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United Nations Commission on International Trade Law

Working Group V (Insolvency Law)
Twenty-fifth session
Vienna, 3-14 December 2001

Provisional Agenda

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

Notes on the provisional agenda

1. 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.

2. 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.

3. 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.

4. 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.

5. 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.

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

7. 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.

8. The twenty-fourth session of the Working Group on Insolvency Law, which was held in New York from 23 July to 3 August 2001, commenced consideration of this work with the first draft of the legislative guide to insolvency law. The report of that meeting is contained in document A/CN.9/504.

9. The Working Group on Insolvency Law is composed of all States members of the Commission. These are:

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, Uruguay and United States of America.

Item 1. Election of officers

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

Item 3. Preparation of legislative guide on insolvency law

11. The Working Group will have before it, and may wish to use as a basis for its deliberations, two Reports of the Secretary-General: "Draft legislative guide on insolvency law" (A/CN.9/WG.V/WP.57 and 58). Document A/CN.9/WG.V/WP.57 sets forth the Introduction, Part One *Key Objectives*, and Part Two *Core provisions of an effective and efficient insolvency regime*, section I of the draft legislative guide. The Introduction discusses the organization and scope of the guide and a glossary of terms. Part One discusses the key objectives of effective and efficient insolvency regimes and Part Two *Core provisions of an effective and efficient insolvency regime*, section I discusses types of insolvency regimes. Document A/CN.9/WG.V/WP.58 sets forth Part Two *Core provisions of an effective and efficient insolvency regime*, sections II-VI of the draft legislative guide. This document analyses and discusses policy questions raised by core topics which have been identified as forming the basis of an effective and efficient insolvency regime and sets forth recommended approaches to those topics.

12. 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; Report of the Working Group on Insolvency Law on the work of its twenty-second session (1999) A/CN.9/469; 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/55/17; Reports of the Secretary-General A/CN.9/WG.V/WP.54 and addenda 1 and 2, and A/CN.9/WG.V/WP.55; and Report of the Working Group on Insolvency Law on the work of its twenty-fourth session (July/August 2001) A/CN.9/504. 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. Adoption of the report

13. The Working Group may wish to adopt, at the close of its session, a report for submission to the thirty-fifth session of the Commission (to be held in June 2002, in New York).

Dates and scheduling of meetings

14. The session of the Working Group on Insolvency Law will take place from 3 to 14 December 2001 at the Vienna International Centre. There will be 8 formal working days for consideration of the agenda. However, depending upon the progress of the work, the Working Group may wish to consider possibly continuing its deliberations on the morning of Friday, 14 December, leaving Thursday, 13 December for preparation of the draft report and the afternoon of Friday, 14 December for adoption of the draft report. Meeting hours will be from 9.30 to 12.30 and from 14:00 to 17:00, except on Monday, 3 December 2001, when the session will commence at 10.00.

15. It is suggested that documents A/CN.9/WG.V/WP.57 and 58 form the basis of the Working Group's discussion. It is envisaged that the Working Group would discuss the different topics in Parts One and Two of the draft guide in sequential order.

16. A further session of the Working Group has been scheduled for 13-17 May 2002 (5 days) in New York.