



# General Assembly

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**United Nations Commission on  
International Trade Law  
Working Group V (Insolvency Law)  
Fifty-eighth session  
New York (online), 3–7 May 2021**

## Annotated provisional agenda

### I. Provisional agenda

1. Opening of the session.
2. Adoption of the agenda.
3. Consideration of micro and small enterprises (MSE) insolvency issues.
4. Other business.

### II. Composition of the Working Group

1. The Working Group is composed of the following States: Algeria (2025), Argentina (2022), Australia (2022), Austria (2022), Belarus (2022), Belgium (2025), Brazil (2022), Burundi (2022), Cameroon (2025), Canada (2025), Chile (2022), China (2025), Colombia (2022), Côte d'Ivoire (2025), Croatia (2025), Czechia (2022), Dominican Republic (2025), Ecuador (2025), Finland (2025), France (2025), Germany (2025), Ghana (2025), Honduras (2025), Hungary (2025), India (2022), Indonesia (2025), Iran (Islamic Republic of) (2022), Israel (2022), Italy (2022), Japan (2025), Kenya (2022), Lebanon (2022), Lesotho (2022), Libya (2022), Malaysia (2025), Mali (2025), Mauritius (2022), Mexico (2025), Nigeria (2022), Pakistan (2022), Peru (2025), Philippines (2022), Poland (2022), Republic of Korea (2025), Romania (2022), Russian Federation (2025), Singapore (2025), South Africa (2025), Spain (2022), Sri Lanka (2022), Switzerland (2025), Thailand (2022), Turkey (2022), Uganda (2022), Ukraine (2025), United Kingdom of Great Britain and Northern Ireland (2025), United States of America (2022), Venezuela (Bolivarian Republic of) (2022), Viet Nam (2025) and Zimbabwe (2025).

2. Member States not members of the Working Group, 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-eighth session of the Working Group will be held at United Nations Headquarters in New York, from Monday, 3 May 2021, to Friday, 7 May 2021. Arrangements will be made to allow delegations to participate in person and remotely, in line with the decision of States members of the Commission on the format, officers and methods of work of the UNCITRAL working groups during the coronavirus disease 2019 (COVID-19) pandemic, adopted on 19 August 2020 and extended by decision of States members of the Commission adopted on 9 December 2020 (see [A/CN.9/1038](#), annex, I and A/CN.9/LIII/CRP.14, available on the web page of the Commission). Meeting hours and other arrangements for the session will be announced on the web page of the Working Group by April 2021.

#### Item 3. Consideration of micro and small enterprises (MSE) insolvency issues

##### 1. Background information

4. At its forty-sixth session, in 2013, the Commission requested the Working Group to conduct, at its spring 2014 session, a preliminary examination of issues relevant to the insolvency of micro, small and medium-sized enterprises (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 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.<sup>1</sup>

5. At its forty-fifth session (New York, 21–25 April 2014), the Working Group 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 UNCITRAL Working Group I (MSMEs) 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).

6. At its forty-ninth session, in 2016, the Commission agreed that the Working Group should 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.<sup>2</sup>

7. At its fifty-first session (New York, 10–19 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 (New York, 7–11 May 2018), the Working Group had before it document [A/CN.9/WG.V/WP.159](#), upon which it

<sup>1</sup> *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* ([A/68/17](#)), para. 326.

<sup>2</sup> *Ibid.*, *Seventy-first Session, Supplement No. 17* ([A/71/17](#)), para. 246.

made various observations ([A/CN.9/937](#), chapter VI). Based on that paper and those observations, a draft text on a simplified insolvency regime ([A/CN.9/WG.V/WP.163](#)) was presented to the Working Group at its fifty-fourth session (Vienna, 10–14 December 2018). At that session, the Working Group suggested revisions to that text ([A/CN.9/966](#), chapter VI) and decided to focus on the needs of micro and small entities (MSEs) in the first instance ([A/CN.9/966](#), para. 118), deferring the definition of such entities to States.

8. At its fifty-fifth session (New York, 28–31 May 2019), having completed its work on enterprise group insolvency, the Working Group had commenced detailed deliberations of features of a simplified insolvency regime, based on a note by the Secretariat ([A/CN.9/WG.V/WP.166](#)). Various views were expressed in the Working Group about the form that a text on MSE insolvency might take, whether it would be a supplement to the UNCITRAL Legislative Guide on Insolvency Law, a stand-alone document, a part of a compilation of UNCITRAL texts addressing the legal aspects of MSMEs throughout their life cycle or a list of principles applicable to a simplified insolvency regime that would supplement the texts of UNCITRAL Working Group I (MSMEs). A concern was expressed in the Working Group that the content and structure of a text on MSE insolvency might vary depending on its final form ([A/CN.9/972](#), paras. 24–27, 31 and 58).

9. The Working Group deferred consideration of recommendations addressing out-of-court and hybrid debt restructuring negotiations until after it had considered recommendations on simplified in-court insolvency proceedings ([A/CN.9/972](#), para. 39). The Working Group requested the Secretariat to add recommendations on a stay, simplified notification of creditors, simplified procedures for review and approval by creditors and courts, zero-asset proceedings, simplified liquidation and expedited proceedings ([A/CN.9/972](#), paras. 40 (c) and 48) and revise other recommendations in the light of the deliberations at the session, when preparing a new text for consideration by the Working Group at its fifty-sixth session ([A/CN.9/972](#), para. 58).

10. The Working Group was informed that the World Bank Group (WBG) was working in parallel with UNCITRAL on a standard that would address insolvency of MSEs ([A/CN.9/972](#), para. 28). The Working Group was advised about the desirability of close coordination with UNCITRAL Working Group I (MSMEs) ([A/CN.9/972](#), paras. 26 and 27).

11. At its fifty-second session, in 2019, the Commission expressed support for the Working Group to continue work on MSE insolvency and noted that the Working Group was of the view that more time for additional work, whether in session or between sessions, including consultations and the appropriate use of expert groups, might be needed to make progress on that work.<sup>3</sup> The Commission was informed that informal consultations held on the margins of its session on 14 July 2019 revealed some preference for preparing a stand-alone comprehensive legislative guide on insolvency of MSEs. The Commission was further informed that the next round of intersessional informal consultations was scheduled for 2 to 3 September 2019 and that both in-person and remote participation would be possible. While support was expressed for holding intersessional informal consultations and expert group meetings, the need for endorsement by the Working Group of conclusions reached at those informal meetings was emphasized.<sup>4</sup> At that session, the Commission also acknowledged the importance of coordinating the work of UNCITRAL with that of the World Bank while the World Bank was updating its Principles for Effective Insolvency and Creditor/Debtor Regimes in order to deal with specific aspects of the insolvency of MSEs.<sup>5</sup>

12. At its fifty-sixth session (Vienna, 2–5 December 2019), the Working Group considered a draft paper on a simplified insolvency regime ([A/CN.9/WG.V/WP.168](#)),

<sup>3</sup> Ibid., *Seventy-fourth Session, Supplement No. 17* ([A/74/17](#)), paras. 180 and 182.

<sup>4</sup> Ibid., para. 180.

<sup>5</sup> Ibid., para. 183.

suggested revisions to the text and requested the Secretariat to prepare a revised text for consideration by the Working Group at its fifty-seventh session ([A/CN.9/1006](#), para. 11). Views differed on whether a role of the independent party should be introduced in the text and about approaches to redrafting a definition of the competent authority proposed at the session ([A/CN.9/1006](#), paras. 30–32 and 102–111). The Working Group deferred consideration of those issues, the other terms in the glossary, and the commentary to its fifty-seventh session.

13. The deliberations of the Working Group together with the results of the informal consultations held on 16, 23, 30 and 31 January and 6 February 2020 in preparation for the May 2020 session had been reflected in the document [A/CN.9/WG.V/WP.170](#), which was expected to be considered by the Working Group at its fifty-seventh session scheduled to be held from 11 to 15 May 2020 but postponed due to the measures put in place by States and the United Nations to contain the spread of the coronavirus disease (COVID-19) pandemic. The note [A/CN.9/WG.V/WP.170/Rev.1](#), presented for consideration by the Working Group at its fifty-seventh session in December 2020 built on that version reflecting also the results of the informal consultations on document [A/CN.9/WG.V/WP.170](#) held by the Working Group from 11 to 15 May 2020 and 3 and 4 September 2020.

14. At its resumed fifty-third session, the Commission noted that the substantial progress had been made on the MSE insolvency text despite the postponed fifty-seventh session of the Working Group that could not take place in May 2020 due to the COVID-19 pandemic but that a number of substantive issues remained outstanding. The Commission confirmed that the work on a simplified insolvency regime should continue in Working Group V with a view to adopting a text on that topic by the Commission, if possible, already at its fifty-fourth session, in 2021, also in the light of the relevance of the topic to COVID-19 response and recovery measures.<sup>6</sup>

15. At its fifty-seventh session (Vienna (online), 7–10 December 2020), the Working Group considered the draft glossary and draft recommendations 1 to 64 contained in the note [A/CN.9/WG.V/WP.170/Rev.1](#) and suggested revisions to them. It deferred consideration of draft recommendations 23, 41, xx to zz, 55 and 65–88 to its next session ([A/CN.9/1046](#), paras. 59, 84, 105, 112 and 127). It also deferred to its next session consideration of some issues related to the draft glossary ([A/CN.9/1046](#), para. 15) and other parts of the text ([A/CN.9/1046](#), para. 98). The Working Group also considered a proposal aimed at expanding references to employees throughout the text and agreed to consider it further at its fifty-eighth session ([A/CN.9/1046](#), paras. 128–131). The Working Group requested the Secretariat to prepare a revised text for consideration by the Working Group at its fifty-eighth session ([A/CN.9/1046](#), para. 12). At its fifty-seventh session, the Working Group did not have time to consider the draft commentary.

## 2. Documentation for the fifty-eighth session

16. The Working Group will have before it a note by the Secretariat on a simplified insolvency regime ([A/CN.9/WG.V/WP.172](#) and Add.1).

17. 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 as amended in 2019;

(b) Reports of the Working Group on the work of its forty-fifth (New York, 21–25 April 2014), fifty-first (New York, 10–19 May 2017), fifty-third (New York, 7–11 May 2018), fifty-fourth (Vienna, 10–14 December 2018), fifty-fifth (New York, 28–31 May 2019), fifty-sixth (Vienna, 2–5 December 2019) and fifty-seventh (Vienna

<sup>6</sup> Ibid., *Seventy-fifth Session, Supplement No. 17* ([A/75/17](#)), part two, paras. 45 and 51 (e).

(online), 7–10 December 2020) sessions ([A/CN.9/803](#), [A/CN.9/903](#), [A/CN.9/937](#), [A/CN.9/966](#), [A/CN.9/972](#), [A/CN.9/1006](#) and [A/CN.9/1046](#));

(c) Notes by the Secretariat on insolvency of micro, small and medium-sized enterprises ([A/CN.9/WG.V/WP.121](#), [A/CN.9/WG.V/WP.147](#), [A/CN.9/WG.V/WP.159](#), [A/CN.9/WG.V/WP.163](#), [A/CN.9/WG.V/WP.166](#), [A/CN.9/WG.V/WP.168](#) and [A/CN.9/WG.V/WP.170/Rev.1](#)).

18. UNCITRAL documents and publications are posted on the UNCITRAL website ([uncitral.un.org](http://uncitral.un.org)) upon their issuance in all the official languages of the United Nations. The documents listed in paragraph 17 are available on the Working Group's page in the "Working Documents" section of the UNCITRAL website. The working paper referred to in paragraph 16 above is expected to be made available on the same web page by mid-April 2021. Delegates may wish to check the availability of that paper by accessing that web page in due course.

#### **Item 4. Other business**

19. The Working Group may wish to consider other issues within its mandate. It may in particular wish to note that its fifty-ninth session is tentatively scheduled to be held at the Vienna International Centre, from 13 to 17 December 2021.<sup>7</sup>

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<sup>7</sup> Ibid., chapter XI, section B.