

### Notes on article 20

46. Article 20 has been revised in accordance with the report of the fifty-first session (A/CN.9/903, paras. 127-129) with the addition of square brackets to paragraph 4 and the inclusion of an additional sentence in square brackets at the end of that paragraph for further consideration. That sentence is based upon the proposal made at the fifty-first session in A/CN.9/903, paragraph 129. A further paragraph numbered article 4 bis has also been added in square brackets, based upon that same proposal.
47. The Working Group may wish to consider whether the title of the article might be simplified to “Approval of a group insolvency solution”. It might be noted that while article 20 appears in chapter 4 dealing with recognition of a planning proceeding, article 20 itself makes no reference to any requirement for recognition of a planning proceeding as a pre-condition for seeking approval of a group insolvency solution or for the group representative to apply under article 20, paragraph 5 directly to the court to be heard on issues relating to approval and implementation of the solution. The Working Group may wish to consider whether there is a necessary connection between recognition and approval of a group insolvency solution.
48. The Working Group may also wish to consider how article 20, paragraph 5 relates to article 18. In particular, is article 20, paragraph 5 covered by, or additional to, article 18 or is article 20, paragraph 5 broader and applicable irrespective of whether or not there is a proceeding in the enacting State (reflecting paragraphs 4 and 4 bis where no proceeding is required to be commenced).
49. Article 20, paragraph 5 might be moved to article 12, paragraph 4, which identifies the activities the group representative is authorized to conduct. The guide to enactment could provide relevant explanation.

## Chapter 5. Treatment of foreign claims

### Article 21. Commitment to and approval of the treatment of foreign claims in accordance with applicable law: non-main proceedings

[Treatment of foreign claims in this State in accordance with applicable law: non-main proceedings]

[Commitment on the treatment of foreign claims to minimize commencement of non-main proceedings]

#### *Variant 1*

To facilitate the treatment of claims that could otherwise be brought by a creditor in a non-main proceeding for an enterprise group member in another State, an insolvency representative of an enterprise group member appointed in the main proceeding taking place in this State may, jointly with a group representative (if any), where another person has been appointed to that role, commit to, and the court in this State may approve, providing that creditor with the treatment in this State that they would have received in a non-main proceeding in that other State. Such undertaking shall be subject to the formal requirements, if any, of this State and shall be enforceable and binding on the insolvency estate.

#### *Variant 2*

1. [To minimize the commencement of non-main proceedings in an enterprise group insolvency], a claim that could be brought by a creditor of an enterprise group member in a non-main proceeding in another State may be treated in a main proceeding commenced in this State in accordance with the treatment it would be accorded in the non-main proceeding, provided:

(a) A commitment to accord such treatment is made by the insolvency representative appointed in the main proceeding in this State. Where a group representative is appointed, the commitment should be made jointly by the insolvency representative and the group representative;

(b) The commitment meets the formal requirements, if any, of this State; and

(c) The court approves the treatment to be accorded in the main proceeding.

2. A commitment made under paragraph 1 shall be enforceable and binding on the insolvency estate.

#### **Notes on article 21**

50. Several variations of the heading of article 21 have been proposed by the Secretariat for the consideration of the Working Group.

51. With respect to the draft article, variant 1 reflects the text as proposed at the fifty-first session (A/CN.9/903, para. 133). Variant 2 is proposed pursuant to the request to the Secretariat (A/CN.9/903, para. 135) to provide a revised text for future consideration. Given the number of different elements to be included in the drafting, it is difficult to simplify, but variant 2 seeks to separate the component elements. The chapeau states the general principle that foreign claims that could be brought in non-main proceedings in another State may be treated in main proceedings in the enacting State in accordance with the treatment that would be accorded in the State in which the non-main proceeding could commence, provided the conditions specified in subparagraphs (a)-(c) are met. The commitment should be made by the insolvency representative of the main proceeding; where a group representative has also been appointed, the commitment should be made jointly by those two office holders (the language of A/CN.9/903, paragraph 130 suggests that the commitment “should” rather than “may” be made jointly). The commitment must meet the formal requirements of the enacting State and the court must approve the treatment indicated in the commitment.

52. Variant 1 refers to the insolvency representative committing to accord the claim certain treatment and then describes that commitment as an undertaking. The current headings of articles 21 bis and 22 use the word “commitment”. Variant 2 also refers only to a commitment. The Working Group may wish to consider whether the articles should refer to a “commitment” or to an “undertaking”.

53. Paragraph 2 of variant 2 reflects the second part of the final sentence of the text proposed in variant 1.

54. The Working Group may wish to consider whether additional clarifications are required in the drafting. For example, should the provision note that the main and the non-main proceedings must relate to members of the same enterprise group, but that they need not relate to the same group member? It might be recalled that document [A/CN.9/903](#), paragraph 131 states, “it was clarified that the main proceeding and the non-main proceeding referred to in [article 21] were proceedings relating to the same debtor”. Further, should the provision explain what is meant by use of the word “treated”? Would it be sufficient to provide a more complete explanation of the provision in a guide to enactment?

### **Article 21 bis. Powers of the court of this State with respect to a commitment under article 21**

#### *Variant 1*

[Subject to article 19], a court in this State may stay or decline to commence a non-main proceeding if a foreign representative of an enterprise group member or a group representative from another State in which a main proceeding is pending has made a commitment under article 21 and may approve the treatment in the foreign proceeding of the claims of creditors located in this State.

#### *Variant 2*

If a foreign representative of an enterprise group member or a group representative from another State in which a main proceeding is pending has made a commitment in accordance with article 21, a court in this State, [subject to article 19], may:

- (a) Approve the treatment to be provided in the foreign main proceeding to the claims of creditors located in this State; and
- (b) Stay or decline to commence a non-main proceeding.

### **Notes on article 21 bis**

55. Article 21 bis was formerly paragraph 2 of article 21 and has been separated in accordance with the report of the fifty-first session ([A/CN.9/903](#), para. 134). A new heading has been proposed. The text of variant 1 reflects the previous drafting of the paragraph, with the addition of the words following “commitment under article 21”, which were added to reflect the substance of article 17, subparagraph 1(i) ([A/CN.9/903](#), para. 134). Variant 2 seeks to separate the various elements of the draft article.

56. One issue the Working Group may wish to consider is whether the commitment made under article 21 has to be approved by the court in the State in which the treatment is to be accorded before it can be approved by the State that is being asked to stay or decline to commence the non-main proceeding. If that is the case, appropriate wording might need to be reflected in article 21 bis — in variant 2, if that is the preferred text, it could be achieved by adding the words “and that commitment has been approved in the main proceeding” after the words “article 21” in the chapeau. It is somewhat more difficult to add to variant 1 and the drafting of the variant, if that is the preferred text, might need to be reconsidered. The qualification “subject to article 19” remains following the observations in the Working Group ([A/CN.9/903](#), para. 134).

**[Part B]****Supplemental provisions****Article 22. Commitment to and approval of the treatment of foreign claims in accordance with applicable law: main proceedings [Treatment of foreign claims in this State in accordance with applicable law: main proceedings] [Commitment on the treatment of foreign claims to minimize commencement of main proceedings]**

To facilitate the treatment of claims that would otherwise be brought by a creditor in a proceeding in another State, an insolvency representative of an enterprise group member or a group representative appointed in this State may commit to, and the court in this State may approve, according that [creditor] [claim] with the treatment in this State that [they] [it] would have received in a proceeding in that other State. Such commitment shall be subject to the formal requirements, if any, of this State and shall be enforceable and binding on the insolvency estate.

**Notes on article 22**

57. The various versions of the heading of draft article 22 reflect the approach proposed above with respect to draft article 21. The square brackets on the second sentence of article 22 have been removed in accordance with the report of the fifty-first session (A/CN.9/903, para. 136). No other revisions, such as aligning the draft article with draft article 21, have been made, in accordance with the report of the fifty-first session (A/CN.9/903, para. 136), however the Working Group may wish to consider the use of the word “accorded” rather than “provided” and changing the reference to the subject of the treatment from the “creditor” to the “claim”, to reflect the drafting of article 21. The question raised at the fifty-first session as to which insolvency estate is referred to in the second sentence remains to be further considered.

**Article 22 bis. Powers of a court of this State with respect to a commitment under article 22***Variant 1*

Subject to article 19, a court in this State may stay or decline to commence a main proceeding if a foreign representative of an enterprise group member or a group representative from another State in which a proceeding is pending has made a commitment under article 22 and may approve the treatment in the foreign proceeding of the claims of creditors located in this State.

*Variant 2*

If a foreign representative of an enterprise group member or a group representative from another State in which a proceeding is pending has made a commitment under article 22, a court in this State, [subject to article 19], may:

- (a) Approve the treatment in the foreign proceeding of the claims of creditors located in this State; and
- (b) Stay or decline to commence a main proceeding.

**Notes on article 22 bis**

58. Article 22 bis was formerly paragraph 2 of article 22 and has been revised as a separate article, in accordance with the report of the fifty-first session (A/CN.9/903, para. 136). The cross-reference to paragraph 1 has been amended to refer to article 22 and the words “and may approve ... ” have been added (A/CN.9/903, para. 136) to reflect the issue previously addressed in article 17, subparagraph 1(i). Variant 1 reflects the text as previously drafted; variant 2 follows the drafting of article 21 bis.

59. The Working Group may wish to consider whether the words “a proceeding is pending” should be clarified by the addition of the word “main”.

#### **Article 23. Additional relief**

1. If, upon recognition of a planning proceeding, the court is satisfied that the interests of the creditors of affected enterprise group members would be adequately protected in the planning proceeding, particularly where a commitment under article 21 or 22 has been made, the court, in addition to granting any relief described in article 17, may stay or decline to commence insolvency proceedings in this State relating to any enterprise group member participating in the planning proceeding.

2. Notwithstanding article 20, if, upon submission of a proposed group insolvency solution by the group representative, the court is satisfied that the interests of the creditors of the affected enterprise group member are adequately protected, the court may approve the relevant portion of the group insolvency solution and grant any relief described in article 17 that is necessary for implementation of the group insolvency solution.

#### **Notes on article 23**

60. Article 23 has been revised in accordance with the report of the fifty-first session ([A/CN.9/903](#), para. 138). Paragraph 1 refers to the making of a commitment under article 21 or 22 (not to the person making the commitment) and in paragraph 2, the two phrases previously in square brackets have been deleted. These referred to where a commitment had been made under article 21 or 22 and qualified the phrase “adequately protected” with the words “in the group insolvency solution”.

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