



# General Assembly

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**United Nations Commission on  
International Trade Law**  
**Working Group V (Insolvency Law)**  
**Fifty-first session**  
New York, 10-19 May 2017

## **Annotated provisional agenda for the fifty-first 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: Argentina (2022), Armenia (2019), Australia (2022), Austria (2022), Belarus (2022), Brazil (2022), Bulgaria (2019), Burundi (2022), Cameroon (2019), Canada (2019), Chile (2022), China (2019), Colombia (2022), Côte d'Ivoire (2019), Czechia (2022), Denmark (2019), Ecuador (2019), El Salvador (2019), France (2019), Germany (2019), Greece (2019), Honduras (2019), Hungary (2019), India (2022), Indonesia (2019), Iran (Islamic Republic of) (2022), Israel (2022), Italy (2022), Japan (2019), Kenya (2022), Kuwait (2019), Lebanon (2022), Lesotho (2022), Liberia (2019), Libya (2022), Malaysia (2019), Mauritania (2019), Mauritius (2022), Mexico (2019), Namibia (2019), Nigeria (2022), Pakistan (2022), Panama (2019), Philippines (2022), Poland (2022), Republic of Korea (2019), Romania (2022), Russian Federation (2019), Sierra Leone (2019), Singapore (2019), Spain (2022), Sri Lanka (2022), Switzerland (2019), Thailand (2022), Turkey (2022), Uganda (2022), United Kingdom of Great Britain and Northern Ireland (2019), the United States of America (2022), Venezuela (Bolivarian Republic of) (2022) and Zambia (2019).

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 fifty-first session of Working Group V (Insolvency Law) is scheduled to be held in New York from Wednesday 10 May to Friday 19 May 2017 (eight working days). Meeting hours will be from 10.00 a.m. to 1.00 p.m. and from 3:00 p.m. to 6 p.m., except on the first day of the session, Wednesday 10 May 2017, when the meeting will commence 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 Chairman and a Rapporteur.

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

##### **1. Background information**

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

5. At its forty-fourth session (December 2013), the Working Group agreed to continue its work on cross-border insolvency of multinational enterprise groups<sup>1</sup> by developing provisions on a number of issues, some of which would extend the existing provisions of the UNCITRAL Model Law on Cross-Border Insolvency (the Model Law) and part three of the UNCITRAL Legislative Guide on Insolvency Law (the Legislative Guide) and involve reference to the UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation. The Working Group discussed this topic at its forty-fifth (April 2014) (A/CN.9/803), forty-sixth (December 2014) (A/CN.9/829), forty-seventh (May 2015) (A/CN.9/835), forty-eighth (December 2015) (A/CN.9/864), forty-ninth (May 2016) (A/CN.9/870) and fiftieth (December 2016) (A/CN.9/898) sessions.

6. At its forty-fifth, forty-sixth and forty-seventh sessions, the Working Group considered the goals of a text facilitating the cross-border insolvency of multinational enterprise groups; the key elements of such a text, including those that might be based upon part three of the UNCITRAL Legislative Guide on Insolvency Law and on the UNCITRAL Model Law on Cross-Border Insolvency; and the form that the text might take, noting that some of the key elements lent themselves to being developed as a model law, while others were more in the nature of provisions that might be included in a legislative guide.

7. At its forty-eighth session, the Working Group agreed a set of key principles for a regime to address cross-border insolvency in the context of enterprise groups and considered a number of draft provisions addressing three main areas of: (a) coordination and cooperation of insolvency proceedings relating to an enterprise group; (b) elements needed for the development and approval of a group insolvency solution involving multiple entities; and (c) the use of what are known as “synthetic

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<sup>1</sup> A/CN.9/763, paras. 13-14; A/CN.9/798, para. 16; see the mandate given by the Commission at its forty-third session (2010): *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17, para. 259(a)).

proceedings” in lieu of commencing non-main proceedings. Two additional supplemental areas were also considered. These were: (d) the use of “synthetic proceedings” in lieu of commencing main proceedings, and (e) approval of a group insolvency solution on a more streamlined basis by reference to the adequate protection of the interests of creditors of affected group members.

8. At its forty-ninth session, the Working Group considered a consolidated draft legislative text incorporating the agreed key principles and draft provisions addressing the five areas indicated in paragraph 7. That draft text was revised following the forty-ninth session to include a number of the key principles as draft legislative provisions and was considered at the fiftieth session. The draft text has been further revised for consideration at the fifty-first session.

**(b) Recognition and enforcement of insolvency-related judgements**

9. At its forty-seventh session (2014), the Commission approved a mandate for Working Group V to develop a model law or model legislative provisions providing for the recognition and enforcement of insolvency-related judgments.<sup>2</sup> The Working Group discussed this topic at its forty-sixth (December 2014) (A/CN.9/829), forty-seventh (May 2015) (A/CN.9/835), forty-eighth (December 2015) (A/CN.9/864), forty-ninth (May 2016) (A/CN.9/870) and fiftieth (December 2016) (A/CN.9/898) sessions.

10. At its forty-sixth session, the Working Group identified a number of key issues to be addressed in a draft instrument, which it was agreed should be developed as a standalone model law, as opposed to forming part of the Model Law. The Working Group had a preliminary exchange of views on a first draft of a model law at its forty-seventh session, with further draft texts revised in accordance with the Working Group’s deliberations and decisions being considered at the forty-eighth, forty-ninth and fiftieth sessions. That draft text has been revised for further consideration at the fifty-first session.

**(c) Insolvency of micro, small and medium-sized enterprises (MSMEs)**

11. At its forty-sixth session (2013), the Commission requested Working Group V to conduct, at its Spring 2014 session, a preliminary examination of issues relevant to the insolvency of MSMEs, and in particular to consider whether the UNCITRAL Legislative Guide on Insolvency Law provided sufficient and adequate solutions for MSMEs. If it did not, the Working Group was requested to consider what further work and potential work product might be required to streamline and simplify insolvency procedures for MSMEs. Its conclusions on those MSME issues were to be included in its progress report to the Commission in 2014 in sufficient detail to enable the Commission to consider what, if any, future work might be required.<sup>3</sup>

12. At its forty-fifth session (April 2014), Working Group V considered the topic as requested and agreed that the issues facing MSMEs were not entirely novel and that solutions for them should be developed in light of the key insolvency principles and the guidance already provided by the Legislative Guide. The Working Group further agreed that it would not be necessary to wait for the results of the work being done by Working Group I in order to commence the study of insolvency regimes for MSMEs. As to the form that work might take, the Working Group agreed that, while such work might form an additional part to the Legislative Guide, no firm conclusion on that

<sup>2</sup> *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17 (A/69/17)*, para. 155.

<sup>3</sup> *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17 (A/68/17)*, para. 326.

point could be taken in advance of undertaking a thorough analysis of the issues at stake.<sup>4</sup>

13. At its forty-seventh session (2014), the Commission gave Working Group V a mandate to undertake work on the insolvency of MSMEs as a next priority, following completion of the work on facilitating the cross-border insolvency of multinational enterprise groups and recognition and enforcement of insolvency-related judgments.<sup>5</sup>

14. At its forty-ninth session (May 2016), Working Group V noted the importance of MSME insolvency and the wide support that had been expressed in favour of work being undertaken on that topic. The Working Group agreed to recommend that the Commission should clarify, at its forty-ninth session (2016), the mandate given at its forty-seventh session to Working Group V as follows: “Working Group V is mandated to develop appropriate mechanisms and solutions, focusing on both natural and legal persons engaged in commercial activity, to resolve the insolvency of MSMEs. While the key insolvency principles and the guidance provided by the UNCITRAL Legislative Guide on Insolvency Law should be the starting point for discussions, the Working Group should aim to tailor the mechanisms already provided in the Legislative Guide to specifically address MSMEs and develop new and simplified mechanisms as required, taking into account the need for those mechanisms to be equitable, fast, flexible and cost efficient. The form the work might take should be decided at a later time based on the nature of the various solutions that were being developed.”<sup>6</sup>

15. At its forty-ninth session (2016), the Commission noted that report of the Working Group and clarified the mandate of Working Group V with respect to the insolvency of MSMEs in accordance with the wording of the recommendation set forth in paragraph 14.<sup>7</sup>

16. In accordance with that mandate, and in view of the well-developed progress of the work on facilitating the cross-border insolvency of multinational enterprise groups and recognition and enforcement of insolvency-related judgments, the Working Group will use some of the additional time allocated to its fifty-first session to hold a preliminary discussion on how the work on this topic might be developed (see para. 22 below).

## 2. Documentation for the fifty-first session

17. 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.145](#)); (b) recognition and enforcement of insolvency-related judgments ([A/CN.9/WG.V/WP.146](#)); and (c) insolvency of micro, small and medium-sized enterprises ([A/CN.9/WG.V/WP.147](#)).

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

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

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

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<sup>4</sup> Report of Working Group V on the work of its forty-fifth session, [A/CN.9/803](#), para. 14.

<sup>5</sup> *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17 (A/69/17)*, para. 156.

<sup>6</sup> Report of Working Group V on the work of its forty-ninth session, [A/CN.9/870](#), para. 87.

<sup>7</sup> *Official Records of the General Assembly, Seventy-first Session, Supplement No. 17 (A/71/17)*, para. 246.

(c) Reports of Working Group V on the work of its forty-fifth (April 2014) (A/CN.9/803), forty-sixth (December 2014) (A/CN.9/829), forty-seventh (May 2015) (A/CN.9/835), forty-eighth (December 2015) (A/CN.9/864), forty-ninth (May 2016) (A/CN.9/870) and fiftieth (December 2016) (A/CN.9/898) sessions;

(d) Facilitating the cross-border insolvency of multinational enterprise groups, notes by the Secretariat: A/CN.9/WG.V/WP.120, A/CN.9/WG.V/WP.124, A/CN.9/WG.V/WP.128, A/CN.9/WG.V/WP.133, A/CN.9/WG.V/WP.134, A/CN.9/WG.V/WP.137 and Add.1 and A/CN.9/WG.V/WP.142 and Add.1;

(e) Cross-border recognition and enforcement of insolvency-related judgments, notes by the Secretariat: A/CN.9/WG.V/WP.126, A/CN.9/WG.V/WP.130, A/CN.9/WG.V/WP.135, A/CN.9/WG.V/WP.138, A/CN.9/WG.V/WP.140 and A/CN.9/WG.V/WP.143 and Add.1; and

(f) Insolvency of micro, small and medium-sized enterprises, note by the Secretariat: A/CN.9/WG.V/WP.121 (Mechanisms suitable for the insolvency of micro, small and medium-sized enterprises: the UNCITRAL Legislative Guide on Insolvency Law).

19. UNCITRAL documents and publications 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 working papers by accessing the Working Group's page in the "Working Groups" section of the UNCITRAL website.

#### **Item 6. Adoption of the report**

20. The Working Group may wish to adopt, at the close of its session, a report for submission to the fiftieth session of the Commission planned to be held in Vienna from 3 to 21 July 2017. 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**

21. Pursuant to a decision of the Commission at its forty-ninth session,<sup>8</sup> the fifty-first session of the Working Group will span eight working days (from 10 to 12 May and from 15 to 19 May 2017). The additional three days (10 to 12 May 2017) were added on an exceptional basis as a result of the Commission's decision to allocate to Working Group V a portion of the conference resources that became available due to the conclusion of the work of another working group.<sup>9</sup> Accordingly, there will be sixteen half-day meetings available for consideration of the agenda items.

22. In order to facilitate the planning of attendance by representatives of State and interested organizations, the following organization of the session is suggested:

(a) To facilitate the participation of delegates of Working Group I, Working Group V might allocate time on Wednesday 10 May 2017 to a preliminary discussion of the insolvency of MSMEs as noted above. At the suggestion of several Member States, it is proposed that the first session of that day be devoted to short presentations concerning the various approaches that have been taken to MSME insolvency regimes,

<sup>8</sup> Ibid., para. 394.

<sup>9</sup> Ibid., para. 365.

followed by a more general discussion in the afternoon session of how the work should be approached;

(b) Thursday 11 and Friday 12 May 2017 might then be devoted to a discussion of the draft model law on the recognition and enforcement of insolvency-related judgments in order to facilitate revision of the text over the weekend of 13 to 14 May 2017 and its further consideration between Wednesday 17 and Friday 19 May 2017; and

(c) The draft text on facilitating the cross-border insolvency of multinational enterprise groups might be considered on Monday 15 and Tuesday 16 May 2017.

23. The Working Group may wish to note that, consistent with decisions taken by the Commission at its thirty-fourth session,<sup>10</sup> 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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<sup>10</sup> *Official records of the General Assembly, Fifty-sixth Session, Supplement No. 17* and corrigendum (A/56/17 and Corr.3), para. 381.