



## General Assembly

Distr.: Limited  
17 February 2010

Original: English

---

**United Nations Commission on  
International Trade Law  
Working Group V (Insolvency Law)  
Thirty-eighth session  
New York, 19-23 April 2010**

### **Insolvency Law: possible future work**

#### **Addendum**

#### **Proposal by the delegation of the United States of America for preparation of a model law or model provisions on selected international insolvency law issues**

*[Background for this proposal is set forth in A/CN.9/WG.V/WP.93/Add.2]*

1. UNCITRAL has been a leader for over a decade in preparing and developing model laws and texts for insolvency law reform including the Model Law on Cross-Border Insolvency with a Guide to Enactment, the Legislative Guide on Insolvency and the Practice Guide on Cross-Border Agreements. In order to complement that body of work, our delegation would like to make a recommendation for future work for Working Group V to develop and prepare a model law or model provisions addressing selected international insolvency law issues.
2. In the past year, a number of requests have been made to bilateral and multilateral assistance bodies for a distillation of pertinent aspects of the UNCITRAL Model Law, the Guide, and the Practice Guide so as to facilitate their consideration in the context of the development of new laws on business insolvency matters, especially on a cross-border basis. That had led our delegation to recommend that we consider work on two possible topics. The first would be to address the lack of predictability in regard to the determination as to the location of the Centre of Main Interest (COMI), a term used by the UNCITRAL Model Law and elsewhere. A number of jurisdictions have not been consistent in decisions interpreting and applying the provisions of the Model Law on Cross-Border Insolvency and UNCITRAL could provide specific guidance on how selected aspects of the Model Law on Cross-Border Insolvency, including COMI and



establishment, should be interpreted and applied. These are issues that need to be addressed.

3. As a second possible topic, we recommend Working Group V develop a model law or model provisions on cross-border insolvency issues affecting enterprise groups based upon part three of the Legislative Guide and the Practice Guide. We recognize that on some matters, there may not be only one approach that works well, and for that and other reasons it will be desirable to consider alternative approaches as needed, so that the model law or provisions will as appropriate include options. Among the topics that might be considered, we suggest jurisdiction, access and recognition.

4. We recommend that Working Group V discuss these proposals at its thirty-eighth session in April 2010 and that they be considered for adoption at the next plenary session in mid-2010. We also recommend that the Commission provide sufficient flexibility so that the Working Group can assess which aspects of those topics merit attention.

5. We have arrived at these suggestions based on concerns that the current global crisis has substantially restricted trade and commerce among States. As UNCITRAL's mandate is to promote trade and commerce throughout the world, the question for UNCITRAL is what role it should play in addressing the current financial crisis in regard to insolvency law reform going forward.

6. The current economic crisis has been both global and one of the severest economic downturns in the last several decades, making it one of the most challenging. Hundreds of thousands of workers are unemployed as a result and many businesses have failed and many that might have been retained as going concerns have had instead to be liquidated or sold in a manner that precluded continued operation. The existence of effective modern insolvency laws and capacity for cross-border cooperation might have reduced this outcome. As a result of these circumstances, many States are reviewing and analyzing the need to reform their insolvency law to address these issues and challenges in the modern world. Given the substantial expertise existing in Working Group V in regard to insolvency law both among the Member and observer States and the NGOs, along with the significant history and experience that the Working Group has in developing substantial and often complex products involving insolvency reform, the ability is in place to take on challenging and complex issues. We recognize that there are other regional efforts that may examine related issues, but we believe it is important for this global body with membership from all regions to pursue this effort.

7. Given the current global problems being experienced by many States, resources for individual States to retain the experts necessary to adequately address insolvency reform relating to international issues is limited. If States were able to utilize existing resources and model texts on insolvency in the consideration of insolvency law reforms, then States would be generally more inclined to revise and modernize their respective insolvency laws. The modernization and reform of existing insolvency laws by States should provide for an expansion of trade and commerce among States based in part on the predictability and transparency produced by such insolvency legislation.

8. This delegation therefore proposes that:

**Working Group V consider recommending that the Commission consider this type of proposal at its next session with a view to approving a mandate for Working Group V to provide guidance on the interpretation and application of selected concepts of the Model Law, including COMI and establishment and to develop a model law or model provisions on insolvency law addressing selected international issues including jurisdiction, access and recognition.**

9. We appreciate the consideration of the Working Group of this proposal.
-