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**United Nations Commission
on International Trade Law**
Working Group I (MSMEs)
Twenty-second session
New York, 10-14 February 2014

Annotated provisional agenda

I. Provisional agenda

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II. Composition of the Working Group

1. The Working Group is composed of all States members of the Commission, which are the following: Algeria (2016), Argentina (2016), Armenia (2019), Australia (2016), Austria (2016), Belarus (2016), Botswana (2016), Brazil (2016), Bulgaria (2019), Cameroon (2019), Canada (2019), China (2019), Colombia (2016), Côte d'Ivoire (2019), Croatia (2016), Denmark (2019), Ecuador (2019), El Salvador (2019), Fiji (2016), France (2019), Gabon (2016), Georgia (2015), Germany (2019), Greece (2019), Honduras (2019), Hungary (2019), India (2016), Indonesia (2019), Iran (Islamic Republic of) (2016), Israel (2016), Italy (2016), Japan (2019), Jordan (2016), Kenya (2016), Kuwait (2019), Liberia (2019), Malaysia (2019), Mauritania (2019), Mauritius (2016), Mexico (2019), Namibia (2019), Nigeria (2016), Pakistan (2016), Panama (2019), Paraguay (2016), Philippines (2016), Republic of Korea (2019), Russian Federation (2019), Sierra Leone (2019), Singapore (2019), Spain (2016), Switzerland (2019), Thailand (2016), Turkey (2016), Uganda (2016),



Ukraine (2014), United Kingdom of Great Britain and Northern Ireland (2019), United States of America (2016), Venezuela (Bolivarian Republic of) (2016) and Zambia (2019). The term of the membership expires on the last day prior to the beginning of the annual session of the Commission in the year indicated in parentheses.

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 twenty-second session of the Working Group will be held at the United Nations Headquarters in New York from 10 to 14 February 2014. Meeting hours will be from 10.00 a.m. to 1.00 p.m. and from 3:00 p.m. to 6:00 p.m., except on Monday, 10 February 2014, when the session will be opened at 10:30 a.m.

Item 2. Election of officers

4. In accordance with its practice at previous sessions, the Working Group may wish to elect a Chair and a Rapporteur.

Item 4. Preparation of legal standards in respect of micro, small and medium-sized enterprises (Simplification of business incorporation and registration)

1. Background information

5. At its forty-second session, in 2009, the Commission requested the Secretariat to prepare a detailed study including an assessment of the legal and regulatory issues at stake in the field of microfinance. The study was also to include proposals as to the form and nature of a reference document discussing the various elements required to establish a favourable legal framework for microfinance, which the Commission might in future consider preparing with a view to assisting legislators and policymakers around the world.¹

6. The study, discussed at the forty-third session of the Commission, in 2010, considered the role of microfinance in poverty alleviation and achievement of the Millennium Development Goals by facilitating access to financial services for the poor who were not served by the formal financial system. On the understanding that an appropriate regulatory environment would contribute to the development of the microfinance sector, the Commission agreed that the Secretariat should convene a colloquium, with the possible participation of experts from other organizations working actively in that field, to explore the legal and regulatory issues surrounding microfinance that fell within the mandate of UNCITRAL. The colloquium was to

¹ *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17 (A/64/17)*, paras. 432-433.

result in an official report outlining the issues at stake and containing recommendations on work that UNCITRAL might usefully undertake in the field.²

7. The colloquium, held in January 2011, resulted in a number of findings.³ Despite some successful initiatives at national level, there was no coherent set of global legal and regulatory measures that could serve as a standard for international best practice. Many States were struggling to find an appropriate regulatory framework to promote financial inclusion (the more current term for “microfinance”), and it was suggested that UNCITRAL could make a substantial contribution in this regard. Several issues were identified for future consideration,⁴ of which the Commission, at its forty-fourth session, in 2011, chose the following for in-depth study by the Secretariat: (i) overcollateralization and the use of collateral with no economic value; (ii) e-money, including its status as savings; whether “issuers” of e-money were engaged in banking and hence what type of regulation they were subject to; and the coverage of such funds by deposit insurance schemes; (iii) provision for fair, rapid, transparent and inexpensive processes for the resolution of disputes arising from microfinance transactions; and (iv) facilitating the use of, and ensuring transparency in, secured lending to microenterprises and small and medium-sized enterprises. At that session, the Commission also agreed to include microfinance as an item for its future work.⁵

8. The study,⁶ submitted at the forty-fifth session of the Commission, in 2012, provided a brief summary of the state of the matter in each of the four topics indicated above, as well as key legal and regulatory issues relating thereto, for consideration by the Commission. Following discussion, the Commission unanimously agreed to hold one or more colloquia on microfinance and related matters, as a matter of priority, with a focus on: facilitating simplified business incorporation and registration; access to credit for micro-businesses and small and medium-sized enterprises; dispute resolution applicable to microfinance transactions; and other topics related to creating an enabling legal environment for micro-businesses and small and medium-sized enterprises.⁷

9. The second colloquium on microfinance was held in Vienna in January 2013 with the participation of experts from all over the world including specialists from governments, international organizations, non-governmental organizations, the private sector and academia. The following topics were discussed: the enabling environment for micro, small and medium-sized enterprises (MSMEs) and the rule of law; incorporation and registration of micro-borrowers; effective alternative dispute resolution mechanisms for MSMEs; enabling legal environment for mobile payments; legal issues surrounding access to credit for MSMEs; and insolvency and winding up of MSMEs.⁸

² *Ibid.*, *Sixty-fifth Session, Supplement No. 17* (A/65/17), paras. 274-280.

³ See A/CN.9/727.

⁴ *Ibid.*, see para. 56.

⁵ *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 17* (A/66/17), paras. 241-246.

⁶ See A/CN.9/756.

⁷ *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 17* (A/67/17), paras. 124-126.

⁸ See A/CN.9/780, presentations made at the colloquium are available at <http://www.uncitral.org/uncitral/en/commission/colloquia/microfinance-2013-papers.html>.

10. At its forty-sixth session, in 2013, the Commission took note of the broad consensus among participants at the colloquium to recommend that a Working Group be established to address the legal aspects of establishing such an enabling environment for MSMEs. Participants in the January 2013 colloquium identified five broad areas where it was thought the Commission could provide guidance, to be articulated so as to address the business cycle of MSMEs.⁹ The starting point could be guidance that allowed for simplified business start-up and operating procedures. Other topics to be taken up subsequently could include the following: (i) a system for resolving disputes between borrowers and lenders, including taking into account possibilities for the use of online dispute resolution; (ii) effective access to financial services for MSMEs, including consideration of broadening the scope of UNCITRAL's existing instruments on e-commerce and international credit transfers to accommodate mobile payment systems; (iii) guidance on ensuring access to credit, addressing issues such as transparency in lending and enforcement in a range of lending transactions and; (iv) insolvency of MSMEs, aimed at fast-track procedures and business rescue options so as to develop workable alternatives to formal insolvency processes in line with both the key characteristics of an effective insolvency system and the needs of MSMEs. UNCITRAL's existing instruments as well as guidance already developed by international organizations were said to be suitable building blocks for work in these areas. As to the form the Commission guidance could take, the Commission was further advised that a flexible tool, such as a legislative guide or a model law according to the topics, would contribute to harmonizing efforts in this sector and provide momentum for reforms which would further encourage micro-business participation in the economy.

11. At its forty-sixth session (2013), the Commission also heard a proposal from the Government of Colombia¹⁰ suggesting that the Commission could create a mandate for a new Working Group focused on the life cycle of a business, particularly in relation to micro and small-sized enterprises. It was suggested that the Working Group could begin with the facilitation of simplified business incorporation and registration, following which it could continue with other matters, such as those discussed at the 2013 colloquium, in order to create an enabling legal environment for this type of business activity.

12. The Commission agreed, at its forty-sixth session (2013), that work on reducing the legal obstacles faced by micro, small and medium-sized enterprises throughout their life cycle, in particular, in developing economies, should be added to the work programme of the Commission.¹¹

13. At its twenty-second session, the Working Group is expected to commence its work on the preparation of legal standards on simplified business incorporation and registration on the basis of notes prepared by the Secretariat (A/CN.9/WG.I/WP.81 and 82) and those submitted by Member States (A/CN.9/WG.I/WP.83).

⁹ Ibid., paras. 49-55.

¹⁰ See A/CN.9/790.

¹¹ *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17 (A/68/17)*, paras. 316-322.

2. Documentation for the twenty-second session

14. The Working Group will have before it, and may wish to use as a basis for its consideration, notes by the Secretariat regarding: (a) a survey of selected activities of international and intergovernmental organizations to promote MSMEs (A/CN.9/WG.I/WP.81) and (b) a review of the features of simplified business incorporation regimes found in selected States, as well as empirical information concerning their use (A/CN.9/WG.I/WP.82). The Working Group will also have before it, and may wish to use as a basis for its consideration, observations by the Government of Colombia concerning the Colombian Simplified Corporation (A/CN.9/WG.I/WP.83).

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

- *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17 (A/68/17)*, paras. 316-322;
- A/CN.9/780, Microfinance: creating an enabling legal environment for micro-business and small and medium-sized enterprises (Report of the January 2013 colloquium);
- A/CN.9/790, proposal by the Government of Colombia; and
- *Official Records of the General Assembly Sixty-seventh Session, Supplement No. 17 (A/67/17)*, paras. 124-126.

16. UNCITRAL documents 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 documents by accessing the Working Group's page in the "Working Groups" section of the UNCITRAL website.

Item 6. Adoption of the report

17. The Working Group may wish to adopt, at the close of its session, a report for submission to the forty-seventh session of the Commission, scheduled to be held in New York, from 7 to 25 July 2014. The main conclusions reached by the Working Group at its ninth meeting (on Friday morning) will be summarily read out for the record at the tenth meeting and subsequently incorporated into the report.

IV. Scheduling of meetings

18. The Working Group's twenty-second session will last for five working days. There will be ten half-day meetings available for consideration of the agenda items. The Working Group may wish to note that, consistent with decisions taken by the Commission at its thirty-fourth session,¹² the Working Group is expected to hold substantive deliberations during the first nine half-day meetings (that is, from Monday to Friday morning), with a draft report on the entire period being prepared by the Secretariat for adoption at the tenth and last meeting of the Working Group (on Friday afternoon).

¹² *Ibid.*, *Fifty-sixth Session, Supplement No. 17 and Corrigendum (A/56/17 and Corr.3)*, para. 381.

19. The Working Group may wish to note that its twenty-third session will be held in Vienna and is tentatively scheduled from 17-21 November 2014.
