



General Assembly

Distr.: Limited
27 August 2010

Original: English

**United Nations Commission on
International Trade Law
Working Group V (Insolvency Law)
Thirty-ninth session
Vienna, 6-10 December 2010**

Annotated provisional agenda for the thirty-ninth 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, Belarus, Benin, Bolivia (Plurinational State of), Botswana, Brazil, Bulgaria, Cameroon, Canada, Chile, China, Colombia, Czech Republic, Egypt, El Salvador, Fiji, France, Gabon, 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 thirty-ninth session of Working Group V (Insolvency Law) is scheduled to be held in Vienna from 6-10 December 2010. 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, 6 December 2010, 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.¹

(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.

¹ *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.

(c) Judicial materials on the UNCITRAL Model Law on Cross-Border Insolvency

9. At its forty-third session, the Commission heard a proposal by the Secretariat which noted that participants in the judicial colloquiums that had been held by UNCITRAL in cooperation with INSOL and the World Bank had indicated a desire for information and guidance for judges on cross-border related issues and in particular on the Model Law. To that end, the Commission was informed that the Secretariat had been working on the preparation of a draft text providing a judicial perspective on the use and interpretation of the Model Law. The Commission agreed that the Secretariat should be mandated to develop that text in the same flexible manner, resources permitting, as was achieved with respect to the UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation. That would involve consultation, principally with judges, but also with insolvency practitioners and professionals; consideration, at an appropriate stage, by Working Group V; and finalization and adoption by the Commission, possibly in 2011.²

2. Documentation for the thirty-ninth session

10. 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.95 and Add.1); (b) Directors' responsibilities and liabilities in insolvency and pre-insolvency cases (A/CN.9/WG.V/WP.96) and (c) Judicial materials on the UNCITRAL Model Law on Cross-Border Insolvency (A/CN.9/WG.V/WP.97 and Add.1-2).

11. 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.93/Add.1 and 2;
- (b) The UNCITRAL Model Law on Cross-Border Insolvency (1997);
- (c) The UNCITRAL Legislative Guide on Insolvency Law (2004); and
- (d) If available in published format, the UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation (2009).

12. UNCITRAL documents are posted on the UNCITRAL website (<http://www.uncitral.org>) upon their issuance in all the official languages of the

² Ibid., *Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 261.

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.

13. Delegates may wish to note that only a very limited number of copies of the UNCITRAL Legislative Guide on Insolvency Law will be available at the thirty-ninth session of the Working Group. However, the Glossary and Recommendations of the Legislative Guide will be made available separately for the information of participants.

Item 6. Adoption of the report

14. The Working Group may wish to adopt, at the close of its session, on Friday, 10 December 2010, a report for submission to the forty-fourth session of the Commission (planned to be held in Vienna, from 27 June to 15 July 2011). The main conclusions reached by the Working Group at its ninth half-day meeting (that is, on the morning of Friday, 10 December 2010) 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 thirty-ninth 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,³ 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).

³ Ibid., *Fifty-sixth Session, Supplement No. 17* and corrigendum (A/56/17 and Corr.3), paragraph 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".