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Draft legislative guide on insolvency law

Note by the Secretariat

Treatment of secured creditors in insolvency

1. At its thirty-fifth session (2002), the Commission noted with particular satisfaction the efforts undertaken by Working Group VI (Security Interests) and Working Group V (Insolvency Law) towards coordinating their work on a subject of common interest such as the treatment of security interests in the case of insolvency proceedings. Strong support was expressed for such coordination, which was generally thought to be of crucial importance for providing States with comprehensive and consistent guidance with respect to the treatment of security interests in insolvency proceedings. The Commission endorsed a suggestion made to revise chapter X of the draft legislative guide on secured transactions in light of the core principles agreed by Working Groups V and VI (see A/CN.9/511, paras. 126-127 and A/CN.9/512, para. 88). The Commission also endorsed a suggestion for closer coordination of the work of the two working groups, including a suggestion to hold a one-day joint meeting of the two working groups at their upcoming sessions.¹

2. To facilitate the discussion at the joint session of Working Groups V and VI on 16 December 2002, this note sets forth a list of those parts of the draft legislative guide on insolvency law (set forth in documents A/CN.9/WG.V/WP.63/Add.3-16) that discuss the manner in which secured creditors may be affected by insolvency law. Unlike the draft legislative guide on secured transactions, the draft insolvency guide does not include a separate chapter addressing those issues, but rather deals with secured creditors in the context of each topic. In respect of some issues, the Guide makes specific reference to secured creditors and the manner in which they

* This document was submitted late because of the need to first finalize all other Addenda in order to complete the list of references.



may be affected. In respect of other issues, secured creditors will be affected in the same manner as all other creditors, for example, with respect to commencement criteria and therefore no particular reference is made to secured creditors. The references set forth below (which include both relevant paragraphs of the commentary and recommendations) relate both to sections specifically addressing secured creditors and to references to secured creditors in the text of paragraphs dealing with other issues.

Chapter III

A.2(a)	Assets of the insolvency estate	Add.5, paras. 60-62, 66 Rec. (27)
B.3(b)	Scope of application of the stay	Add.6, paras. 73, 75-77, 80-83
B.4(a)	Discretionary or automatic application	para. 84
B.4(b)	Time of application	para. 87
B.4(c)	Duration of application of the stay	paras. 91-92
B.4(e)	Relief from the stay	para. 94
B.5.	Protection of secured creditors	paras. 96-102 Recs. (40)-(42)
C.1(b)	Sale of secured assets	Add.7, para. 109-110
C.1(f)	Surrender of secured assets	para. 113
C.3.	Third party owned assets	para. 116 Recs. (44)-(45), (51)
E.3(d)	Types of transactions subject to avoidance	Add.9, para. 170 Rec. (71)

Chapter IV

C.1.	Classes of creditors	Add.11, paras. 261-262
C.2(d)	Creditor committee	paras. 269, 278-280
C.2(e)	Voting of creditors	para. 292 Rec. (110)

Chapter V

A.4.	The (reorganization) plan	Add.12, para. 321
A.5.	Approval of a plan	paras. 325, 327, 329-334
A.6.	Here the plan is not approved	paras. 346-347
A.8(a)	Objections to approval of a plan	para. 349
A.8(b)	Steps required for court confirmation	para. 351
B.	(Expedited) reorganization proceedings	Add.12, para. 369

Chapter VI

A.2(a)	Creditors required to submit claims	Add.13, paras. 377-379 Rec. (148), (157)
B.1.	Need for post-commencement finance	Add.14, para. 414
B.3.	Attracting post-commencement finance —providing security	paras. 416-420 Recs. (162)-(164)
C.1(a)	Priorities—secured creditors	Add.14, paras. 423-425 Rec. (168)

Notes

¹ *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 17, A/57/17, para. 203.*