



# General Assembly

Distr.: General  
20 April 2011  
English  
Original: Spanish

---

**United Nations Commission  
on International Trade Law**  
Forty-fourth session  
Vienna, 27 June-8 July 2011

## **Judicial materials on the UNCITRAL Model Law on Cross-Border Insolvency**

### **Compilation of comments by Governments**

#### **Note by the Secretariat\***

Working Group V (Insolvency Law), pursuant to the Commission's mandate, considered, at its thirty-ninth session (Vienna, 6-10 December 2010), a draft text setting forth judicial materials on the Model Law (A/CN.9/715, paras. 110-116). At that session, the Working Group invited comments from States on their experience with the Model Law to be submitted to the Secretariat for possible consideration in the preparation of a revised draft (see A/CN.9/715, para. 116). The Secretariat also encouraged States to send comments on the judicial materials to enable the materials to be finalized and adopted at the forty-fourth Commission session in 2011 (see Agenda item 5). The text of the comments received is reproduced as an annex to this note in the form in which they were received by the Secretariat.

---

\* Submission of this document was delayed due to the late receipt of comments.



## Annex

### **Comments received from Governments on the judicial materials on the UNCITRAL Model Law on Cross-Border Insolvency**

#### **Mexico**

[received: 14 April 2011]

[Original: Spanish]

The Government of Mexico wishes to express its agreement with the judicial materials, which are in line with the main points set out and submitted to the Commission by Mexico.

Insofar as the text is not binding on Member States — that is, it does not instruct judges on how to deal with applications for recognition of foreign proceedings — we have no substantial observations or comments to make. In particular, as stated in paragraph 3 of document A/CN.9/WG.V/WP.97, in section A (Purpose and scope), the document succeeds in providing “general guidance on the issues a particular judge might need to consider, based on the intentions of those who crafted the Model Law and the experiences of those who have used it in practice.”

#### **Spain**

[received: 4 April 2011]

[Original: Spanish]

Before making our detailed comments, we should like to extend our congratulations to UNCITRAL, particularly the members of the Secretariat, for the work that they have done. These documents — A/CN.9/WG.V/WP.97 and the two addenda — constitute an excellent text that adds to the body of materials provided by the Commission for the benefit of the international community in the area of insolvency; it is particularly important at this time, given the current credit restrictions worldwide and their consequences. In particular, the judicial materials to which our comments refer, relating to the Model Law, the UNCITRAL Legislative Guide on Insolvency Law and the UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation, fill in the gaps in the range of useful texts and will help bring about a general reform of insolvency law in a number of countries.

As a general observation, the Secretariat must be congratulated on the judicial approach adopted and maintained throughout document A/CN.9/WG.V/WP.97. This is worth emphasizing, because it has succeeded in not compromising judicial independence or, in other words, it has put forward interpretations of certain aspects of the Model Law that have been considered by specific courts, at the same time pointing out that the solution may be different under different legal systems. Perhaps the only point to be made in this context, since it could possibly be excessive, would be to delete the last sentence in paragraph 40, which some may feel goes beyond the intended scope of the text.

A second general comment is that it would seem most appropriate to link the text with the reference texts: the provisions of the Model Law or the texts of the Legislative Guide and the Practice Guide.

This approach, indeed, forms the basis for all our main comments on document A/CN.9/WG.V/WP.97 and its addenda. Our comments apply, of course, to the Spanish version (to which we will mainly be referring, as will be seen), but on occasion it may seem best that a term should be brought into line with, for example, the Practice Guide. Thus, in paragraph 64, the phrase “members of groups of companies” could be rather “members of enterprise groups”, a form of words that is commoner in the Practice Guide. This is, certainly, a fairly minor — and arguable — point, but consistency between the various documents, using the same terminology, in English, would encourage the same consistency in the other languages; so it might be a good idea to carry out a harmonization exercise, which, however far it goes, could prove very useful.

Still on the subject of the English version, though not in relation to a term used in the previous texts, since it does not appear in them, we feel that an unfortunate adjective is used in the heading of section II B.3: perhaps the phrase would be equally satisfactory with the deletion of the word “substantive”.

The rest of our comments, of which there are few, relate to the advisability of aligning some terms in the Spanish text with those used in the English. Specifically, since search tools make for easier reference, it would be better to write “*bienes y derechos*” wherever the English version has “assets”, or “*entidad*” or “*compañía*” where the English has “company” or “corporation”. The phrase “corporate debtor” would thus always appear as “*entidad deudora*” or “*compañía deudora*” (see paras. 34, 59 and 75, among others). Similarly, there could be “*entidad fantasma*” or “*compañía fantasma*”, but not “*empresa fantasma*” (para. 85) and “*entidad filial*” or “*compañía filial*” (para. 82). The same applies to the contrast drawn in paragraph 67, where the Spanish text should use the phrase “(*social o individual*)” in referring to a debtor.

In paragraph 59, the word “*contra*” should be avoided, because this expression referring to a debtor distorts the substance of the insolvency proceedings; the word could be replaced by some such phrase as “*en relación a*”.

The definition of “insolvency representative” should reproduce that of the Legislative Guide or the Practice Guide.

The second sentence of paragraph 61 is perhaps not entirely successful and would benefit from revision.

Lastly, the names of courts are sometimes translated in the footnotes. This practice — of translating names of courts — may produce more confusion than clarity. The best way to proceed may be to follow the Practice Guide in giving brief citations of cases, with the details given at the end of the document (this should, of course, apply to both the English version and the other languages).