



# General Assembly

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**United Nations Commission  
on International Trade Law  
Working Group V (Insolvency Law)  
Thirty-second session  
New York, 14-18 May 2007**

## **Annotated provisional agenda for the thirty-second 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 the treatment of corporate groups in insolvency.
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, Australia, Austria, Belarus, Belgium, Benin, Brazil, Cameroon, Canada, Chile, China, Colombia, Croatia, Czech Republic, Ecuador, Fiji, France, Gabon, Germany, Guatemala, India, Iran (Islamic Republic of), Israel, Italy, Japan, Jordan, Kenya, Lebanon, Lithuania, Madagascar, Mexico, Mongolia, Morocco, Nigeria, Pakistan, Paraguay, Poland, Qatar, Republic of Korea, Russian Federation, Rwanda, Serbia, Sierra Leone, Singapore, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, the former Yugoslav Republic of Macedonia, Tunisia, Turkey, Uganda, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela (Bolivarian Republic of) and Zimbabwe.

2. In addition, States that are not members of the Commission, as well as relevant intergovernmental and international non-governmental organizations, may be invited to attend the session as observers. In accordance with established



UNCITRAL practice, observer delegations may participate actively in the deliberations leading to decisions, which are taken by consensus.

### **III. Annotations to agenda items**

#### **Item 1. Opening of the session**

3. The thirty-second session of Working Group V (Insolvency Law) is scheduled to be held at the United Nations Headquarters from 14-18 May 2007. Meeting hours will be from 10:00 a.m. to 1:00 p.m., and from 3:00p.m. to 6:00 p.m., except on Monday, 14 May 2007, when the session 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 the treatment of corporate groups in insolvency**

5. At its thirty-eighth session (2005), the Commission had before it a number of proposals (A/CN.9/582 and Add.1-7), on which it heard presentations, for future work in the area of insolvency law, specifically on treatment of corporate groups in insolvency, cross-border insolvency protocols in transnational cases, post-commencement financing in international reorganizations, directors' and officers' responsibilities and liabilities in insolvency and pre-insolvency cases, and commercial fraud and insolvency.

6. After discussion, some preference for the topics of corporate groups, cross-border protocols and post-commencement financing was expressed.<sup>1</sup> The Commission agreed that to facilitate further consideration and obtain the views and benefit from the expertise of international organizations and insolvency experts, an international colloquium should be held, similar to the UNCITRAL/INSOL International/International Bar Association Global Insolvency Colloquium (Vienna, 4-6 December 2000), which had been a key part of the work on the development of the UNCITRAL Legislative Guide on Insolvency Law (see A/CN.9/495). The Commission agreed that in preparing the programme and determining the priorities for a colloquium, to be held in Vienna from 14 to 16 November 2005, the Secretariat should take into account the discussion of the various topics in the Commission.

7. At its thirty-ninth session (2006), the Commission had before it a note by the Secretariat (A/CN.9/596) reporting on the international colloquium that took place from 14 to 16 November 2005.

8. With respect to the proposals made by the Secretariat for possible future work, the Commission recalled, in particular, that treatment of corporate groups in insolvency had arisen in the context of the development of the UNCITRAL Legislative Guide on Insolvency Guide, and that the treatment in the Insolvency Guide was either limited to a brief introduction, as in the case of treatment of corporate groups in insolvency, or limited to domestic insolvency law, as in the case of post-commencement financing. It was acknowledged that undertaking further work on those two topics would build upon and complement the work already

completed by the Commission. The Commission also noted that the proposal on cross-border insolvency protocols was closely related and complementary to the promotion and use of a text already adopted by the Commission, the Model Law on Cross-Border Insolvency,<sup>2</sup> which had been enacted by 11 States and was the subject of increasing interest and discussion. It was therefore appropriate to consider how implementation of the coordination and cooperation provisions of the Model Law could be facilitated by making the legal and judicial experience with respect to the negotiation, use and content of protocols available, in some form, to the international legal community.

9. After consideration, the Commission agreed that:

(a) The treatment of corporate groups in insolvency was sufficiently developed for the topic to be referred to Working Group V (Insolvency Law) for consideration in 2006 and that the Working Group should be given the flexibility to make appropriate recommendations to the Commission regarding the scope of its future work and the form it should take, depending upon the substance of the proposed solutions to the problems the Working Group would identify under that topic;

(b) Post-commencement financing should initially be considered as a component of work to be undertaken on insolvency of corporate groups, with the Working Group being given sufficient flexibility to consider any proposals for work on additional aspects of the topic;

(c) Initial work to compile practical experience with respect to negotiating and using cross-border insolvency protocols should be facilitated informally through consultation with judges and insolvency practitioners. A preliminary progress report on that work should be presented to the Commission for further consideration at its fortieth session, in 2007;

(d) The Secretariat should have flexibility to organize the work to be undertaken with respect to topics (b) and (c), as appropriate, in view of limited resources;

(e) Work being undertaken by other organizations in relation to the topics of directors' and officers' responsibilities in insolvency and pre-insolvency, and insolvency and commercial fraud should be monitored to facilitate consideration, at some future date, of work that might be undertaken by the Commission.

10. The Working Group commenced its consideration of the treatment of corporate groups in insolvency at its thirty-first session in December 2006, on the basis of a note by the Secretariat covering both domestic and international treatment of corporate groups (A/CN.9/WG.V/WP.74 and Add.1 and 2).

#### **Documentation for the thirty-second session**

11. The Working Group will have before it, and may wish to use as a basis for its consideration a note by the Secretariat concerning the treatment of corporate groups in insolvency (A/CN.9/WG.V/WP.76 and Add.1).

12. In planning the attendance of their representatives, States and interested organizations may wish to note that the documents listed in paragraph 11 draw on sections of the following background documents (to facilitate reference, specific

paragraph and article numbers are included in the documents referred to in para. 10):

(a) A note concerning developments in insolvency law, including the use of cross-border protocols and court-to-court communication guidelines; and case law on interpretation of “centre of main interests” and “establishment” in the European Union (A/CN.9/580);

(b) A note concerning proposals for possible future work in the area of insolvency law (A/CN.9/582 and Add.1-7);

(c) A note concerning possible future work in the area of insolvency law and reporting on the international colloquium held in November 2005 (A/CN.9/596);

(d) A note concerning developments in insolvency law, including in interpretation of the “centre of main interests” in the European Union (A/CN.9/597);

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

(f) The UNCITRAL Legislative Guide on Insolvency Law (2004).

13. A note concerning the treatment of corporate groups in insolvency (A/CN.9/WG.V/WP.74 and Add.1 and 2).

14. UNCITRAL documents are posted on the UNCITRAL website (<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.

15. 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-second session of the Working Group.

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

16. The Working Group may wish to adopt, at the close of its session, on Friday, 18 May 2007, a report for submission to the fortieth session of the Commission (planned to be held in Vienna, from 18 June to 13 July 2007). The main conclusions reached by the Working Group at its ninth half-day meeting (that is, on the morning of Friday, 18 May) will be summarily read out for the record by the Chairman at the tenth half-day meeting and subsequently incorporated into the Working Group’s report.

### **IV. Scheduling of meetings**

17. The Working Group’s thirty-second session will last for five working days. There will be ten half-day meetings available for consideration of the agenda items. The Working Group may wish to note that, consistent with decisions taken by the Commission at its thirty-fourth session,<sup>3</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 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).

*Notes*

- <sup>1</sup> *Official Records of the General Assembly, Sixtieth Session, Supplement No. 17 (A/60/17)*, paragraph 210.
  - <sup>2</sup> *Ibid.*, *Fifty-second Session, Supplement No. 17 (A/52/17)*, annex I, and United Nations publication, Sales No. E.99.V.3, which contains also the accompanying Guide to Enactment.
  - <sup>3</sup> *Official Records of the General Assembly, 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”.
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