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**United Nations Commission on
International Trade Law
Working Group V (Insolvency Law)
Fifty-fourth session
Vienna, 10–14 December 2018**

Annotated provisional agenda

I. Provisional agenda

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Consideration of insolvency topics.
5. Other business.
6. Adoption of the report.

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), Czechia (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. Member States not members of the Commission, non-Member States having received a standing invitation to participate as observers in the sessions and the work of the General Assembly, 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-fourth session of the Working Group will be held at the Vienna International Centre in Vienna, from Monday 10 December to Friday 14 December 2018 (five working days). Meeting hours will be from 9.30 a.m. to 12.30 p.m. and from 2.00 p.m. to 5.00 p.m., except on the first day of the session, Monday 10 December 2018, 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) Cross-border insolvency of enterprise groups

5. At its forty-third session, in 2010, the Commission endorsed the recommendation by the Working Group that activity be initiated on, among others, cross-border insolvency issues affecting enterprise groups.¹ At its forty-fourth session (December 2013), the Working Group agreed to continue its work on cross-border insolvency of enterprise groups, commenced at its forty-second session (November 2012) (A/CN.9/763, paras. 13–14), 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 (A/CN.9/798, para. 16). 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), fifty-first (May 2017) (A/CN.9/903), fifty-second (December 2017) (A/CN.9/931) and fifty-third (May 2018) (A/CN.9/937) sessions.

6. At its forty-fifth, forty-sixth and forty-seventh sessions, the Working Group considered the goals of a text on the cross-border insolvency of 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.²

7. At its forty-eighth session, the Working Group agreed on a set of key principles for a regime to address 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) 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 streamlined basis by reference to the

¹ *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17 (A/65/17)*, para. 259(a).

² A/CN.9/803, chapter V; A/CN.9/829, chapter V; and A/CN.9/835, chapter V.

adequate protection of the interests of creditors of affected group members ([A/CN.9/864](#), chapter IV).

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 above ([A/CN.9/870](#), chapter IV). That draft text was subsequently revised to include a number of the key principles as draft legislative provisions and, as revised, was considered at the fiftieth, fifty-first, fifty-second and fifty-third sessions.³ Following the decision of the Working Group at its fifty-third session that the text should be prepared as a model law with the provisional title of “model law on enterprise group insolvency” ([A/CN.9/937](#), paras. 48–49), the text has been further revised for consideration at the fifty-fourth session of the Working Group. A draft guide to enactment of the model law has also been prepared for consideration at the fifty-fourth session.

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

9. Having completed part four of the Legislative Guide on Insolvency Law, dealing with the obligations of directors in the period approaching insolvency (2013), at its forty-fourth session (December 2013), 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. 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.

10. 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 ([A/CN.9/870](#), para. 86). The draft text was revised in accordance with the suggestions of the Working Group at its forty-ninth session and was made available to the Working Group at its fifty-second session (December 2017) ([A/CN.9/WG.V/WP.153](#)), although it was not considered in substance at that session. It will be made available again to the fifty-fourth session of the Working Group. At that session, given that the work on enterprise groups is expected to be nearing completion, the Working Group may wish to consider whether any further adjustments to the draft text on directors’ obligations might be required in order for it to be finalised at the same time as the draft model law on enterprise group insolvency.

(c) Insolvency of micro, small and medium-sized enterprises (MSMEs)

11. At its forty-sixth session, in 2013, the Commission requested Working Group V to conduct, at its spring 2014 session, a preliminary examination of issues relevant to the insolvency of MSMEs, and in particular to consider whether the UNCITRAL Legislative Guide on Insolvency Law provided sufficient and adequate solutions for MSMEs. If it did not, the Working Group was requested to consider what further work

³ [A/CN.9/898](#), chapter V; [A/CN.9/903](#), chapter VI; [A/CN.9/931](#), chapter VI; and [A/CN.9/937](#), chapter V.

and potential work product might be required to streamline and simplify insolvency procedures for MSMEs. Its conclusions on those MSME issues were to be included in its progress report to the Commission in 2014 in sufficient detail to enable the Commission to consider what, if any, future work might be required.⁴

12. At its forty-fifth session (April 2014), Working Group V considered the topic as requested and agreed that the issues facing MSMEs were not entirely novel and that solutions for them should be developed in light of the key insolvency principles and the guidance already provided by the Legislative Guide. The Working Group further agreed that it would not be necessary to wait for the results of the work being done by Working Group I in order to commence the study of insolvency regimes for MSMEs. As to the form that work might take, the Working Group agreed that, while such work might form an additional part to the Legislative Guide, no firm conclusion on that point could be taken in advance of undertaking a thorough analysis of the issues at stake ([A/CN.9/803](#), para. 14).

13. At its forty-seventh session, in 2014, the Commission gave Working Group V a mandate to undertake work on the insolvency of MSMEs as a next priority, following completion of the work on the cross-border insolvency of multinational enterprise groups and recognition and enforcement of insolvency-related judgments.⁵

14. At its forty-ninth session (May 2016), Working Group V noted the importance of addressing MSME insolvency and the wide support that had been expressed in favour of work being undertaken on that topic. The Working Group agreed to recommend that the Commission should clarify, at its forty-ninth session, in 2016, the mandate given at its forty-seventh session to Working Group V as follows: “Working Group V is mandated to develop appropriate mechanisms and solutions, focusing on both natural and legal persons engaged in commercial activity, to resolve the insolvency of MSMEs. While the key insolvency principles and the guidance provided by the UNCITRAL Legislative Guide on Insolvency Law should be the starting point for discussions, the Working Group should aim to tailor the mechanisms already provided in the Legislative Guide to specifically address MSMEs and develop new and simplified mechanisms as required, taking into account the need for those mechanisms to be equitable, fast, flexible and cost efficient. The form the work might take should be decided at a later time based on the nature of the various solutions that were being developed.” ([A/CN.9/870](#), para. 87).

15. At its forty-ninth session, in 2016, the Commission clarified the mandate of Working Group V with respect to the insolvency of MSMEs in accordance with the wording of the recommendation set forth in paragraph 14.⁶

16. At its fifty-first session (May 2017), the Working Group held a preliminary discussion on how the work on this topic might be developed ([A/CN.9/903](#), paras. 13–14). At its fifty-third session (May 2018), the Working Group had before it document [A/CN.9/WG.V/WP.159](#), upon which it made various observations ([A/CN.9/937](#), chapter VI). Based on that paper and those observations, the Working Group will have before it the first draft of a legislative text on MSME insolvency as contained in document [A/CN.9/WG.V/WP.163](#).

2. Documentation for the fifty-fourth session

17. The Working Group will have before it notes by the Secretariat on (a) the draft model law on enterprise group insolvency and guide to enactment ([A/CN.9/WG.V/WP.161](#) and [A/CN.9/WG.V/WP.162](#)); (b) obligations of directors of enterprise group companies in the period approaching insolvency ([A/CN.9/WG.V/WP.153](#)); and (c) insolvency of micro, small and medium-sized enterprises ([A/CN.9/WG.V/WP.163](#)).

⁴ *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17 (A/68/17)*, para. 326.

⁵ *Ibid.*, *Sixty-ninth Session, Supplement No. 17 (A/69/17)*, para. 156.

⁶ *Ibid.*, *Seventy-first Session, Supplement No. 17 (A/71/17)*, para. 246.

18. 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](#)), fifty-first (May 2017) ([A/CN.9/903](#)), fifty-second (December 2017) ([A/CN.9/931](#)) and fifty-third (May 2018) ([A/CN.9/937](#)) sessions;

(d) Cross-border insolvency of 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, [A/CN.9/WG.V/WP.146](#), [A/CN.9/WG.V/WP.152](#) and [A/CN.9/WG.V/WP.158](#)); and France's observations on document [A/CN.9/WG.V/WP.128](#) entitled "Facilitating the cross-border insolvency of multinational enterprise groups" ([A/CN.9/WG.V/WP.131](#));

(e) Obligations of directors of enterprise group companies in the period approaching insolvency, notes by the Secretariat: [A/CN.9/WG.V/WP.125](#), [A/CN.9/WG.V/WP.129](#) and [A/CN.9/WG.V/WP.139](#); and

(f) Insolvency of micro, small and medium-sized enterprises, notes by the Secretariat: [A/CN.9/WG.V/WP.121](#), [A/CN.9/WG.V/WP.147](#) and [A/CN.9/WG.V/WP.159](#).

19. UNCITRAL documents and publications are posted on the UNCITRAL website (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

20. The Working Group may wish to adopt, at the close of its session, a report for submission to the fifty-second session of the Commission to be held in Vienna, from 8 to 26 July 2019. 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

21. The Working Group's fifty-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,⁷ the Working Group is expected to hold substantive deliberations during the first nine half-day meetings (that is, from Monday to Friday morning). The report is to be adopted at the last meeting of the Working Group (on Friday afternoon).

22. The Working Group may wish to note that its fifty-fifth session is scheduled to be held in New York from 28 to 31 May 2019 (four days only).⁸

⁷ *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 17* and corrigendum ([A/56/17](#) and Corr.3), para. 381.

⁸ *Ibid.*, *Seventy-third Session, Supplement No. 17* ([A/73/17](#)), para. 284 (e).