



# General Assembly

Distr.: Limited  
27 March 2014

Original: English

---

**United Nations Commission on  
International Trade Law**  
**Working Group V (Insolvency Law)**  
**Forty-fifth session**  
New York, 21-25 April 2014

## **Comments of the United States of America on A/CN.9/WG.V/WP.120**

1. In 2010, the UNCITRAL Commission authorized Working Group V to commence work on a set of issues that would possibly include “a model law or provisions on insolvency law addressing selected international issues, including jurisdiction, access and recognition.”<sup>1</sup> After completing other work within its mandate, in December 2013 Working Group V returned to this idea and decided that it should commence work on such a project in order to facilitate the cross-border insolvency of multinational enterprise groups. In its report, the Working Group identified a number of key issues that should be components of that work.<sup>2</sup> The United States of America thanks the Secretariat for providing the Working Group with A/CN.9/WG.V/WP.120, which will greatly facilitate the Working Group’s discussion of these issues at our forty-fifth session.

2. In advance of the session, the United States would like to reiterate its strong support for this project and to provide a few brief comments highlighting several of the issues noted in A/CN.9/WG.V/WP.120 as critical to the Working Group’s early consideration during this session. We believe that a thorough discussion of these areas would provide a useful starting point for the Working Group’s efforts, as many of the other issues highlighted in A/CN.9/WG.V/WP.120 build upon these topics.

### **A. Jurisdiction and standing**

3. We believe that the Working Group should explore the approach set forth by the Secretariat in A/CN.9/WG.V/WP.120 and develop a mechanism through which

---

<sup>1</sup> See A/65/17, pp. 51-52, Report of the United Nations Commission on International Trade Law, 43rd Session (21 June-9 July 2010).

<sup>2</sup> See A/CN.9/798, pp. 5-6, Report of Working Group V (Insolvency Law), 44th Session (16-20 December 2013).



members of an enterprise group may voluntarily subject themselves to the jurisdiction of a court in a pending insolvency proceeding of an enterprise group member. The Working Group would need to consider a number of issues in developing such a framework. First, the framework would need to ensure access and standing for each of the enterprise group members that elect to participate in pending insolvency proceedings involving any enterprise group member. A key part of this element would be ensuring that the court would have the ability to exercise jurisdiction over the enterprise group members. Further, the distinction between main and non-main proceedings may not be relevant or necessary where enterprise group members have elected to submit to the jurisdiction of a court conducting a group member's insolvency proceeding. The voluntary participation of group members in one proceeding should also eliminate the need for the Working Group to expend much effort in defining the "parent" of an enterprise group. In addition, as enterprise groups may have dozens or even hundreds of nominally separate members, procedures should be put in place for administering complex enterprise group insolvencies in a fair yet practical manner, while still respecting the separate identity of group members.

## **B. Synthetic proceedings**

4. As discussed in section D(1) of A/CN.9/WG.V/WP.120, the concept of synthetic proceedings could provide a useful tool for the Working Group to include in any set of model provisions aimed at facilitating the cross-border insolvency of enterprise groups. Synthetic proceedings could save time and costs, as well as reduce the complexity of coordination between multiple proceedings. Given the potential benefits of using synthetic proceedings, and the experiences that some jurisdictions have already had with this approach, we believe that the Working Group should consider express provisions regarding this concept as one of the core elements of our work in this area. Although the present law of certain nations may be able to provide foreign creditors with the distribution to which they would have been entitled if separate proceedings had been commenced in their home countries, express provisions to this effect could be useful.

5. In developing an approach that would enable the use of synthetic proceedings, we believe the Working Group will need to consider some difficult questions. For example, synthetic proceedings will need to incorporate safeguards to ensure that the interests of all relevant jurisdictions will be taken into account, while still making the process functional. Thus, we believe that the Working Group would benefit from an early discussion of the elements that would be needed for such a process and how it would interact with the jurisdictional and standing elements discussed above.

## **C. Cooperation and coordination among enterprise group members**

6. In those circumstances where proceedings in more than one country are unavoidable, the Working Group can continue to build upon the existing provisions of the UNCITRAL Model Law on Cross-Border Insolvency with respect to the mandate of cooperation and coordination between courts and estate administrators. Recommendations 240-245 of the UNCITRAL Legislative Guide on Insolvency

Law currently contain principles that recognize that courts and the administrators of affiliated estates should cooperate, especially where reorganization of the enterprise as a going concern is a realistic possibility. More specific provisions could be drafted, building on suggestions contained in A/CN.9/WG.V/WP.120: (i) the concept of a coordinating proceeding with the responsibility of attempting to administer the enterprise for the benefit of all of its constituent parties; (ii) facilitation of financing jointly attained by members of an enterprise group whether or not a party to insolvency proceedings in more than one country; and (iii) relief provided to group members collectively.

---