



# General Assembly

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**United Nations Commission on  
International Trade Law  
Working Group V (Insolvency Law)  
Fifty-second session**

Vienna, 18-22 December 2017

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

### **I. Provisional agenda**

1. Opening of the Working Group session.
2. Election of officers.
3. Adoption of the agenda.
4. Consideration of insolvency topics.
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: Argentina (2022), Armenia (2019), Australia (2022), Austria (2022), Belarus (2022), Brazil (2022), Bulgaria (2019), Burundi (2022), Cameroon (2019), Canada (2019), Chile (2022), China (2019), Colombia (2022), Côte d'Ivoire (2019), Czech Republic (2022), Denmark (2019), Ecuador (2019), El Salvador (2019), France (2019), Germany (2019), Greece (2019), Honduras (2019), Hungary (2019), India (2022), Indonesia (2019), Iran (Islamic Republic of) (2022), Israel (2022), Italy (2022), Japan (2019), Kenya (2022), Kuwait (2019), Lebanon (2022), Lesotho (2022), Liberia (2019), Libya (2022), Malaysia (2019), Mauritania (2019), Mauritius (2022), Mexico (2019), Namibia (2019), Nigeria (2022), Pakistan (2022), Panama (2019), Philippines (2022), Poland (2022), Republic of Korea (2019), Romania (2022), Russian Federation (2019), Sierra Leone (2019), Singapore (2019), Spain (2022), Sri Lanka (2022), Switzerland (2019), Thailand (2022), Turkey (2022), Uganda (2022), United Kingdom of Great Britain and Northern Ireland (2019), the United States of America (2022), Venezuela (Bolivarian Republic of) (2022) and Zambia (2019).

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 fifty-second session of Working Group V (Insolvency Law) is scheduled to be held in Vienna from Monday 18 December to Friday 22 December 2017 (five working days). Meeting hours will be from 9.30 a.m. to 12.30 p.m. and from 2:00 p.m. to 5 p.m., except on the first day of the session, Monday 18 December 2017, when the meeting will commence at 10.00 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 insolvency topics

##### 1. Background information

##### (a) Facilitating the cross-border insolvency of multinational enterprise groups

5. At its forty-fourth session (December 2013), the Working Group agreed to continue its work on cross-border insolvency of multinational enterprise groups<sup>1</sup> by developing provisions on a number of issues, some of which would extend the existing provisions of the UNCITRAL Model Law on Cross-Border Insolvency (the Model Law) and part three of the UNCITRAL Legislative Guide on Insolvency Law (the Legislative Guide) and involve reference to the UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation. The Working Group discussed this topic at its forty-fifth (April 2014) ([A/CN.9/803](#)), forty-sixth (December 2014) ([A/CN.9/829](#)), forty-seventh (May 2015) ([A/CN.9/835](#)), forty-eighth (December 2015) ([A/CN.9/864](#)), forty-ninth (May 2016) ([A/CN.9/870](#)), fiftieth (December 2016) ([A/CN.9/898](#)) and fifty-first (May 2017) ([A/CN.9/903](#)) sessions.

6. At its forty-fifth, forty-sixth and forty-seventh sessions, the Working Group considered the goals of a text facilitating 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 UNCITRAL Legislative Guide on Insolvency Law and on the UNCITRAL Model Law on Cross-Border Insolvency; 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 more in the nature of provisions that might be included in a legislative guide.

7. At its forty-eighth session, the Working Group agreed a set of key principles for a regime to address cross-border insolvency in the context of enterprise groups and considered a number of draft provisions addressing three main areas of: (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 what are known as “synthetic proceedings” in lieu of commencing non-main proceedings. Two additional supplemental areas were also considered: (d) the use of “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.

<sup>1</sup> [A/CN.9/763](#), paras. 13-14; [A/CN.9/798](#), para. 16; see the mandate given by the Commission at its forty-third session (2010): *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17 (A/65/17, para. 259(a))*.

8. At its forty-ninth session, the Working Group considered a consolidated draft legislative text incorporating the agreed key principles and draft provisions addressing the five areas indicated in paragraph 7. That draft text was revised following the forty-ninth session to include a number of the key principles as draft legislative provisions and was considered at the fiftieth and fifty-first sessions. It has been further revised for consideration at the fifty-second session.

**(b) Recognition and enforcement of insolvency-related judgements**

9. At its forty-seventh session (2014), the Commission approved a mandate for Working Group V to develop a model law or model legislative provisions providing for the recognition and enforcement of insolvency-related judgments.<sup>2</sup> The Working Group discussed this topic at its forty-sixth (December 2014) ([A/CN.9/829](#)), forty-seventh (May 2015) ([A/CN.9/835](#)), forty-eighth (December 2015) ([A/CN.9/864](#)), forty-ninth (May 2016) ([A/CN.9/870](#)), fiftieth (December 2016) ([A/CN.9/898](#)) and fifty-first (May 2017) ([A/CN.9/903](#)) sessions.

10. At its forty-sixth session, the Working Group identified a number of key issues to be addressed in a draft instrument, which it was agreed should be developed as a standalone model law, as opposed to forming part of the Model Law. The Working Group had a preliminary exchange of views on a first draft of a model law at its forty-seventh session, with further draft texts revised in accordance with the Working Group's deliberations and decisions being considered at the forty-eighth, forty-ninth, fiftieth and fifty-first sessions. That draft text has been revised for further consideration at the fifty-second session.

**(c) Obligations of directors of enterprise group companies in the period approaching insolvency**

11. At its forty-fourth session, the Working Group agreed on the importance of addressing the obligations of directors of enterprise group companies in the period approaching insolvency, given that there were clearly difficult practical problems in that area and that solutions would be of great benefit to the operation of efficient insolvency regimes ([A/CN.9/798](#), para. 23). At the same time, the Working Group noted that there were issues that needed to be considered carefully so that solutions would not hinder business recovery, make it difficult for directors to continue to work to facilitate that recovery, or influence directors to prematurely commence insolvency proceedings. In light of those considerations, the Working Group agreed that an examination of how part four of the Legislative Guide could be applied in the enterprise group context and identification of additional issues (e.g. conflicts between a director's duty to its own company and the interests of the group) would be helpful ([A/CN.9/798](#), para. 23). The Working Group discussed this topic at its forty-sixth (December 2014) ([A/CN.9/829](#)), forty-seventh (May 2015) ([A/CN.9/835](#)) and forty-ninth (May 2016) ([A/CN.9/870](#)) sessions.

12. At its forty-ninth session, the Working Group noted the revisions to the text provided in document [A/CN.9/WG.V/WP.139](#) and made a number of specific drafting suggestions. It also agreed to keep the draft text under consideration pending further development of the work on enterprise group insolvency. The draft text has been revised in accordance with the suggestions of the Working Group at its forty-ninth session and will be available for further consideration at the fifty-second session.

**2. Documentation for the fifty-second session**

13. The Working Group will have before it notes by the Secretariat on (a) recognition and enforcement of insolvency-related judgments ([A/CN.9/WG.V/WP.150](#) and [WP.151](#)); (b) facilitating the cross-border insolvency of multinational enterprise

<sup>2</sup> *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17 (A/69/17)*, para. 155.

groups ([A/CN.9/WG.V/WP.152](#)); and (c) obligations of directors of enterprise group companies in the period approaching insolvency ([A/CN.9/WG.V/WP.153](#)).

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

(a) The UNCITRAL Legislative Guide on Insolvency Law (2004), including parts three (2010) and four (2013);

(b) The UNCITRAL Model Law on Cross-Border Insolvency (1997) and Guide to Enactment and Interpretation (2013);

(c) Reports of Working Group V on the work of its forty-fifth (April 2014) ([A/CN.9/803](#)), forty-sixth (December 2014) ([A/CN.9/829](#)), forty-seventh (May 2015) ([A/CN.9/835](#)), forty-eighth (December 2015) ([A/CN.9/864](#)), forty-ninth (May 2016) ([A/CN.9/870](#)), fiftieth (December 2016) ([A/CN.9/898](#)) and fifty-first (May 2017) ([A/CN.9/903](#)) sessions;

(d) Cross-border recognition and enforcement of insolvency-related judgments, notes by the Secretariat: [A/CN.9/WG.V/WP.126](#), [A/CN.9/WG.V/WP.130](#), [A/CN.9/WG.V/WP.135](#), [A/CN.9/WG.V/WP.138](#), [A/CN.9/WG.V/WP.140](#), [A/CN.9/WG.V/WP.143](#) and Add.1 and [A/CN.9/WG.V/WP.145](#);

(e) Facilitating the cross-border insolvency of multinational enterprise groups, notes by the Secretariat: [A/CN.9/WG.V/WP.120](#), [A/CN.9/WG.V/WP.124](#), [A/CN.9/WG.V/WP.128](#), [A/CN.9/WG.V/WP.133](#), [A/CN.9/WG.V/WP.134](#), [A/CN.9/WG.V/WP.137](#) and Add.1, [A/CN.9/WG.V/WP.142](#) and Add.1 and [A/CN.9/WG.V/WP.146](#); and

(f) Obligations of directors of enterprise group companies in the period approaching insolvency ([A/CN.9/WG.V/WP.139](#) and [A/CN.9/WG.V/WP.153](#)).

15. UNCITRAL documents and publications are posted on the UNCITRAL website ([www.uncitral.org](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 working papers by accessing the Working Group's page in the "Working Groups" section of the UNCITRAL website.

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

16. The Working Group may wish to adopt, at the close of its session, a report for submission to the fifty-first session of the Commission planned to be held in New York from 25 June to 13 July 2018. The report will include the main conclusions reached by the Working Group. The substance of the Working Group's deliberations at its meeting on Friday morning will be summarily read out for the record and subsequently incorporated into the report.

## **IV. Scheduling of meetings**

17. The Working Group's fifty-second 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>3</sup> the Working Group is expected to hold substantive deliberations in the allocated time. The report is to be adopted at the last meeting of the Working Group (on Friday afternoon).

18. The Working Group may wish to note that its fifty-third session is tentatively scheduled to be held in New York from 7 to 11 May 2018.

<sup>3</sup> *Official records of the General Assembly, Fifty-sixth Session, Supplement No. 17* and corrigendum ([A/56/17](#) and Corr.3), para. 381.