



General Assembly

Distr.: Limited
14 October 2024

English only

**United Nations Commission on
International Trade Law
Working Group V (Insolvency Law)
Sixty-fifth session
Vienna, 16–20 December 2024**

Other business: possible future work

Proposal by the delegation of Australia for preparation of an updated Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross-Border Insolvency

Note by the Secretariat

On 8 October 2024, the Government of Australia submitted to the Secretariat a proposal for preparation of an updated Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross-Border Insolvency. The text of the proposal is reproduced as an annex to this note in the form in which it was received by the Secretariat, with some formatting changes.



Annex

Proposal by the delegation of Australia for preparation of an updated Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross-Border Insolvency

Part I: background to the Guide to Enactment and Interpretation

1. At its thirtieth session, in 1997, the Commission adopted the UNCITRAL Model Law on Cross-Border Insolvency (A/52/17, paras. 221–222 and annex I). The Commission also considered that, in order to make the Model Law a more effective tool, it would be useful to formulate a guide designed to assist States in enacting and applying the Model Law (A/52/17, paras. 23–24). The Commission did not have time to consider the draft Guide to Enactment of the UNCITRAL Model Provisions on Cross-Border Insolvency at its thirtieth session but mandated that the Model Law and the Guide to Enactment be published as a single, consolidated document (A/52/17, para. 220). The draft Guide to Enactment was prepared (A/CN.9/436) and subsequently finalized (A/CN.9/442) by the Secretariat based on material from the Commission's thirtieth session. At its thirty-first session, in 1998, the Commission noted with appreciation the completion of the Guide to Enactment (A/53/17, para. 272).

2. At its thirty-eighth session, in 2010, the Working Group received a proposal from the delegation of the United States of America to recommend to the Commission that the Guide to Enactment be revised to provide guidance on the interpretation and application of selected concepts of the Model Law, including the “centre of main interests” (A/CN.9/WG.V/WP.93/Add.1, para. 8). The delegation also provided background to the proposal (A/CN.9/WG.V/WP.93/Add.2). The Working Group made the proposed recommendation to the Commission (A/CN.9/691, para. 104). At its forty-third session, in 2010, the Commission endorsed the recommendation by the Working Group (A/65/17, para. 259).

3. At its forty-third session, in 2013, the Working Group considered the proposed revisions to the Guide to Enactment (A/CN.9/WG.V/WP.112) and made some further revisions (A/CN.9/766, paras. 13–54). The revisions were based on the deliberations of the Working Group at its thirty-ninth (2010), fortieth (2011), forty-first (2012) and forty-second (2012) sessions (A/CN.9/715, A/CN.9/738, A/CN.9/742 and A/CN.9/763, respectively), and proposals set forth in documents A/CN.9/WG.V/WP.95 and Add.1, A/CN.9/WG.V/WP.99, A/CN.9/WG.V/WP.103 and Add.1, A/CN.9/WG.V/WP.105 and A/CN.9/WG.V/WP.107. The Working Group advised the Commission that it had completed its revisions to the Guide to Enactment (A/CN.9/766, para. 101).

4. At its forty-sixth session, in 2013, the Commission added additional recommendations (A/68/17, para. 197) and adopted the revised Guide to Enactment and Interpretation (A/68/17, para. 198).

Part II: purpose of the Guide to Enactment and Interpretation

5. Model laws provide States with an example of a law which, if the State chooses to enact it, will assist in bringing the laws of that State and others that have similarly chosen to enact it into harmony. The Model Law is designed as a modern, harmonized and fair framework to effectively address instances of cross-border proceedings concerning debtors experiencing severe financial distress or insolvency. The Model Law is principally a procedural document. Its main provisions focus on promoting: (a) access to local courts; (b) recognition of foreign proceedings; (c) relief to assist foreign proceedings; and (d) cooperation among States.

6. The Guide to Enactment and Interpretation reflects the Commission's view, held since the adoption of the Model Law, that the effectiveness of the Model Law is best supported by an explanatory document. The Guide to Enactment and Interpretation is primarily intended to be of use to the legislative and executive branches of State Governments, which are the branches that would be responsible for modifying (where necessary) and enacting the Model Law. It also provides a perspective on the Model Law that should be of interest to judicial officers, lawyers, academics and others charged with the interpretation and application of the Model Law. The Guide to Enactment and Interpretation is also complemented by the "UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective" (2022), the "Digest of Case Law on the UNCITRAL Model Law on Cross-Border Insolvency" (2021), and the "UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation" (2009).

Part III: proposal for an update of the Guide to Enactment and Interpretation

7. The Guide to Enactment and Interpretation serves an important role as a complement to the Model Law. In order to best promote the aims of the Model Law, the delegation of Australia would like to make a recommendation for future work for Working Group V to review and update the Guide to Enactment and Interpretation.

8. Recognizing the role of UNCITRAL as a leader in developing the Model Law, we recommend that Working Group V first conduct a review of the Guide to Enactment and Interpretation to determine appropriate areas for updating in light of the development of the Model Law since its adoption. Following this review, we further recommend that Working Group V, having identified areas of the Guide to Enactment and Interpretation for which an update is appropriate, work to develop approaches to effect an update to these areas.

9. We recommend that Working Group V discuss the above-mentioned proposals at its sixty-fifth session in December 2024 and that they be considered for adoption at the fifty-eighth session of UNCITRAL, in 2025. We also recommend that the Commission provide sufficient flexibility so that the Working Group can assess which areas of the Guide to Enactment and Interpretation merit attention.

10. We have arrived at this suggestion based on both the development of the Model Law itself and the increase in the number of jurisdictions which have adopted legislation based on or influenced by the Model Law. Indeed, since the Guide to Enactment and Interpretation's most recent update, adopted by the Commission at its forty-sixth session on 18 July 2013, forty jurisdictions have adopted such legislation.

11. This delegation therefore proposes that:

Working Group V consider recommending that the Commission consider this type of proposal at its next session with a view to approving a mandate for Working Group V to conduct a review as to the currency of the Guide to Enactment and Interpretation and to update the Guide to Enactment and Interpretation.

12. We appreciate the consideration of this proposal by Working Group V.