Report on the Sixty-Seventh Session of United Nations Commission on International Trade Law (UNCITRAL)Working Group V (Insolvency Law) and the associated Colloquium on the Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross-Border Insolvency

by

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Executive Summary

On 8 to 10 December 2025, the United Nations Commission on International Trade Law ("**UNCITRAL**") Working Group V - Insolvency Law ("**Working Group**") held its sixty-seventh session in Vienna. The session was attended by representatives of UNCITRAL member States and observers from certain States and international intergovernmental and non-governmental organizations.

During the session, the wording of the Draft Model Law on Applicable Law in Insolvency Proceedings ("**MLAPL**") (A/CN.9/WG.V/WP.204) was discussed in detail. Particular attention was devoted to Articles 7, 8, 9, 11, 13, 15, 16, and 17.

Following the Working Group session, a Colloquium on possible updates to the Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross-Border Insolvency ("**Model Law**") ("**the Guide**") was held on 11 to 12 December 2025. The Colloquium emphasised the importance of the Guide for judges, as it is frequently used in practice to interpret the provisions of the Model Law. In addition, presentations were delivered and discussed concerning the application of the Model Law in various jurisdictions.

Substantive Discussions on Provisions of MLAPL

A. Article 8. Special rules for treatment of secured creditors, subject to adequate protection; and treatment of *rights in rem* in respect to debtor's assets, subject to adequate protection

Delegates' comments focused on the possible expansion of the approach adopted in Article 8. Such an expansion was considered necessary to ensure more effective regulation of the debtor's digital assets. One proposal suggested applying the law of the State in which the relevant digital registers are maintained and where rights in those assets are recorded. It was also noted that this approach could potentially be extended to corporate rights. However, as some delegates observed, implementation would be challenging given that digital asset registers are not publicly accessible and there exist potential inconsistencies between this Article 8 and Article 94 of the UNCITRAL Model Law on Secured Transactions.

B. Article 9. Special rules for foreign litigation and arbitration

The interaction between cross-border insolvency proceedings and their effects on arbitration and foreign litigation prompted extensive debate among the delegates. Some participants expressed the view that the insolvency court itself should determine how to address pending arbitral proceedings, and that no automatic priority should be accorded to either set of proceedings. Moreover, when addressing the relationship between cross-border insolvency and arbitration, considerations of procedural economy were emphasised.

Several delegations suggested that insolvency proceedings should prevail over arbitral proceedings, thereby resulting in the suspension of the latter. This position, however, also gave rise to discussion regarding the inflexibility of such a rule, as the systematic intervention of insolvency rules in arbitral proceedings could undermine the efficiency of arbitration.

C. Integrity of MLAPL

In a number of related discussions, delegates considered the appropriateness of using Latin terms and their meaning within the text of MLAPL. The question was also raised whether all terms should be defined directly in MLAPL itself, rather than by reference to other UNCITRAL instruments. It was noted that, if MLAPL provides definitions for all relevant terms, it would constitute a self-contained instrument that States could apply immediately upon implementation. By contrast, reliance on references to other UNCITRAL texts would require those instruments to be implemented as well in order to ensure the effective application of MLAPL.

D. Chapter III. Recognition of the effects of the *lex fori concursus* and other laws applied by the foreign court (Article 13 to Article 17)

With regard to Chapter III as a whole, as well as to specific provisions thereof, concerns were expressed as to whether this chapter is necessary at all, given that other provisions of MLAPL address similar issues. On that basis, it was suggested that Chapter III might need to be redrafted. Several delegations, however, presented arguments in support of retaining Chapter III in the text of MLAPL. In their view, Chapter III should remain, as it has a more practical orientation compared to Chapter II, complements it, and is closely connected to it. Accordingly, Chapter III was described as giving effect to the principles set out in Chapter II.

In addition, some delegations drew attention to the repetitive nature of certain provisions in Chapters II and III. For example, it was suggested that Articles 12 and 17 could be merged into a single provision addressing the public policy exception.

E. Colloquium on possible updates to the Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross-Border Insolvency

The final two days were devoted to the possible revision and enhancement of the Guide. The important role of the Guide was emphasised, as it serves as a document complementing the provisions of the Model Law by providing States with guidance on its application. This was considered particularly significant for States with relatively lower levels of economic development. At the same time, it was noted that the adoption of the Model Law by a State may contribute to increased investment inflows.

Proposals by certain member States were made to supplement the Guide with new mechanisms for the regulation of cross-border insolvency, such as protocols. In addition, presentations were delivered on the application of the Model Law in specific jurisdictions, addressing a number of key issues, including the determination and relocation of the debtor's COMI, concurrent proceedings, and the protection of creditors, etc.

Conclusion

The Working Group agreed to hold a session in April 2026 devoted to the project on the law applicable to insolvency proceedings. At the conclusion of the session, discussions were held on possible future work topics in the field of insolvency law. The report of the current session was adopted, subject to certain amendments proposed by delegations.

Overall, throughout the session and the Colloquium, the Working Group and participants carried out substantial work in examining and analysing important proposals for amendments to MLAPL and the Guide.

In my view, the use of clearer and more precise drafting in the text of MLAPL is particularly important. In this regard, more specific definitions are desirable for provisions addressing, for example, arbitration and the determination of the law applicable to the debtor's digital assets.