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United Nations Commission on International Trade Law

Working Group V (Insolvency Law)

Twenty-seventh session

Vienna, 9-13 December 2002

First joint session of Working Groups V

(Insolvency Law) and VI (Security Interests)

Vienna, 16-17 December 2002

I. Provisional agenda for twenty-seventh session of Working Group V

1. Scheduling of meetings
2. Election of officers
3. Adoption of the agenda
4. Preparation of a legislative guide on insolvency law
5. Other business
6. Adoption of the report

Notes on the provisional agenda

Item 1. Scheduling of meetings

1. The twenty-seventh session of the Working Group will be held at the Vienna International Centre from 9 to 13 December 2002. There will be 5 formal working days for consideration of the agenda. Except on Monday, 9 December 2002, when the session will commence at 10.00a.m., meeting hours will be from 9.30 to 12.30 and from 14.00 to 17:00.

2. The Working Group on Insolvency Law is composed of all States members of the Commission: Argentina, Austria, Benin, Brazil, Burkina Faso, Cameroon, Canada, China, Colombia, Fiji, France, Germany, Honduras, Hungary, India, Iran (Islamic

Republic of), Italy, Japan, Kenya, Lithuania, Mexico, Morocco, Paraguay, Romania, Russian Federation, Rwanda, Sierra Leone, Singapore, Spain, Sudan, Sweden, Thailand, The former Yugoslav Republic of Macedonia, Uganda, United Kingdom of Great Britain and Northern Ireland, and United States of America.

Item 2. Election of officers

3. The Working Group, in accordance with its practice at previous sessions, may wish to elect a Chairman and a Rapporteur.

Item 4. Preparation of a legislative guide on insolvency law

4. The Commission, at its thirty-second session (1999), had before it a proposal by Australia (A/CN.9/462/Add.1) on possible future work in the area of insolvency law. That proposal had recommended that, in view of its universal membership, its previous successful work on cross-border insolvency and its established working relations with international organizations that have expertise and interest in the law of insolvency, the Commission was an appropriate forum for the discussion of insolvency law issues. The proposal urged that the Commission consider entrusting a working group with the development of a model laws on corporate insolvency to foster and encourage the adoption of effective national corporate insolvency regimes.

5. Recognition was expressed in the Commission for the importance to all countries of strong insolvency regimes. The view was expressed that the type of insolvency regime that a country had adopted had become a “front-line” factor in international credit ratings. Concern was expressed, however, about the difficulties associated with work on an international level on insolvency legislation, which involved sensitive and potentially diverging socio-political choices. In view of those difficulties, the fear was expressed that the work might not be brought to a successful conclusion. It was said that a universally acceptable model law was in all likelihood not feasible and that any work needed to take a flexible approach that would leave options and policy choices open to States. While the Commission heard expressions of support for such flexibility, it was generally agreed that the Commission could not take a final decision on committing itself to establishing a working group to develop model legislation or another text without further study of the work already being undertaken by other organizations and consideration of the relevant issues.

6. To facilitate that further study, the Commission decided to convene an exploratory session of a working group to prepare a feasibility proposal for consideration by the Commission at its thirty-third session. That session of the Working Group was held in Vienna from 6 to 17 December 1999.

7. At its thirty-third session in 2000 the Commission noted the recommendation that the Working Group had made in its report (A/CN.9/469, para. 140) and gave the Group the mandate to prepare a comprehensive statement of key objectives and core features for a strong insolvency, debtor-creditor regime, including consideration of out-of-court restructuring, and a legislative guide containing flexible approaches to the implementation of such objectives and features, including a discussion of the alternative approaches possible and the perceived benefits and detriments of such approaches.¹

8. It was agreed that in carrying out its task the Working Group should be mindful of the work under way or already completed by other organizations, including the World Bank, the International Monetary Fund (IMF), the Asian Development Bank (ADB), INSOL International (INSOL) (an international federation of insolvency professionals) and Committee J of the Section on Business Law of the International Bar Association (IBA). In order to obtain the views and benefit from the expertise of those organizations, the Secretariat, in cooperation with INSOL and the IBA organized the UNCITRAL/INSOL/IBA Global Insolvency Colloquium in Vienna, from 4-6 December 2000.

9. At its thirty-fourth session in 2001, the Commission had before it the report of the Colloquium (A/CN.9/495).

10. The Commission took note of the report with satisfaction and commended the work accomplished so far, in particular the holding of the Global Insolvency Colloquium and the efforts of coordination with the work carried out by other international organizations in the area of insolvency law. The Commission discussed the recommendations of the Colloquium, in particular with respect to the form that the future work might take and interpretation of the mandate given to the Working Group by the Commission at its thirty-third session. The Commission confirmed that the mandate should be widely interpreted to ensure an appropriately flexible work product, which should take the form of a legislative guide. In order to avoid the legislative guide being too general or too abstract to provide the required guidance, the Commission suggested that the Working Group should bear in mind the need to be as specific as possible in developing its work. To that end, model legislative provisions, even if only addressing some of the issues to be included in the guide, should be included as far as possible.²

11. The twenty-fourth session of the Working Group on Insolvency Law (New York, 23 July to 3 August 2001) commenced consideration of this work with the first draft of the legislative guide on insolvency law. The report of that meeting is contained in document A/CN.9/504. Work continued at the twenty-fifth (Vienna, 3-14 December 2001) and twenty-sixth (New York, 13-17 May 2002) sessions of the Working Group. The reports of those meetings are contained in documents A/CN.9/507 and A/CN.9/511 respectively.

12. At its thirty-fifth session in 2002, the Commission had before it the reports of the twenty-fourth, twenty-fifth and twenty-sixth sessions of the Working Group. The Commission noted that, at its twenty-sixth session, the Working Group had discussed the likely timing for the completion of its work and had considered that it would be in a better position to make a recommendation to the Commission after its twenty-seventh session (Vienna, 9-13 December 2002) when it would have the opportunity to review a further draft of the legislative guide. The Commission requested the Working Group to continue the preparation of the legislative guide and to consider its position with respect to completion of its work at its twenty-seventh session.³

13. The Working Group will have before it, and may wish to use as a basis for its deliberations, a Note by the Secretariat: Draft legislative guide on insolvency law (A/CN.9/WG.V/WP.63 and addenda). Those documents, which set forth the full text of the commentary of the Guide together with recommendations, have been revised in the light of the discussion of the Working Group at its twenty-fifth and twenty-sixth sessions.

14. Background materials may be found in the following documents: Possible future work on insolvency law: Note by the Secretariat A/CN.9/WG.V/WP.50; Reports of the Secretary-General A/CN.9/WG.V/WP.54 and addenda 1 and 2; A/CN.9/WG.V/WP.55; A/CN.9/WG.V/WP.57; A/CN.9/WG.V/WP.58; A/CN.9/WG.V/WP.59; A/CN.9/WG.V/WP.61 and Addenda 1 and 2; Report on the UNCITRAL/INSOL/IBA Global Insolvency Colloquium (2000) A/CN.9/495; Report of UNCITRAL on the work of its thirty-fourth session (2001) A/56/17 and thirty-fifth session (2002) A/57/17; Report of the Working Group on Insolvency Law on the work of its twenty-second session (1999) A/CN.9/469; twenty-fourth session (July/August 2001) A/CN.9/504; twenty-fifth session (December 2001) A/CN.9/507 and twenty-sixth session (May 2002) A/CN.9/511. These working papers may be found on the UNCITRAL website www.uncitral.org under “Working Groups” and then “Working Group on Insolvency Law”; the reports may be found under documents relating to the relevant session of the Commission.

Item 5. Other business

15. A further session of the Working Group is scheduled for 24-28 February 2003.

Item 6. Adoption of the report

16. The Working Group may wish to adopt, at the close of its session, a report for submission to the thirty-sixth session of the Commission (Vienna, 2003). The Working Group may wish to note that, consistent with decisions taken by the Commission at its thirty-fourth session (see A/56/17, para. 381), 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).

II. Provisional agenda for first joint session of Working Groups V (Insolvency Law) and VI (Security Interests)

1. Scheduling of meetings
2. Election of officers
3. Adoption of the agenda
4. Consideration of the treatment of security rights in insolvency proceedings
5. Other business
6. Adoption of the report

Notes on the provisional agenda

Item 1. Scheduling of meetings

1. The joint session of Working Groups V and VI will be held at the Vienna International Centre from 16 to 17 December 2002. Meeting hours will be from

09.30 to 12.30 and from 14:00 to 17:00. The Working Groups are expected to hold substantive deliberations during the first two half-day meetings (that is on Monday morning and afternoon), with a draft report being prepared by the Secretariat for adoption by the Working Groups on Tuesday, 17 December 2002, in the afternoon.

Item 2. Election of officers

2. The Working Groups may wish to elect a Chairman and a Rapporteur of the joint session.

Item 4. Consideration of the treatment of security rights in insolvency proceedings

3. At its thirty-fifth session (2002), the Commission noted with particular satisfaction the efforts undertaken by Working Group VI (Security Interests) and Working Group V (Insolvency Law) towards coordinating their work on a subject of common interest such as the treatment of security interests in the case of insolvency proceedings. Strong support was expressed for such coordination, which was generally thought to be of crucial importance for providing States with comprehensive and consistent guidance with respect to the treatment of security interests in insolvency proceedings. The Commission endorsed a suggestion made to revise chapter X of the draft legislative guide on secured transactions in light of the core principles agreed by Working Groups V and VI (see A/CN.9/511, paras. 126-127 and A/CN.9/512, para. 88). The Commission also endorsed a suggestion for closer coordination of the work of the two working groups, including a suggestion to hold a one-day joint meeting of the two working groups at their upcoming sessions.⁴

4. The Working Groups will have before them and may use as basis for their consideration the revised chapter on insolvency of the draft guide on secured transactions (A/CN.9/WG.VI/WP.6/Add.10) and the draft legislative guide on insolvency law (A/CN.9/WG.V/WP.63 and Addenda) together with a summary outlining the treatment of secured creditors in the draft legislative guide on insolvency law (A/CN.9/WG.V/WP.64).

Item 6. Adoption of the report

5. The Working Groups may wish to adopt, at the close of their joint session, a report for submission to the thirty-sixth session of the Commission in 2003.

¹ *Official Records of the General Assembly, Fifth-fifth Session, Supplement No. 17, A/55/17* paras 400-409.

² *Official Records of the General Assembly, Fifth-sixth Session, Supplement No. 17, A/56/17* paras 296-308.

³ *Official Records of the General Assembly, Fifth-seventh Session, Supplement No. 17, A/57/17* para. 194

⁴ *ibid.*, para. 203