



# General Assembly

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**United Nations Commission on  
International Trade Law  
Working Group V (Insolvency Law)  
Thirty-fourth session  
New York, 3-7 March 2008**

## **Annotated provisional agenda for the thirty-fourth session of Working Group V (Insolvency Law)**

### **I. Provisional agenda**

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Consideration of the treatment of corporate groups in insolvency.
5. Other business.
6. Adoption of the report of the Working Group.

### **II. Composition of the Working Group**

1. The Working Group is composed of the following States: Algeria, Armenia, Australia, Austria, Bahrain, Belarus, Benin, Bolivia, Bulgaria, Cameroon, Canada, Chile, China, Colombia, Czech Republic, Ecuador, Egypt, El Salvador, Fiji, France, Gabon, Germany, Greece, Guatemala, Honduras, India, Iran (Islamic Republic of), Israel, Italy, Japan, Kenya, Latvia, Lebanon, Madagascar, Malaysia, Malta, Mexico, Mongolia, Morocco, Namibia, Nigeria, Norway, Pakistan, Paraguay, Poland, Republic of Korea, Russian Federation, Senegal, Serbia, Singapore, South Africa, Spain, Sri Lanka, Switzerland, Thailand, Uganda, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela (Bolivarian Republic of) and Zimbabwe.
2. States not members of the Commission and international governmental organizations may attend the session as observers and participate in the



deliberations. In addition, invited international non-governmental organizations may attend the session as observers and represent the views of their organizations on matters where the organization concerned has expertise or international experience so as to facilitate the deliberations at the session.

### **III. Annotations to agenda items**

#### **Item 1. Opening of the session**

3. The thirty-fourth session of Working Group V (Insolvency Law) is scheduled to be held at the United Nations Headquarters from 3-7 March 2008. Meeting hours will be from 10:00 a.m. to 1:00 p.m. and from 3:00 p.m. to 6:00 p.m., except on Monday, 3 March 2008, when the session will commence at 10:30 a.m.

#### **Item 2. Election of officers**

4. In accordance with its practice at previous sessions, the Working Group may wish to elect a Chairman and a Rapporteur.

#### **Item 4. Consideration of the treatment of corporate groups in insolvency**

##### **1. Previous deliberations**

5. At its thirty-eighth session (2005), the Commission had before it a number of proposals (A/CN.9/582 and Add.1-7), on which it heard presentations, for future work in the area of insolvency law, specifically on treatment of corporate groups in insolvency, cross-border insolvency protocols in transnational cases, post-commencement financing in international reorganizations, directors' and officers' responsibilities and liabilities in insolvency and pre-insolvency cases, and commercial fraud and insolvency.

6. After discussion, some preference for the topics of corporate groups, cross-border protocols and post-commencement financing was expressed.<sup>1</sup> The Commission agreed that to facilitate further consideration and obtain the views and benefit from the expertise of international organizations and insolvency experts, an international colloquium should be held, similar to the UNCITRAL/INSOL International/International Bar Association Global Insolvency Colloquium (Vienna, 4-6 December 2000), which had been a key part of the work on the development of the UNCITRAL Legislative Guide on Insolvency Law (see A/CN.9/495). The Commission agreed that in preparing the programme and determining the priorities for a colloquium, to be held in Vienna from 14 to 16 November 2005, the Secretariat should take into account the discussion of the various topics in the Commission.

7. At its thirty-ninth session (2006), the Commission had before it a note by the Secretariat (A/CN.9/596) reporting on the international colloquium that took place from 14 to 16 November 2005.

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<sup>1</sup> *Official Records of the General Assembly, Sixtieth Session, Supplement No. 17 (A/60/17)*, paragraph 210.

8. With respect to the proposals made by the Secretariat for possible future work, the Commission recalled, in particular, that treatment of corporate groups in insolvency had arisen in the context of the development of the UNCITRAL Legislative Guide on Insolvency Guide, and that the treatment in the Insolvency Guide was either limited to a brief introduction, as in the case of treatment of corporate groups in insolvency, or limited to domestic insolvency law, as in the case of post-commencement financing. It was acknowledged that undertaking further work on those two topics would build upon and complement the work already completed by the Commission. The Commission also noted that the proposal on cross-border insolvency protocols was closely related and complementary to the promotion and use of a text already adopted by the Commission, the Model Law on Cross-Border Insolvency,<sup>2</sup> which had been enacted by 11 States and was the subject of increasing interest and discussion. It was therefore appropriate to consider how implementation of the coordination and cooperation provisions of the Model Law could be facilitated by making the legal and judicial experience with respect to the negotiation, use and content of protocols available, in some form, to the international legal community.

9. After consideration, the Commission agreed that:

(a) The treatment of corporate groups in insolvency was sufficiently developed for the topic to be referred to Working Group V (Insolvency Law) for consideration in 2006 and that the Working Group should be given the flexibility to make appropriate recommendations to the Commission regarding the scope of its future work and the form it should take, depending upon the substance of the proposed solutions to the problems the Working Group would identify under that topic;

(b) Post-commencement financing should initially be considered as a component of work to be undertaken on insolvency of corporate groups, with the Working Group being given sufficient flexibility to consider any proposals for work on additional aspects of the topic;

(c) Initial work to compile practical experience with respect to negotiating and using cross-border insolvency protocols should be facilitated informally through consultation with judges and insolvency practitioners. A preliminary progress report on that work should be presented to the Commission for further consideration at its fortieth session, in 2007;

(d) The Secretariat should have flexibility to organize the work to be undertaken with respect to topics (b) and (c), as appropriate, in view of limited resources;

(e) Work being undertaken by other organizations in relation to the topics of directors' and officers' responsibilities in insolvency and pre-insolvency, and insolvency and commercial fraud should be monitored to facilitate consideration, at some future date, of work that might be undertaken by the Commission.

10. The Working Group commenced its consideration of the treatment of corporate groups in insolvency at its thirty-first session in December 2006, on the basis of a

<sup>2</sup> Ibid., *Fifty-second Session, Supplement No. 17* (A/52/17), annex I, and United Nations publication, Sales No. E.99.V.3, which also contains the accompanying Guide to Enactment.

note by the Secretariat covering both domestic and international treatment of corporate groups (A/CN.9/WG.V/WP.74 and Add.1 and 2).

11. The Working Group continued its consideration of the treatment of corporate groups in insolvency at its thirty-second session in May 2007, on the basis of notes by the Secretariat covering both domestic and international treatment of corporate groups (A/CN.9/WG.V/WP.76 and Add.1). For lack of time, the Working Group did not discuss the international treatment of corporate groups contained in document A/CN.9/WG.V/WP.76/Add.2.

12. At its fortieth session (2007), the Commission noted the Working Group's progress regarding consideration of the treatment of corporate groups in insolvency as reflected in the reports of the Working Group's thirty-first (Vienna, 11-15 December 2006) and thirty-second (New York, 14-18 May 2007) sessions (A/CN.9/618 and A/CN.9/622, respectively) and reaffirmed that the mandate of the Working Group was to consider the treatment of corporate groups in insolvency, with post-commencement finance to be included as a component of that work.<sup>3</sup>

13. The Commission took note of the Working Group's agreement at its thirty-first session that the UNCITRAL Legislative Guide on Insolvency Law and the UNCITRAL Model Law on Cross-Border Insolvency provided a sound basis for the unification of insolvency law and that the current work on corporate groups was intended to complement those texts, not to replace them (A/CN.9/618, para. 69). The Commission further noted the suggestion made at that session of the Working Group that a possible method of work entailed consideration of the provisions contained in these existing texts that might be relevant in the context of corporate groups and the identification of those issues that required additional discussion and the preparation of additional recommendations.<sup>4</sup>

14. The Commission also noted concerns expressed with respect to some components of that work, in particular substantive consolidation and its effect on the separate identity of individual members of a corporate group and the possibility of submitting a solvent member of a corporate group to collective procedures, and requested the Working Group to bear them in mind in its deliberations.<sup>5</sup>

15. The Working Group continued its consideration of the treatment of enterprise groups<sup>6</sup> in insolvency at its thirty-third session in November 2007, on the basis of notes by the Secretariat covering domestic issues (A/CN.9/WG.V/WP.78 and Add.1). For lack of time, the Working Group did not discuss international issues as contained in document A/CN.9/WG.V/WP.76/Add.2.

## **2. Documentation for the thirty-fourth session**

16. The Working Group will have before it, and may wish to use as a basis for its consideration notes by the Secretariat concerning the domestic treatment of enterprise groups in insolvency (A/CN.9/WG.V/WP.80 and addenda, as applicable)

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<sup>3</sup> *Official Records of the General Assembly, Sixty-second Session, Supplement No. 17* (A/62/17), paragraphs 186-187.

<sup>4</sup> *Ibid.*, paragraph 188.

<sup>5</sup> *Ibid.*, paragraph 189.

<sup>6</sup> At its thirty-third session, the Working Group adopted the term "enterprise groups", which is explained in the glossary included in document A/CN.9/WG.V/WP.78.

and international treatment of enterprise groups in insolvency (A/CN.9/WG.V/WP.76/Add.2).

17. In planning the attendance of their representatives, States and interested organizations may wish to note the following background documents:

(a) A note concerning developments in insolvency law, including the use of cross-border protocols and court-to-court communication guidelines; and case law on interpretation of “centre of main interests” and “establishment” in the European Union (A/CN.9/580);

(b) A note concerning proposals for possible future work in the area of insolvency law (A/CN.9/582 and Add.1-7);

(c) A note concerning possible future work in the area of insolvency law and reporting on the international colloquium held in November 2005 (A/CN.9/596);

(d) A note concerning developments in insolvency law, including interpretation of the “centre of main interests” in the European Union (A/CN.9/597);

(e) A note by the Secretariat on facilitation of cooperation, direct communication and coordination in cross-border insolvency proceedings (A/CN.9/629);

(f) The UNCITRAL Model Law on Cross-Border Insolvency (1997);

(g) The UNCITRAL Legislative Guide on Insolvency Law (2004);

(h) Notes by the Secretariat concerning the treatment of enterprise groups in insolvency (A/CN.9/WG.V/WP.74 and Add.1 and 2; A/CN.9/WG.V/WP.76 and Add.1 and 2; and A/CN.9/WG.V/WP.78 and Add.1); and

(i) Reports of Working Group V (Insolvency Law) on the work of its thirty-first to thirty-third sessions (A/CN.9/618, A/CN.9/622 and A/CN.9/643).

18. UNCITRAL documents are posted on the UNCITRAL website (<http://www.uncitral.org>) upon their issuance in all the official languages of the United Nations. Delegates may wish to check the availability of the documents by accessing the Working Group’s page in the “Commission and Working Groups Documents” section of the UNCITRAL website.

19. Delegates may wish to note that only a very limited number of copies of the UNCITRAL Legislative Guide on Insolvency Law will be available at the thirty-fourth session of the Working Group. The Glossary and Recommendations of the Legislative Guide will separately be made available for the information of participants.

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

20. The Working Group may wish to adopt, at the close of its session, on Friday, 7 March 2008, a report for submission to the forty-first session of the Commission (planned to be held in New York, from 16 June to 11 July 2008). The main conclusions reached by the Working Group at its ninth half-day meeting (that is, on the morning of Friday, 7 March) will be summarily read out for the record at the

tenth half-day meeting and subsequently incorporated into the Working Group's report.

#### **IV. Scheduling of meetings**

21. The Working Group's thirty-fourth session will last for five working days. The Working Group may wish to note that, consistent with decisions taken by the Commission at its thirty-fourth session,<sup>7</sup> the Working Group is expected to hold substantive deliberations during the first nine half-day meetings (that is, from Monday to Friday morning), with adoption of the report, as noted above at the tenth and last meeting of the Working Group (on Friday afternoon).

22. At the close of its thirty-third session, the Working Group was of the view that having achieved substantial progress with respect to domestic issues concerning the treatment of enterprise groups in insolvency, it would be appropriate to consider international issues at an early state of its thirty-fourth session. That consideration would be based upon document A/CN.9/WG.V/WP.76/Add.2, and should take into account issues of post-application and post-commencement finance, as well as cross-border protocols.

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<sup>7</sup> *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17* and corrigendum (A/56/17 and Corr.3), paragraph 381, available on the UNCITRAL website under "Commission and Working Groups Documents" on the left side, then "Commission Sessions" and then "34th session, 25 June-13 July 2001, Vienna".