Report on the Sixty-Seventh Session of the United Nations Commission on International Trade Law Working Group V (Insolvency Law)

by

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INTRODUCTION

The United Nations Commission on International Trade Law ("**UNCITRAL**") Working Group V - Insolvency Law ("**Working Group**") held its sixty-seventh session on 8 to 10 December 2025 in Vienna. Following its annotated provisional agenda for the session, the Working Group continued its deliberations focused on the applicable law to cross-border insolvency proceedings, as well as on other matters relevant to its work. The proposal to harmonize the rules on the applicable law in insolvency proceedings was firstly introduced by the European Union on behalf of its member States in 2019, highlighting the existing divergent approaches in national laws and the absence of provisions on the topic in the UNCITRAL Model Laws. A harmonized solution is considered as a means to improve consistency and predictability in cross-border insolvency cases.

For its sixty-seventh session, with the support of the UNCITRAL Secretariat, the starting points to the Working Group consisted of a set of legislative provisions and accompanying commentary (A/CN.9/WG.V/WP.202) that reflects deliberations from the sixty-fifth session. In addition, the Working Group's deliberations took into account a draft Model Law (A/CN.9/WG.V/WP.204) and a draft guide to enactment (A/CN.9/WG.V/WP.205), prepared on the basis of the previous deliberations of the Working Group at its sixty-sixth session, the draft Model Law on Applicable Law in Insolvency Proceedings ("**MLAPL**").

DISCUSSIONS ON THE DRAFT PROVISIONS OF MLAPL

Article 2 – Definitions: The draft MLAPL proposed three different options to define "*Rights in rem*", of which mortgages are an example, consisting of: (i) "Property rights enforceable against all"; (ii) "Rights over assets that are effective against third parties"; and (iii) for each enacting State to adopt a definition in accordance with their national laws. After discussion, the Working Group agreed on option (ii), replacing the expression “third parties” with “all”. It was also agreed that an illustrative list of *Rights in rem* would be included in the commentary to the MLAPL, in which enacting States may include examples of *Rights in rem* according to their national laws.

Article 9 - Special rules for foreign litigation and arbitration

Outstanding costs of litigation and arbitration in the context of insolvency proceedings are a key issue worldwide. The Working Group agrees that the draft MLAPL should acknowledge this issue and empower the *lex fori concursus* as the governing law in this respect. In addition, in the context of arbitration proceedings, procedural mechanisms such as stay of proceedings are acknowledged as adequate measures for the protection of creditors. Nevertheless, defining the duration and applicable rules to such stays remains subject to the Working Group’s deliberations. The three options proposed for Article 9 feature the (i) *lex loci arbitri*; (ii) the law of the State in which insolvency proceedings were opened; (iii) the law of the State where the litigation proceeding is taking place or, respectively, of the seat of arbitration. The Working Group entertained a proposal for Article 9 favouring the use of the *lex fori concursus* as the governing law over the effects of the opening of insolvency proceedings on foreign litigation or arbitration proceedings. While some delegations supported this option, others expressed support for option (ii) above, reinstating the need for further discussions.

Article 11 - Coordination of concurrent proceedings

This provision addresses the conjuncture of multiple insolvency proceedings with respect to the same debtor or enterprise group. It purports that a court may apply the insolvency law of the State of the foreign main proceeding in the local proceeding before it. The Working Group revised the provision with a view to promote further consistency with remaining provisions of the MLAPL, in particular with Article 5, under which the *lex fori concursus* shall govern all aspects of the commencement, conduct, administration and closure of insolvency proceedings and their effects.

Article 12 - Public policy exception in the context of chapter II of MLAPL; and Article 17 - Public policy exception in the context of chapter III of MLAPL

These provisions safeguard the public policy supremacy of the MLAPL enacting State. Given their placement in different chapters of the MLAPL, the Working Group considered the importance of establishing a single public policy provision that covers all other provisions of the MLAPL. The delegation of Switzerland raised the point that while chapters II and III of the MLAPL deal with different stages and effects of foreign insolvency proceedings, having two different public policy provisions would open doors to the creation of different public policy tests, one for the standard of application of the law and another for the stage of recognition by foreign courts. The delegation of Canada's proposal of having a single combined public policy provision received substantive support. It remains open for discussion by the Working Group under which Chapter should a combined public policy provision be placed. The delegation of the European Union expressed preference on having the public policy provision placed under Chapters I or II, but not under Chapter III, due to the fact that each chapter has different goals and therefore different judges will be applying them subject to the enacting State's judicial structure.

CONCLUSION

The sixty-seventh session of UNCITRAL Working Group V carried out substantial work to examine and analyse important proposals for amendments to the MLAPL and its accompanying Guide to Enactment. Key discussions led to the adoption of the current session's report and highlighted the need for clearer, more precise drafting in the Model Law, particularly regarding specific definitions for provisions such as arbitration and the law applicable to digital assets. The Working Group agreed to hold the next session in April 2026 to continue the project on the law applicable to insolvency proceedings, alongside discussions on possible future work topics in the field.