



# General Assembly

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**United Nations Commission on  
International Trade Law  
Working Group V (Insolvency Law)  
Forty-sixth session  
Vienna, 15-19 December 2014**

## **Annotated provisional agenda for the forty-sixth session of Working Group V (Insolvency Law)**

### **I. Provisional agenda**

1. Opening of the Working Group session.
2. Election of officers.
3. Adoption of the agenda.
4. Consideration of insolvency topics.
5. Other business.
6. Adoption of the report of the Working Group.

### **II. Composition of the Working Group**

1. The Working Group is composed of the following States: Algeria, Argentina, Armenia, Australia, Austria, Belarus, Botswana, Brazil, Bulgaria, Cameroon, Canada, China, Colombia, Côte d'Ivoire, Croatia, Denmark, Ecuador, El Salvador, Fiji, France, Gabon, Georgia, Germany, Greece, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Israel, Italy, Japan, Jordan, Kenya, Kuwait, Liberia, Malaysia, Mauritania, Mauritius, Mexico, Namibia, Nigeria, Pakistan, Panama, Paraguay, Philippines, Poland, Republic of Korea, Russian Federation, Sierra Leone, Singapore, Spain, Switzerland, Thailand, Turkey, Uganda, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela (Bolivarian Republic of) and Zambia.
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 forty-sixth session of Working Group V (Insolvency Law) is scheduled to be held in Vienna from 15-19 December 2014. Meeting hours will be from 9:30 a.m. to 12:30 p.m. and from 2:00 p.m. to 5:00 p.m., except on Monday, 15 December 2014, when the session will be opened at 10 a.m.

#### **Item 2. Election of officers**

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

#### **Item 4. Consideration of insolvency topics**

5. The Working Group will have before it working papers addressing the following three topics.

##### **(1) Facilitating the cross-border insolvency of multinational enterprise groups**

6. At its forty-fourth session (December 2013), the Working Group agreed to continue its work on cross-border insolvency of multinational enterprise groups by developing provisions on a number of issues, some of which would extend the existing provisions of the Model Law on Cross-Border Insolvency and part three of the Legislative Guide and involve reference to the Practice Guide on Cross-Border Insolvency Cooperation (A/CN.9/798, para. 16). Discussion of those issues commenced at the Working Group's forty-fifth session (April 2014) (A/CN.9/803) and will continue at the forty-sixth session.

##### **(2) Obligations of directors of enterprise group companies in the period approaching insolvency**

7. At its forty-fourth session, the Working Group agreed on the importance of addressing the obligations of directors of enterprise group companies in the period approaching insolvency, given that there were clearly difficult practical problems in this area and that solutions would be of great benefit to the operation of efficient insolvency regimes. At the same time, the Working Group noted that there were issues that needed to be considered carefully so that solutions would not hinder business recovery, make it difficult for directors to continue to work to facilitate that recovery, or influence directors to prematurely commence insolvency proceedings. In light of those considerations, the Working Group agreed that it would be helpful to have the next steps taken informally in an expert group, whose task would be to examine how part four of the Legislative Guide could be applied in the enterprise group context and identify any additional issues (such as conflicts between a director's duty to its own company and the interests of the group, as well as issues

of governing law) that might need to be addressed. The informal expert group was to report back to the Working Group no later than the session in the second half of 2014 (A/CN.9/798, para. 23). The discussion in the informal group forms the basis of the working paper prepared for consideration by the Working Group.

**(3) Recognition and enforcement of insolvency-derived judgements**

8. At its forty-fourth session, Working Group V had agreed (A/CN.9/798, para. 30) that it should seek at an appropriate time a mandate from the Commission to commence work on the recognition and enforcement of insolvency-derived judgements, which had been discussed at the colloquium held in conjunction with the forty-fourth session in December 2013 (A/CN.9/815). At its forty-fifth session, the Working Group agreed (A/CN.9/803, para. 39(b)) that it should seek that mandate from the Commission at its forty-seventh session (2014). At that session, the Commission agreed that, in addition to topics 1 and 2 above, Working Group V's other priority should be to develop a model law or model legislative provisions to provide for the recognition and enforcement of insolvency-derived judgements, which was said to be an important area for which no explicit guidance was contained in the UNCITRAL Model Law on Cross-Border Insolvency. The Commission approved a mandate accordingly (A/69/17, para. 155).

**Item 5. Documentation for the forty-sixth session**

9. The Working Group will have before it notes by the Secretariat on (a) facilitating the cross-border insolvency of multinational enterprise groups (A/CN.9/WG.V/WP.124); (b) obligations of directors of enterprise group companies in the period approaching insolvency (A/CN.9/WG.V/WP.125); and (c) recognition and enforcement of insolvency-derived judgements (A/CN.9/WG.V/WP.126).

10. In planning the attendance of their representatives, States and interested organizations may wish to note, in addition to the documents referred to in the working papers for the session, the following background documents:

(a) The UNCITRAL Legislative Guide on Insolvency Law (2004), including parts three (2010) and four (2013); and

(b) The UNCITRAL Model Law on Cross-Border Insolvency (1997) and Guide to Enactment and Interpretation (2013).

11. UNCITRAL documents are posted on the UNCITRAL website ([www.uncitral.org](http://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**

12. The Working Group may wish to adopt, at the close of its session, a report for submission to the forty-eighth session of the Commission planned to be held in New York, from 29 June to 16 July 2015. The report will include the main conclusions reached by the Working Group. The substance of the Working Group's deliberations at its meeting on Friday morning will be summarily read out for the record and subsequently incorporated into the report.

#### **IV. Scheduling of meetings**

13. The Working Group's forty-sixth session will last for five working days. The Working Group may wish to note that, consistent with decisions taken by the Commission at its thirty-fourth session, the Working Group is expected to hold substantive deliberations in the allocated time. The report is to be adopted at the last meeting of the Working Group (on Friday afternoon).

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