REPORT ON THE SIXTY-EIGHTH SESSION OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL) WORKING GROUP V (INSOLVENCY LAW)

By

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A. EXECUTIVE SUMMARY

From 13 to 17 April 2026, the United Nations Commission on International Trade Law ("**UNCITRAL**") Working Group V (Insolvency Law) held its sixty-eight session at the United Nations Headquarters in New York. The Working Group continued its deliberations on draft model law on applicable law in insolvency proceedings (A/CN.9/WG V/WP.207)[1].

After deliberation and consideration, the session achieved consensus on several provisions including draft Articles 7, 8, 9 and the cross-border recognition framework in Chapter III and definitions. Though the final text was not adopted due to a lack of consensus on certain provisions, the Working Group reached key directional decisions and confirmed the structure of the next session, which is tentatively scheduled to be held in late 2026 in Vienna.

B. BACKGROUND

UNCITRAL Working Group V has been tasked with developing a model law to harmonize conflict of law rules applicable in cross-border insolvency proceedings. The main challenge deliberated upon was which national law governs specific aspects of insolvency proceedings. Working Group V discussed the law applicable for the safeguards such as avoidance actions, set-off rights, rights in rem and claims,particularly when a debtor's assets and creditors span over multiple jurisdictions.

The draft model law particularly defaults to the *lex fori concursus* – the insolvency law of the state where proceedings were opened, while also ensuring exceptions and safeguards where the legitimate expectations or interest of the parties requires protection of the transactions. This session focused on finalizing the precise scope and formulation of these exceptions and safeguards.

[1] Draft model law on applicable law in the insolvency proceedings, https://docs.un.org/en/A/CN.9/WG.V/WP.207.

C. KEY DISCUSSION POINTS

1. Article 7 (1) – Avoidance of Transactions

The debate was centered around how to protect the legitimate expectations or interest of the parties to the transactions that the administrator seeks to avoid. After deliberation between option 1 and 2, the Working Group adopted option 2 as the basis for further drafting, favoring a rule bound approach over the flexible approach of option 1, thus not allowing too much space for judicial maneuver.

Another notable development was the proposal to reverse the burden of proof, by substituting the phrase "*if applying that law is necessary*" with "*unless applying that law is not necessary*". Thus, shifting the burden of proof onto the party resisting the avoidance. The Working Group also agreed to replace the words "*legitimate interests*" with "*legitimate expectation*" throughout Article 7 (1), as the consensus was that the safeguard should focus on the reasonable reliance of a counterparty at the time of transaction, rather than a broader interest- based standard.

A recurring concern was regarding the limitation of the safeguard, as it should be expressly limited to situations involving a shift of the debtor's **COMI – Centre of Main Interests**. Some delegations also argued that the limitation should be explained in the Guide to Enactment, if not within the model law itself. Failing to reach the consensus over certain issues, including burden of proof and scope, the final resolution was deferred to a subsequent session.

2. Article 7 (2) – Set off

The Working Group expressed a broad support for option 2, aligning and harmonizing the set-off provision structurally with the avoidance framework. Some delegations also cautioned against mechanical alignment, noting that set off involves distinct claims, arising at different times and possibly under different legal relationships, whereas avoidance typically concerns a single particular transaction.

Different opinions also arose over whether '*legitimate expectations*', which is preferred for consistency, or '*legitimate interests*', which is preferred for its flexibility in the set-off context, was the more appropriate standard. The group discussed narrowing the protected class of the party actually invoking set-off, rather than all parties to a transaction or the one who is having any legal relationship. Similarly, no final agreement was made, and the provision was deferred alongside Article 7 (1).

3. Article 7(3) – Rights in Rem.

A new proposal was tabled for this Article 7(3), focusing on situations where rights in rem were created and initially attached to an asset under the law of a State whose private international law rules do not themselves apply the *lex fori concursus* to the insolvency treatment of those rights. The new proposal also included an option safeguard: where the identified law has no substantial connection to the asset, the court may apply the law of the debtor's COMI jurisdiction. Due to the paucity of the time, and proposal being very latest, it remains subject to further deliberation.

4. Article 8 – Deference to Foreign Proceedings

For the first part, the Working Group agreed to remove explicit reference to the ranking of the creditor claims, retaining only the word "*treatment*", on the understanding that the Guide to Enactment would confirm that treatment encompasses ranking. This proposal brought the provision into closer alignment with the UNCITRAL Model Law on Enterprise Group Insolvency ("**MLEGI**").

More significant structural debate arose between delegations regarding paragraph (c), which falls on the MLEGI concepts and terminology. Some delegations expressed concern that, since MLEGI has not yet been fully enacted by any State parties, importing its framework into the applicable model law will risk confusions in non-MLEGI jurisdictions. The Working Group showed consensus to retain paragraph (c) as a discretionary enabling provision, redrafted to permit courts to apply the law of a foreign planning proceeding to facilitate the development of an enterprise group insolvency solution, irrespective of whether the enacting State has adopted the MLEGI or not.

The Working Group also agreed not to move the said Article to a separate chapter and rejected projected proposals to add provisions for situations where the originating court itself serves as a planning proceeding.

5. Article 9 – Close-out Netting Arrangements

The draft text of Article 9 provides a very broad exception to the *lex fori concursus* for closing out netting arrangements. A proposal was tabled to replace this exception with a narrower safeguard, based on the principles of World Bank Group. It would only apply where the *lex fori concursus* fails to prevent the undue delay, thereby preventing the use of the exception as a broad "safe harbour".

Supporters of the modification claimed that the exemption was subject to misuse and might compromise any corporate restructuring process. However, many delegations vehemently opposed this stance on the grounds that netting is an indispensable risk management technique in turbulent market environments like those found in energy and commodity markets, where rapid settlement is vital. They feared that including the stay provision would introduce a risk factor that contradicted market practices.

The Working Group ultimately agreed to retain the Article 9(3) as an exception while deleting the trailing "*unless*" clause, which appeared to introduce a litigation risk without adding any substantive value. The question regarding the placement of whether the accompanying footnote should be kept in the provision, a note or the guide remains open for further deliberation.

6. Chapter III – Recognition and the Cross-border Effect

A proposal was made to replace the draft Article 10 which attracted considerable discussion over two days. In the substitute provision that was suggested, there would be an allowance for the court of the recognizing State to apply the applicable rules of law (including those under Chapter II) in granting reliefs while at the same time being mindful of a caveat concerning both the public policy issue as well as the fundamental principles of insolvency law.

Various delegations had reservations about the "fundamental principles" approach due to its vagueness and possible overlap with or threat to the public policy doctrine under draft Article 4. The compulsory nature of paragraph 2 was especially criticized for involving issues of national sovereignty and judicial independence and seeming to relate to areas better covered by the MLCBI. The Working Group decided not to discuss the proposed replacement any further, as some delegations felt that the problem could be remedied by amendments to draft Article 10.

In addition, there was consideration by the Working Group of a provision to be included in Chapter III that would provide for an automatic stay of all pending proceedings relating to insolvency matters once a foreign proceeding had been recognized until such time as it could be intervened into by the foreign representative or Court.

D. CONCLUSION[2] AND OUTLOOK

This period of the sixty-eighth session of Working Group V of UNCITRAL is characterized by consolidation, when certain key decisions have been taken in the right direction and many questions were cleared up. First, the Working Group concluded that the draft model law must be adopted at least in one more session, which can be explained by numerous unresolved problems concerning Articles 7, 9 and chapter III.

The Working Group further decided that approximately 80 per cent of the provisional schedule of the next sixty-ninth session would be allocated to finalizing the text of the draft model law. An informal consultation concerning the relevant law project will take place during that week. In addition, there seems to be interest in reviewing the UNCITRAL Legislative Guide on Insolvency Law (2004), and perhaps a colloquium of external experts may be held within the first half of 2027.

From a practitioner and academic perspective, this session highlighted how difficult it is to devise conflict of laws rules concerning insolvency, a domain in which certainty on the one hand and judicial flexibility on the other need to be properly reconciled. The issue of reconciling safe-harbour provisions protecting financial transactions with the goals of efficient administration of insolvencies continued to loom large, and the prospective result reached during the next sixty-ninth session would attract particular attention.

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[2] A/CN.9/1256 - Report of the UNCITRAL Colloquium on Possible Updates to the Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross-Border Insolvency https://docs.un.org/en/A/CN.9/1256