



# General Assembly

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**United Nations Commission on  
International Trade Law**  
**Working Group V (Insolvency Law)**  
**Fortieth session**  
Vienna, 31 October-4 November 2011

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

### **I. Provisional agenda**

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Consideration of new 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, Bahrain, Benin, Bolivia (Plurinational State of), Botswana, Brazil, Bulgaria, Cameroon, Canada, Chile, China, Colombia, Czech Republic, Egypt, El Salvador, Fiji, France, Gabon, Georgia, Germany, Greece, Honduras, India, Iran (Islamic Republic of), Israel, Italy, Japan, Jordan, Kenya, Latvia, Malaysia, Malta, Mauritius, Mexico, Morocco, Namibia, Nigeria, Norway, Pakistan, Paraguay, Philippines, Poland, Republic of Korea, Russian Federation, Senegal, Singapore, South Africa, Spain, Sri Lanka, Thailand, Turkey, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela (Bolivarian Republic of).
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 fortieth session of Working Group V (Insolvency Law) is scheduled to be held in Vienna from 31 October-4 November 2011. 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, 31 October 2011, when the session will commence at 10:00 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 new insolvency topics**

##### **1. Previous deliberations**

5. At its forty-third session in 2010, the Commission had before it a series of proposals for future work on insolvency law (A/CN.9/WG.V/WP.93 and Add.1-6 and A/CN.9/582/Add.6). Those proposals had been discussed at the thirty-eighth session of Working Group V (see A/CN.9/691, paras. 99-107) and a recommendation on potential topics made to the Commission (A/CN.9/691, para. 104). An additional document (A/CN.9/709), submitted after that session of Working Group V, set forth material additional to the proposal of Switzerland contained in A/CN.9/WG.V/WP.93/Add.5.

6. After discussion, the Commission endorsed the recommendation by Working Group V that activity be initiated on two insolvency topics, both of which were of current importance, where a greater degree of harmonization of national approaches would be beneficial in delivering certainty and predictability.<sup>1</sup>

##### **(a) Interpretation and application of selected concepts of the UNCITRAL Model Law on Cross-Border Insolvency relating to centre of main interests**

7. The first of the two topics concerns the proposal by the United States, as described in A/CN.9/WG.V/WP.93/Add.1, paragraph 8, to provide guidance on the interpretation and application of selected concepts of the UNCITRAL Model Law on Cross-Border Insolvency (the Model Law) relating to centre of main interests (COMI) and possibly to develop a model law or provisions on insolvency law addressing selected international issues, including jurisdiction, access and recognition, in a manner that would not preclude the development of a convention.

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<sup>1</sup> *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17 (A/65/17)*, para. 259.

**(b) Directors' responsibilities and liabilities in insolvency and pre-insolvency cases**

8. The second topic concerns the proposals by the United Kingdom (A/CN.9/WG.V/WP.93/Add.4), INSOL International (A/CN.9/WG.V/WP.93/Add.3) and the International Insolvency Institute (A/CN.9/582/Add.6) concerning the responsibility and liability of directors and officers of an enterprise in insolvency and pre-insolvency cases. In the light of concerns raised during extensive discussion, the Commission agreed that the focus of the work on that topic should only be upon those responsibilities and liabilities that arose in the context of insolvency, and that it was not intended to cover areas of criminal liability or to deal with core areas of company law.

9. The Working Group commenced its consideration of both topics at its thirty-ninth session on the basis of notes prepared by the Secretariat (A/CN.9/WG.V/WP.95 and Add.1 A/CN.9/WG.V/WP.96, respectively).

10. At its forty-fourth session (2011), the Commission expressed its appreciation for the progress made by the Working Group as reflected in the report of its thirty-ninth session (A/CN.9/715) and commended the Secretariat for the working papers and reports prepared for that session.

**2. Documentation for the fortieth session**

11. The Working Group will have before it, and may wish to use as a basis for its consideration, notes by the Secretariat concerning (a) Interpretation and application of selected concepts of the UNCITRAL Model Law on Cross-Border Insolvency relating to centre of main interests (A/CN.9/WG.V/WP.99); and (b) Directors' responsibilities and liabilities in insolvency and pre-insolvency cases (A/CN.9/WG.V/WP.100).

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

(a) A/CN.9/WG.V/WP.95 and Add.1, and A/CN.9/WG.V/WP.96;

(b) A/CN.9/715;

(c) The UNCITRAL Model Law on Cross-Border Insolvency (1997);

(d) The UNCITRAL Legislative Guide on Insolvency Law (2004); and

(e) The UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation (2009);

(f) The UNCITRAL Model Law on Cross-Border Insolvency: the Judicial Perspective (2011) (pre-release text) available online at [www.uncitral.org/uncitral/en/uncitral\\_texts/insolvency.html](http://www.uncitral.org/uncitral/en/uncitral_texts/insolvency.html).

13. 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 "Commission and Working Groups Documents" section of the UNCITRAL website.

**Item 6. Adoption of the report**

14. The Working Group may wish to adopt, at the close of its session, on Friday, 4 November 2011, a report for submission to the forty-fifth session of the Commission planned to be held in [New York, from 18 June to 6 July 2012], alternatively [Vienna, from 9 to 27 July 2012]. The main conclusions reached by the Working Group at its ninth half-day meeting (that is, on the morning of Friday, 4 November 2011) will be summarily read out for the record at the tenth half-day meeting and subsequently incorporated into the Working Group's report.

**IV. Scheduling of meetings**

15. The Working Group's fortieth 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,<sup>2</sup> the Working Group is expected to hold substantive deliberations during the first nine half-day meetings (that is, from Monday to Friday morning), with adoption of the report, as noted above, at the tenth and last meeting of the Working Group (on Friday afternoon).

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<sup>2</sup> *Ibid.*, *Fifty-sixth Session, Supplement No. 17* and corrigendum (A/56/17 and Corr.3), para. 381, available on the UNCITRAL website under "Commission and Working Groups Documents" on the left side, then "Commission Sessions" and then "34th session, 25 June-13 July 2001, Vienna".