



**United Nations Commission on
International Trade Law**
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**Report of Working Group V (Insolvency Law) on the work
of its sixty-sixth session (New York, 12–16 May 2025)**

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* Reissued for technical reasons on 2 September 2025.



I. Introduction

1. At its sixty-sixth session, the Working Group completed its consideration of the topic of asset tracing and recovery in insolvency proceedings (ATR) and continued its consideration of the topic of applicable law in insolvency proceedings (APL). Background information on those topics may be found in the annotated provisional agenda of the session ([A/CN.9/WG.V/WP.200](#)).

II. Organization of the session

2. The Working Group, which was composed of all States members of the Commission, held its sixty-sixth session in New York, from 12 to 16 May 2025.

3. The session was attended by representatives of the following States members of the Working Group: Algeria, Argentina, Australia, Austria, Belarus, Belgium, Brazil, Canada, Chile, China, Colombia, Côte d'Ivoire, Croatia, Dominican Republic, Finland, France, Germany, Ghana, India, Iran (Islamic Republic of), Iraq, Israel, Italy, Japan, Kuwait, Malaysia, Mexico, Morocco, Nigeria, Panama, Poland, Republic of Korea, Russian Federation, Saudi Arabia, Singapore, Spain, Switzerland, Thailand, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Viet Nam and Zimbabwe.

4. The session was attended by observers from the following States: Denmark, El Salvador, Guatemala, Haiti, Myanmar, Netherlands (Kingdom of the), Oman, Paraguay, Philippines, Senegal and United Arab Emirates.

5. The session was also attended by observers from the Holy See and the European Union.

6. The session was also attended by observers from the following international organizations:

(a) *Organizations of the United Nations system*: International Monetary Fund and the World Bank Group;

(b) *Invited international governmental organizations*: International Association of Insolvency Regulators (IAIR);

(c) *Invited international non-governmental organizations*: American Bar Association (ABA), Business Recovery and Insolvency Practitioners Association of Nigeria (BRIPAN), Center for International Legal Studies (CILS), China Council for the Promotion of International Trade (CCPIT), Civil Law Initiative, Conference on European Restructuring and Insolvency Law (CERIL), Conseil National des Administrateurs Judiciaires et des Mandataires Judiciaires (CNAJMJ), European Law Students' Association (ELSA), INSO Section, INSOL Europe, INSOL International, Instituto Iberoamericano de Derecho Concursal (IIDC), International Bar Association (IBA), International Commercial Arbitration Moot (MAA), International Insolvency Institute (III), International Women's Insolvency and Restructuring Confederation (IWIRC), National Association of Bankruptcy Trustees (NABT), New York City Bar (NYCBA), P.R.I.M.E. Finance Foundation and Union Internationale des Avocats (UIA).

7. The Working Group elected the following officers:

Chair: Mr. Xian Yong Harold Foo (Singapore)

Rapporteur: Ms. Jasnica Garašić (Croatia)

8. The Working Group had before it the following documents:

(a) Annotated provisional agenda ([A/CN.9/WG.V/WP.200](#));

(b) Note by the Secretariat: asset tracing and recovery in insolvency proceedings ([A/CN.9/WG.V/WP.201](#)); and

(c) Note by the Secretariat: applicable law in insolvency proceedings ([A/CN.9/WG.V/WP.202](#)).

9. The Working Group adopted the following agenda:
 1. Opening of the session.
 2. Election of officers.
 3. Adoption of the agenda.
 4. Consideration of insolvency topics:
 - (a) Legal issues arising from asset tracing and recovery in insolvency proceedings; and
 - (b) Applicable law in insolvency proceedings.
 5. Other business.
 6. Adoption of the report.

III. Deliberations

10. Under agenda item 4 (a), the Working Group completed its work on the draft toolkit for expedited asset tracing and recovery in insolvency proceedings and draft background notes on asset tracing and recovery in insolvency proceedings, presented as a consolidated publication in working paper [A/CN.9/WG.V/WP.201](#), and agreed to transmit the texts to the Commission for consideration, finalization and adoption at its fifty-eighth session, in 2025. The summary of deliberations of the Working Group on that agenda item may be found in chapter IV below.

11. Under agenda item 4 (b), the Working Group continued deliberations of APL aspects on the basis of working paper [A/CN.9/WG.V/WP.202](#). The summary of deliberations of the Working Group on that agenda item may be found in chapter V below.

12. Under agenda item 5, the Working Group deliberated on other matters of relevance to its work. The summary of deliberations of the Working Group on that agenda item may be found in chapter VI below.

13. Appreciation was expressed to the secretariat for its efforts to increase awareness about the work of UNCITRAL Working Group V and UNCITRAL insolvency texts, and those efforts were encouraged. Support was voiced for Working Group V to continue work in the area of insolvency law. In that context, the upcoming consideration by the Commission of possible future work by UNCITRAL in the area of insolvency law was welcomed.

IV. Consideration of legal issues arising from asset tracing and recovery in insolvency proceedings ([A/CN.9/WG.V/WP.201](#))

A. General

14. The Working Group had before it a draft toolkit for expedited asset tracing and recovery in insolvency proceedings and draft background notes on asset tracing and recovery in insolvency proceedings, presented as a consolidated publication in working paper [A/CN.9/WG.V/WP.201](#).

15. The Working Group requested the secretariat to: (a) standardize references to “ATR”, the “toolkit and background notes”, “assets of the debtor” and “assets of the insolvency estate” throughout the publication; (b) replace the second sentence in the first paragraph of the preface with “It originated from proposals that UNCITRAL provide a set of options for enactment as domestic law in jurisdictions interested in

enhancing cross-border cooperation on ATR.”; and (c) replace “to employ” with “may employ” in the fourth paragraph of the preface.

16. The Working Group agreed to delete the definitions of “*actio pauliana*” and “constructive trust” from the glossary and reflect the content of those definitions in footnotes to be added to those terms mentioned in paragraph 20 of the background notes. It also agreed to delete the definition of the “insolvency estate” and the words “(or debtor assets or the debtor’s assets)” from the term “assets of the debtor”. It agreed to replace “(or insolvency estate assets)” with “(or the insolvency estate)” in the term “assets of the insolvency estate” and to replace “Cumulatively,” with “Include” in the definitions of “ATR measures” and “Provisional ATR measures”.

17. Proposed changes to the definitions of “avoidance”, “centre of the debtor’s main interests (COMI)” and “non-disclosure measures” were not accepted. The Working Group recalled its earlier decision not to include the definition of “debtor”.¹

18. A suggestion to include reference to “gag and seal orders” in the definition of “non-disclosure measures” was not accepted. Instead, it was agreed to define “gag and seal orders” in an additional footnote to section II.D.3 of the toolkit and to paragraph 20 or 180 of the background notes, emphasizing that such orders were available only in some jurisdictions. The proposed “gag and seal order” definition read as follows: “A ‘gag and seal order’ is an ex parte application requesting expedited relief, with the court ‘sealing’ the application (i.e. making it non-public) and ‘gagging’ (i.e. prohibiting) the party holding the information from disclosing it.”

B. Comments on the draft toolkit

19. In section II.A, the Working Group agreed to: (a) replace “ATR steps” with “ATR-related activities” in objective 3; and (b) add at the end of safeguard 4 “and should take into account the protection of confidential information”. Proposed changes to feature 6 in that section did not receive support.

20. In section II.B, the Working Group agreed to replace safeguard 1 with the following wording: “The applicant may be required to specify and identify the location of the assets. It should be required to submit evidence that those assets are assets of the insolvency estate or that they are required for the enforcement of the insolvency estate’s claim against the defendant. The applicant should be required to provide evidence as to the risk that, without the asset protection measure sought, the assets in question will be hidden, transferred or dissipated. The court may grant, deny or modify the relief requested based upon the evidence presented.”

21. In section II.C, the Working Group agreed to change “costs” with “cost” in the objective and to start the first safeguard with the words “Recovery of an asset”.

22. In section II.D, the Working Group agreed to: (a) delete feature 3 from section 2; and (b) replace “Not to defeat” with “To support” in objective 2 of section 3.

23. In section III.B, the Working Group agreed to add “, as appropriate” at the end of the chapeau of the features and “should” in the chapeau of the safeguards. The suggestion to replace safeguard 4 in that section with “Protection of affected parties’ right to be present and heard, including by providing adequate notice” was not accepted.

C. Comments on the draft background notes

24. The Working Group agreed:

(a) In paragraph 17, to add the words “and in line with UNCITRAL texts” at the end of the first sentence, delete the second sentence and footnotes 10 and 11, and merge the third and fourth sentences as follows “The preceding does not displace the

¹ A/CN.9/1169, paras. 15–16.

general private international law rules that determine the law applicable to ownership ...”;

(b) At the end of paragraph 32 (a), to add the words “when circumstances so require” and a footnote explaining that such circumstances usually include those listed in recommendation 39(c) of the UNCITRAL Legislative Guide on Insolvency Law (the “Legislative Guide”);²

(c) In paragraph 66, the second sentence, to add “related to” before “its assets” and to continue that phrase with “and prevent an unauthorized transaction from becoming effective vis-à-vis third parties ...”;

(d) In footnote 107, to delete “As noted in the background notes” or replace it with a cross-reference;

(e) In paragraph 135, to add references to unjust enrichment and restitution remedies in parentheses after “constructive trust”;

(f) In paragraph 161, to replace “judicial office” with “judicial officer” and “under certain conditions” with “provided that the receiving State does not object”;

(g) At the end of paragraph 164, to add “In recent years, the practice of the taking of evidence by video link has become more prevalent. This may be subject to the need to obtain approval from the State where the person from whom evidence is to be taken is located”;

(h) In the annex, the row on registers of movable assets, the features column, to replace the last sentence with “Registration is typically effective if all filing requirements have been complied with”;

(i) In the annex, the row on registers of security interests in movable assets, the features column, to replace “the initial notice must” with “the initial notice typically must”, “the grantor may be enabled” with “the grantor may also be required”, “The registry rejects” with “Registries may reject” and “The registration is effective” with “The registration is typically effective”.

D. Next steps

25. The Working Group agreed to recommend the draft toolkit and background notes, as contained in document [A/CN.9/WG.V/WP.201](#) with amendments set out in this report, for consideration, finalization and adoption by the Commission at its fifty-eighth session, in 2025.

V. Consideration of the topic of applicable law in insolvency proceedings ([A/CN.9/WG.V/WP.202](#))

A. General

26. The Working Group had before it document [A/CN.9/WG.V/WP.202](#).

27. Some delegations expressed concern about the current structure of the draft text. They considered that there was no need for chapters II and III in the text since private international law rules applicable in insolvency proceedings should be the same in originating and receiving States and because the effects of the *lex fori concursus* ought to be recognized in receiving States. Those concerns were not shared by other delegations, and doubts were expressed that, in the absence of a framework that provided for the automatic recognition of the effects of main proceedings across all

² United Nations publication, Sales No. E.05.V.10. Available at https://uncitral.un.org/en/texts/insolvency/legislativeguides/insolvency_law.

States, it would be possible to achieve the outcomes mentioned in the preceding sentence.

28. The value and effectiveness of chapter II provisions in the absence of recognition was questioned. Other delegations saw the value of chapter II in providing guidance to courts on private international law rules applicable in insolvency proceedings, which was often missing. Those delegations also saw the value of chapter II in enabling courts in originating States to defer to the laws of foreign States where circumstances of the case so required (for example, to increase chances of obtaining relief in aid of local proceedings from foreign courts (e.g. turnover of assets), to achieve coordination of relief in parallel (actual or potential) proceedings or to prevent opening parallel proceedings). They also saw the value of chapter II in providing guidance to receiving States when those States considered requests for relief from foreign courts. In the light of the close interconnection between chapters II and III, delegations underscored the need for consistency between those chapters.

29. Some delegations were uncertain whether chapter II should become part of a model law or should amend or supplement recommendations 31–34 of the Legislative Guide (see further discussion on this point in paras. 31 and 76–80 below). They saw room for simplifying that chapter and connecting it closer to chapter III and the UNCITRAL cross-border insolvency framework. (For further discussion of chapter II, see other sections of this chapter.)

30. As regards chapter III, several delegations saw the value of that chapter in supplementing UNCITRAL insolvency model laws, like article X of the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments (MLIJ)³ did, by enabling courts in receiving States to provide additional relief to foreign proceedings. It was explained that the relief envisaged in chapter III would be in the form of a replacement by the receiving State of its private international law rules applicable in insolvency proceedings, where those existed, with those of the *lex fori concursus*. Suggestions were made to add safeguards in chapter III and expand that chapter with different scenarios. In particular, the need for the different treatment of effects of the *lex fori concursus* of the main proceedings and other proceedings was acknowledged. (For further discussion of chapter III, see paras. 71–73 below.)

31. As regards the form of the instrument, some delegations considered it useful to prepare a stand-alone text that would be used by States regardless of whether they enacted any UNCITRAL insolvency model laws. Another proposal was to convert chapter II to a set of principles with chapter III explaining how those principles applied in different cross-border insolvency cases. Other delegations reiterated that, regardless of the form of the instrument, the text ought to build on and be consistent with existing UNCITRAL insolvency texts and should not deal with substantive or jurisdictional issues unless the Working Group received a specific mandate from the Commission to work on those issues in the current project. (For further discussion of the form of the instrument, see paras. 76–80 below.)

B. Chapter II, section A

1. Item (j) on the *lex fori concursus* list and paragraph 5 of the draft legislative provision on *lex fori concursus*

32. Views differed on whether item (j) should refer to “secured creditors” or “rights in rem” and, consequently, whether it should read “treatment of secured creditors, subject to adequate protection” or “treatment of rights in rem in respect of the debtor’s assets, subject to adequate protection”. The proposed definitions of “rights in rem” found in the definitions section were considered to be raising ambiguities.

³ United Nations publication, Sales No. E.19.V.8. Available at <https://uncitral.un.org/en/texts/insolvency/modellaw/mlij>.

33. As regards paragraph 5, views differed on whether it should be kept as a legislative provision or placed in the commentary. Those delegations that favoured placing it in the commentary considered the current draft legislative provision to be too detailed and prescriptive for chapter II. They also considered it to be raising substantive insolvency law matters, which, in the light of the nature of the project, should be addressed in the commentary. Concern was also expressed that it might be cumbersome to implement the provision because it required comparison between the treatment under the *lex fori concursus* and the *lex rei sitae*.

34. Those concerns were not shared by other delegations. It was recalled that paragraph 5 was the result of the compromise achieved at the previous session.⁴ Paragraph 5 was explained to contain useful quantitative, qualitative and time elements and reflected internationally accepted banking standards, for reference by courts. It was also noted that some form of comparison, whether for ascertaining adequate protection or substantial disadvantage, was unavoidable.

35. The view prevailed that paragraph 5 should be kept as a legislative provision.

36. As regards the content of paragraph 5, some delegations considered that it should be redrafted along the lines of paragraph 6 of the draft commentary in chapter III, which would eliminate the need for the originating court to compare the treatment under the *lex fori concursus* and *lex rei sitae*. Other delegations preferred to keep the paragraph as drafted or with the replacement of “encumbered asset” with “asset subject to the right in rem”.

37. Another suggestion was to redraft the paragraph as follows:

“Notwithstanding paragraph 1 (j) of this legislative provision, the treatment of a secured claim/right in rem in respect of the debtor’s immovable assets shall be governed by the *lex rei sitae* only if the *lex fori concursus*:

(i) substantially impairs the value of the encumbered immovable asset as compared to *lex rei sitae*; or

(ii) unduly interferes with a timely liquidation of the secured claim/right in rem as compared to *lex rei sitae*.”

38. Some support was expressed for that proposal with the deletion of the word “only”. Difficulties with redrafting that legislative provision without first agreeing on the form and nature of the instrument, the interaction of chapters II and III and the scope of the provision (i.e. whether it was intended to cover secured claims or rights in rem more broadly and only immovable or also movable property) were also acknowledged.

39. Arguments in support of narrowing the scope of application of the paragraph to immovable property were reiterated,⁵ including the absence of internationally accepted uniform localization rules with respect to movable assets, especially intangible assets, and the risk of fragmenting applicable law when a security interest or right in rem covered multiple assets. Arguments in support of the broad scope of the provision included the need to retain flexibility, and the concerns that the current wording might be interpreted as exclusionary with respect to movable assets, and the need to cover in the provision all types of assets used in trade finance.

40. In subsequent discussion, the importance of achieving greater clarity and flexibility was reiterated. Other delegations emphasized that certainty and predictability should prevail.

41. Another proposal received at the session was to replace paragraph 5 of the draft legislative provision on *lex fori concursus*, as contained in working paper [A/CN.9/WG.V/WP.202](#) or as proposed to be revised in paragraph 37 above, with the following legislative provision, refocused on adequate protection and accompanied

⁴ A/CN.9/1198, paras. 34–38.

⁵ Ibid., para. 36(d); and A/CN.9/1169, para. 43(c).

by commentary: “Treatment of secured creditors/rights in rem is subject to adequate protection. In the case of immovable property, adequate protection requires consideration of the preservation of value of the assets in its situs and that it is not [unduly] impaired. In the case of movable assets, adequate protection requires consideration that the right holder’s interests (wherever located) are preserved and that the value of the asset is not [unduly] impaired.”

42. With respect to proposals in paragraphs 37 and 41 above and the wording of paragraph 5 of the draft legislative provision on *lex fori concursus* in [A/CN.9/WG.V/WP.202](#), it was noted that qualifiers giving rise to different interpretation and litigation, such as “unduly” or “substantial”, should be avoided. Other delegations emphasized the importance of those qualifiers and their retention in square brackets for further consideration.

43. Views differed on whether chapter II provisions should be drafted only for main proceedings and without recognition aspects in mind. It was suggested to proceed on that basis since otherwise the text could become complex. The other view was that issues arising from other proceedings, COMI shifts, recognition, coordination of parallel proceedings and cross-border insolvency cooperation, including by giving undertakings with respect to foreign claims in the originating proceedings, mattered not only at the recognition stage but also in the originating court and hence should be reflected in chapter II. It was suggested that they be discussed later. It was recalled in that context that solutions found in the UNCITRAL cross-border insolvency framework, including that the scope of non-main proceedings was to be limited to local assets, were not universally accepted.

44. The Working Group heard suggestions to rephrase paragraph 5 of the draft legislative provision on *lex fori concursus* along the lines of paragraph 2 of the same draft provision, which might address concerns that the current drafting conflated private international law and substantive insolvency law issues.

45. After further discussion, it was agreed to retain both “treatment of secured creditors, subject to adequate protection” and “treatment of rights in rem in respect of the debtor’s assets, subject to adequate protection” in square brackets in item (j). It was further agreed to use the proposal reproduced in paragraph 37 above without the word “only”, with “substantially” put in square brackets and “[adequate protection]” added, as the starting point for further discussion at future sessions. As regards adequate protection, the Working Group agreed to include a footnote to item (j) and paragraph 5 where reference to adequate protection would appear, indicating that the Working Group discussed adequate protection in the context of both item (j) on the *lex fori concursus* list and draft paragraph 5 but deferred consideration on whether and, if so, how adequate protection should be reflected, pending decision on the final formulation of paragraph 5.

46. It was agreed to keep the words “secured claim”, “right in rem” and “immovable” in square brackets since views on the scope of the provision continued to differ. The importance of a broader scope of the provision for trade finance, micro- and small enterprises and reorganization was reiterated. A view was expressed that the content of recommendation 51 (a) of the Legislative Guide might need to be reinstated in paragraph 5.

47. If the provision were to refer to all assets, it was considered necessary to discuss localization rules and the definition of “*lex rei sitae*”. The draft commentary to the current definition of “*lex rei sitae*”, in particular references to registers, was considered helpful. A suggestion was made to add in that section that the *lex rei sitae* was to be ascertained with reference to the date of commencement of insolvency proceedings. Another suggestion was not to use the term “*lex rei sitae*”, replacing it with the “law governing secured claim/right in rem” and explaining existing rules that identify that law in the commentary.

48. Recommendations 31 and 34 of the Legislative Guide were recalled in discussion, in particular that they recommended subjecting the treatment of secured

creditors to the *lex fori concursus* and keeping exceptions to the *lex fori concursus* to a minimum. Concern was expressed that the Working Group might deviate from those recommendations in this project.

2. Item (g) on the *lex fori concursus* list and paragraph 3 of the draft legislative provision on *lex fori concursus*

49. Several delegations preferred option 1 since it provided more legal certainty and predictability for affected parties. Option 2 was considered too broad and uncertain with respect to the law applicable to avoidance. The following suggestions did not receive support: (a) removing reference to the time of the transaction giving rise to avoidance in option 1; (b) combining options 1 and 2, with option 1 as the default and option 2 as a supplementary solution.

50. The Working Group agreed to retain only option 1, deferring the choice between “may”, “should” and “shall” in that provision until after the form of the text had been agreed. A suggestion to introduce a similar safeguard for the treatment of ipso facto clauses (item (h) on the *lex fori concursus* list) was not taken up.

3. Item (i) on the *lex fori concursus* list and paragraph 4 of the draft legislative provision on *lex fori concursus*

51. Views expressed at previous sessions were reiterated.⁶ Some delegations questioned whether it was appropriate to refer to COMI in the context of that provision. Different suggestions were made: (a) to delete paragraph 4 and modify the commentary to item (i) to clarify that, in referring to the “treatment” of set-off, item (i) on the *lex fori concursus* list covered only how creditors with set-off claims were treated in insolvency proceedings (e.g. as secured creditors or otherwise) and was not intended to cover, for example, the creation of a set-off right; (b) to retain option 1, as the law applicable to the debtor’s claim was considered most appropriate in the context of paragraph 4; and (c) to retain option 2, replacing “at the time of conclusion of the transaction giving rise to a set-off” with “at the time the claim giving rise to a right of set-off arises”, to align with recommendation 100 of the Legislative Guide.

52. The Working Group agreed to retain both options for paragraph 4 for further consideration, with option 2 amended as suggested in the preceding paragraph.

C. Arbitration

53. Views were exchanged on how the text could encourage coordination of insolvency and arbitration proceedings. Provisions on the primacy of international obligations, which were expected to be included in the text depending on its final form, were recalled in that context.

54. The Working Group received a proposal that read as follows:

“Notwithstanding paragraph XX of the legislative provision, the effects of the opening of insolvency proceedings on pending arbitral proceedings shall be governed by the *lex loci arbitri*, provided that such law does not substantially disadvantage when compared with the *lex fori concursus* as regards:

(i) A temporary stay of the pending arbitral proceedings for a reasonable period of time; and

(ii) The right of the insolvency practitioner to intervene and to be heard in the pending arbitral proceedings.”

⁶ A/CN.9/1198, paras. 45–48; A/CN.9/1169, paras. 58–61; A/CN.9/1126, para. 44; and A/CN.9/1094, para. 78.

55. While several delegations welcomed the proposal as a starting point for discussion, other delegations expressed concerns that the proposal as drafted: (a) was too rigid; (b) reintroduced substantive arbitration matters, such as the need to define *lex loci arbitri*, which had previously been agreed would not be addressed in the project;⁷ (c) conflated the right of contracting parties to agree to resolve their contractual disputes in arbitration as opposed to, for example, litigation, with effects of insolvency proceedings on the exercise of that right; (d) failed to distinguish between the originating court's prerogative under the *lex fori concursus* to impose a stay on arbitral proceedings and the recognition and enforcement of that stay across borders (e.g. by the court at the seat of arbitration or by the arbitral tribunal); and (e) was too complex, requiring assessment of substantial disadvantage for its application.

56. In response to a suggestion to exclude all arbitration-related aspects from the draft text, it was noted that guidance on those aspects was needed. Paragraph 11 of the commentary to item (d) on the *lex fori concursus* was highlighted as valuable. It was suggested to expand that commentary to include litigation and mediation aspects and to convey that the text accorded the same treatment to all dispute resolution mechanisms.

57. Some delegations considered that arbitration matters belonged to chapter III, not chapter II. Other delegations thought that arbitration matters should be treated properly in both chapters. It was noted that the receiving State would not always be the place where arbitration, mediation or litigation took place; rather, a party to the litigation, arbitration or mediation could be located in the receiving State.

58. Some delegations were hopeful that a middle ground could be found in drafting a legislative provision on the subject for inclusion in chapter II. It was suggested that the proposal should allow for more flexibility, identifying the *lex fori concursus* as the default rule with some more general carve-outs, as was done for rights in rem/secured claims. It was acknowledged that, for arbitration, the adequate protection of creditors would be replaced with adequate procedural protection (e.g. the right of the insolvency estate to benefit from a short stay of arbitral proceedings, to prepare for participation in arbitration and to be heard in arbitration).

59. Another proposal received at the session read: "The opening of foreign insolvency proceedings shall interrupt (stay) legal proceedings pending at the time of the opening which relate to the insolvency estate. The interruption shall continue until the legal dispute is resumed by a person who is entitled to continue the legal dispute under the law of the State in which the proceedings were opened, or until the insolvency proceedings are terminated."

60. In the subsequent discussion, complex issues arising from the intersection of insolvency and arbitration laws were illustrated with reference to case law. It was noted that the current project would not resolve all of those issues. Views expressed earlier on some of those issues were reiterated, including regarding the need for a substantive norm in the text on the stay of arbitral proceedings following the commencement of insolvency proceedings, which would be equally applicable in both the originating and receiving States.⁸

61. The Working Group received another proposal for placement in chapter II, which read as follows: "Notwithstanding paragraph 1 of this legislative provision, foreign pending litigation or arbitration shall be taken into account in accordance with the law of the State where the proceeding is taking place or, respectively, of the seat of arbitration, if such law provides for sufficient rights of the insolvency representative to be heard and participate in that proceeding."

62. It was explained that the main goal of the proposal was to enable and encourage cooperation and coordination between the originating court and the courts at the seat of the proceedings.

⁷ A/CN.9/1198, para. 55.

⁸ Ibid., para. 53.

63. While welcoming the proposal as a basis for future discussion, concerns were expressed that the proposed wording was prescriptive and too broad, as it did not deal specifically with a stay of proceedings, which had so far been the focus of discussions. Another concern was that placing the proposal only in chapter II would be insufficient, and that at a minimum, the commentary should explicitly recommend that States impose a stay on ongoing proceedings as a matter of substantive insolvency law.

64. Views were reiterated that issues arising from the intersection of insolvency and other proceedings relevant to the project belonged more appropriately in chapter III than in chapter II of the text, although a link between the two should be established (see para. 57 above). Several delegations reiterated their positions on other points that the proposal in paragraph 61 raised, as expressed at the current session (see para. 55 above) and in previous sessions.⁹

65. For some delegations, differentiating between the treatment of litigation and arbitration in insolvency proceedings was important. Those delegations considered that the proposed wording was suitable for litigation but not for arbitration. Other delegations were of the view that there should be no distinction between the treatment of litigation and arbitration in the project.

66. The Working Group agreed to consider the proposal contained in paragraph 61 above, together with the other proposals received during the session (see paras. 54 and 59 above), at its next session. It was agreed that standing and costs were the key issues in the discussion of the intersection of insolvency and arbitral proceedings in this project, and the draft should acknowledge that aspect and reflect that the *lex fori concursus* would be the law governing those issues. In response to a query whether the draft text also referred to arbitral proceedings commenced after the opening of insolvency proceedings, the Working Group recalled its earlier deliberations, including that no decision had yet been taken on that aspect.¹⁰

67. A suggestion was made to delete the references to arbitration agreements that appear in square brackets in paragraphs 18–19 of the draft commentary to item (h) on the *lex fori concursus* list. In response, several delegations supported retaining those references in square brackets for further consideration, since the Working Group had not yet considered them. It was noted that different considerations would arise in discussion of those references as compared to a stay of arbitral proceedings. The relevant case law and ongoing debates were recalled in that context. The Working Group agreed to retain the references in square brackets for further consideration.

D. Cross-border matters

68. The Working Group received the following proposal:

“1. In the event that a creditor or a shareholder obtains an advantage in relation to foreign assets in comparison to what this creditor would obtain in the State where the insolvency proceedings have been opened, such advantage will be considered to qualify as a prepayment on any distribution in the insolvency proceedings.

2. In the event that an interested party receives or retains any value with respect to a foreign establishment or foreign assets in accordance with the laws of the establishment or the location of the assets or a judgment by a foreign court, there will be no claim to return such value to the insolvency estate, nor will there be any sanctions for breach of the laws of the *lex fori concursus*, unless (a) the proceedings have been opened in the State where the centre of the debtor’s main interests is located and (b) the application of this rule would be

⁹ See A/CN.9/1198, paras. 53–57; A/CN.9/1169, paras. 64–71; A/CN.9/1163, para. 73; and A/CN.9/1133, paras. 47–53.

¹⁰ A/CN.9/1169, para. 71; A/CN.9/1163, para. 73.

manifestly contrary to the public policy of the State where the insolvency proceedings have been opened.”

69. Following a preliminary exchange of views, during which some delegations acknowledged the importance of issues raised in the proposal, it was suggested that the proposal be discussed further in conjunction with chapter II, section C, and chapter III.

70. In discussion of chapter II, section C, concern was expressed about the content of paragraph 17 (a) of working paper [A/CN.9/WG.V/WP.202](#). It was suggested that references to COMI should not appear in the context of that paragraph. The alternative view was that the first sentence of that paragraph, up to the word “if”, should be converted into a permissive legislative provision, with the territorial scope of application of that provision clarified. The Working Group requested the secretariat to draft the provisions of section C of chapter II on the basis of that proposal and other elements contained in paragraph 17.

71. The Working Group received the following proposals to replace the draft legislative provision in chapter III:

Option 1

“Upon recognition of a foreign main proceeding, the court may grant relief by giving effect to the law(s) applied by the foreign court in accordance with chapter II of these legislative provisions.”

Option 2

“Upon recognition of a foreign proceeding, the court may grant relief by giving effect to the law(s) applied by the foreign court in accordance with chapter II of these legislative provisions. When granting such relief, the court should consider whether the proceeding is the main proceeding.”

72. It was suggested that an “equivalent effect” provision, similar to the one found in article 15 (1) of MLIJ, should be included in chapter III.

73. The Working Group agreed to include the two options found in paragraph 71 above in the draft text for discussion at the next session. (As regards the proposal found in para. 68 above, see paras. 76 and 80 below.)

E. Regulated systems, markets and facilities

74. The Working Group recalled recommendation 32 of the Legislative Guide from which the exception originated. It was suggested that the commentary be further clarified to indicate that: (a) the exception covered only regulated systems, markets, and facilities, and only activities taking place within them described in the draft commentary to that item; and (b) references to “indirect participants” and “distributed ledger technologies” in the commentary were not intended to expand the very narrow scope of that exception.

F. Close-out netting

75. Views expressed in previous sessions were reiterated.¹¹ The Working Group agreed to discuss the exception further, linking to systemic risk other contracts or agreements that a State may wish to specify in that exception. The following suggestions did not receive sufficient support: (a) to convert the exception into a safeguard; (b) to delete “unless that law has no substantial relationship to the parties or the arrangement”; and (c) to add a safeguard in paragraph 2 similar to the one for avoidance in the *lex fori concursus* provision.

¹¹ [A/CN.9/1198](#), paras. 26–31; [A/CN.9/1169](#), paras. 62–63.

G. Form of the text

76. Several delegations expressed support for preparing a stand-alone model law on the basis of the draft text. Some of those delegations also expressed support for incorporating a proposal found in paragraph 68 above. They considered that a stand-alone model law, as originally envisaged in the proposal submitted to the Commission,¹² would better serve the needs of States, especially civil law jurisdictions. According to them, such a model law, while complementing, reinforcing and promoting the existing UNCITRAL cross-border insolvency framework, would be of value to all States, regardless of whether they had adopted that framework. The importance of a guide to enactment that would explain the interaction of the new model law with the other three UNCITRAL insolvency model laws was emphasized. It was also considered important to convey, upon adoption of the new model law, that some of its provisions updated recommendations 31 to 34 of the Legislative Guide.

77. Some delegations were sceptical that it would be possible to prepare a stand-alone model law. Several other delegations, while not excluding the possibility of converting chapter III of the draft text to a stand-alone model law or a supplement to the UNCITRAL Model Law on Cross-Border Insolvency (MLCBI),¹³ questioned the feasibility and the desirability of preparing a model law on the basis of chapter II. They considered it more appropriate to convert chapter II into an updated and expanded version of recommendations 31–34 and the commentary thereto of the Legislative Guide, a set of principles or other guidance material. Preparing a separate model law on the basis of chapter II was not excluded by some delegations. The separation of two chapters was considered conducive to the integration of chapter III provisions into the existing UNCITRAL cross-border insolvency framework and enactment of those provisions either as part of that framework or alone. In response, it was observed that the Working Group had invested a considerable amount of time and effort to logically link the two chapters, and it would be counterproductive to separate those chapters at this stage.

78. Another suggested approach was to start with a model law and assess later whether any part of that model law should be converted into something different or additional, e.g. supplements to the Legislative Guide and the MLCBI.

79. Views differed on what would provide a more persuasive authority – an unenacted model law or guidance material. A view was expressed that further proliferation of UNCITRAL insolvency model laws did not help to overcome challenges with their enactment.

80. The prevailing view was that the draft text to be presented to the Working Group at its next session should take the form of a stand-alone model law incorporating chapters II and III. Noting that only some delegations explicitly requested to include the proposal found in paragraph 68 above in such a new model law (see para. 76 above), the Working Group agreed to include that proposal in square brackets in a separate section at the end of the draft text for further discussion.

H. Other matters

81. A suggestion to revise the third sentence of paragraph 2 of the draft commentary to the exception for labour contracts and relationships, to indicate that qualification of a contract or relationship as a labour contract or relationship and avoidance actions related to labour contracts and relationships should be governed by the law applicable to those contracts and relationships, did not receive support. It was considered that the draft commentary on that point was consistent with the generally accepted private international law principles and ensured the equal treatment of creditors.

¹² A/CN.9/995.

¹³ United Nations publication, Sales No. E.14.V.2. Available at https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency.

82. A suggestion was made to clarify in the text the difference between an exception and a safeguard to the *lex fori concursus* rule.

VI. Other business

83. The Working Group was informed about the upcoming enactment of the MLCBI in a jurisdiction, as well as the issues that jurisdiction faced in transposing certain MLCBI provisions into national law. The importance of clarifying those matters in the current Working Group projects was emphasized, particularly with respect to safeguards and exceptions to the *lex fori concursus* rule.

84. The Working Group took note of issues raised in paragraphs 31 and 32 of the annotated provisional agenda of the session ([A/CN.9/WG.V/WP.200](#)) and possible changes in the dates of its sixty-seventh and sixty-eighth sessions, subject to the decision by the Commission at its fifty-eighth session. A request was made to the Commission to allocate alternative dates for the sixty-eighth session of the Working Group, either later in April or May 2026.

85. The Working Group was informed that insolvency-related aspects comprising the adoption of the ATR texts, progress report of Working Group V and possible future work by UNCITRAL in the area of insolvency law were scheduled for discussion by the Commission on 14 July. The Working Group took note that, for consideration of possible future work by UNCITRAL in the area of insolvency law, the Commission would have before it a note by the Secretariat ([A/CN.9/1219](#)) and the proposal by Australia received by the Working Group at its sixty-fifth session ([A/CN.9/WG.V/WP.199](#)). An observer from the World Bank welcomed and expressed interest in that upcoming Commission discussion and recalled long-standing cooperation between the World Bank Group and UNCITRAL in the area of insolvency law.

86. Stressing the value of livestreaming for inclusiveness, cost savings and diverse expert representation, the Working Group requested that the Commission consider whether and how livestreaming of Working Group V sessions could be resumed.
