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Report of Working Group V (Insolvency Law) on the work of its sixty-eighth session (New-York, 13–17 April 2026)

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I. Introduction

1. At its sixty-eighth session, the Working Group continued its consideration of the topic of applicable law in insolvency proceedings. Background information on that topic may be found in the annotated provisional agenda of the session ([A/CN.9/WG.V/WP.206](#)).

II. Organization of the session

2. The Working Group, which was composed of all States members of the Commission, held its sixty-eighth session in New York, from 13 to 17 April 2026.

3. The session was attended by representatives of the following States members of the Working Group: Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, China, Czechia, Dominican Republic, El Salvador, France, Germany, Ghana, Hungary, Israel, Italy, Japan, Kuwait, Malaysia, Mauritania, Mauritius, Mexico, Morocco, Netherlands (Kingdom of the), Nigeria, Philippines, Poland, Republic of Korea, Russian Federation, Saudi Arabia, Singapore, Spain, Sweden, Switzerland, Thailand, Türkiye, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America and Viet Nam.

4. The session was attended by observers from the following States: Algeria, Chad, Croatia, Finland, Guatemala, Jordan, Kyrgyzstan, Myanmar, Namibia, Oman and Serbia.

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 intergovernmental organizations*: International Association of Insolvency Regulators (IAIR);

(c) *Invited international non-governmental organizations*: American Bar Association (ABA), Center for International Legal Studies (CILS), China Council for the Promotion of International Trade (CCPIT), Conference on European Restructuring and Insolvency Law (CERIL), Conseil National des Administrateurs Judiciaires et Mandataires Judiciaires (CNAJMJ), European Company Lawyers Association (ECLA), European Law Institute (ELI), Fondation pour le droit continental (FDC), Groupe de Réflexion sur l'Insolvabilité et sa Prévention (GRIP 21), INSOL Europe, Instituto Iberoamericano de Derecho Concursal (IIDC), International Bar Association (IBA), International Commercial Arbitration Moot (MAA), International Insolvency Institute (III), International Swaps and Derivatives Association (ISDA), International Women's Insolvency and Restructuring Confederation (IWIRC), Law Association for Asia and the Pacific (LAWASIA), National Association of Bankruptcy Trustees (NABT), New York City Bar (NYCBAR), P.R.I.M.E. Finance Foundation and Union Internationale des Huissiers de Justice et Officiers Judiciaires (UIHJ).

7. The Working Group elected the following officers:

Chair: Mr. Xian Yong Harold Foo (Singapore)

Rapporteur: Ms. Alice Ciofu (Belgium)

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

(a) Annotated provisional agenda ([A/CN.9/WG.V/WP.206](#));

(b) Note by the Secretariat: draft model law on applicable law in insolvency proceedings ([A/CN.9/WG.V/WP.207](#)); and

(c) Note by the Secretariat: draft guide to enactment of the UNCITRAL Model Law on Applicable Law in Insolvency Proceedings ([A/CN.9/WG.V/WP.208](#)).

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 the topic of applicable law in insolvency proceedings.
 5. Other business.
 6. Adoption of the report.

III. Deliberations

10. Under agenda item 4, the Working Group continued its deliberations on the draft model law on applicable law in insolvency proceedings ([A/CN.9/WG.V/WP.207](#)). The summary of deliberations of the Working Group on that agenda item may be found in chapter IV below.

11. 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 V below.

IV. Consideration of a draft model law on applicable law in insolvency proceedings ([A/CN.9/WG.V/WP.207](#))

A. Avoidance (article 7(1))

12. While some delegations expressed a preference for option 1, considering that it would provide the necessary flexibility to courts, the view prevailed that option 2 was more appropriate for a model law. It was therefore agreed that option 2 should be retained as the basis for further work, subject to modifications, including the replacement of “legitimate interests” with “legitimate expectations”.

13. It was suggested that the words “if applying that law is necessary to protect the legitimate interests of the parties to the transaction” be replaced with “unless applying that law is not necessary to protect the legitimate interests of the party against whom avoidance of the transaction is sought.” It was explained that such reformulation would reverse the burden of proof and ensure that the safeguard appropriately focused on legitimate expectations of the counterparty to the transaction being avoided.

14. It was queried whether the proposed reformulation, in particular the use of “unless”, would render the provision more suitable for placement in article 9 on exceptions to the application of the *lex fori concursus*, rather than as a safeguard operating within the framework where the *lex fori concursus* remained the default rule.

15. As regards the burden of proof, the Working Group discussed whether it should always be on the party claiming the disapplication of the *lex fori concursus*. It also discussed whether it was necessary for the provision to address that subject. It was noted that in many jurisdictions applicable procedural rules regulated it.

16. With respect to the scope of the safeguard, the Working Group noted that the current wording did not clearly indicate that its application was intended to be limited to situations involving a shift of the centre of the debtor’s main interests (COMI). It was suggested that that aspect should be clarified either in the text of the provision or in the accompanying guide to enactment. A view was expressed that, in cases of COMI shifts, it would be appropriate to refer to the legitimate expectations of the counterparty to the transaction being avoided, who might be adversely affected by

such a shift without being aware thereof. In response to suggestions that the legitimate expectations of the debtor, the insolvency estate, the general body of creditors and other parties should also be taken into account, it was noted that those interests were outside the scope of the safeguard as they were already addressed through the avoidance regime under the *lex fori concursus*.

17. The Working Group deferred a decision on those issues, including a suggestion that the second part of draft article 7(1) could be reformulated to read: “so as to ensure that the legitimate expectations of the party to the transaction against whom avoidance is sought are protected.”

18. The Working Group also considered whether draft article 7(1) should expressly provide for deference to the law of the main proceeding in respect of avoidance actions, with a view to aligning it with draft article 8 and the approach reflected in chapter III. Doubts were expressed as to whether it would be necessary or appropriate to include such a requirement. Several delegations emphasized the competence of the courts and authorities in the State of a non-main proceeding to administer assets located within their jurisdiction, including with respect to avoidance actions, without being bound by the avoidance regime applicable in the foreign main proceeding or in the State where the debtor’s COMI had previously been located. The secretariat was requested to clarify, in the draft guide to enactment, the interaction between articles 6, 7(1), 8(b) and chapter III.

B. Set-off (article 7(2))

19. Broad support was expressed for option 2, which was viewed as better aligned with the overall structure of the draft provisions and with the policy objective of ensuring coherence with the approach taken to avoidance.

20. At the same time, some delegations emphasized that set-off and avoidance were fundamentally different in nature and should not necessarily be treated in the same manner. It was noted that avoidance typically concerned a single transaction and focused on the timing of that transaction, whereas set-off involved two distinct claims between a debtor and a creditor, which might arise at different points in time and not necessarily from the same transaction or even from a direct contractual relationship. In that regard, it was observed that the timing of when the respective claims giving rise to a right of set-off were created might be difficult to determine, further complicating the operation of the provision.

21. For those reasons, some delegations questioned whether it was appropriate to follow the same approach as in draft article 7(1). It was suggested that set-off raised more complex considerations than avoidance, and that the rationale for aligning the two provisions was not entirely clear.

22. The Working Group further discussed the appropriate standard to be used in the provision. While it had been proposed, by analogy with draft article 7(1) (see para. 12 above), to replace “legitimate interests” with “legitimate expectations”, different views were expressed. Some delegations supported the use of “legitimate expectations” as promoting consistency and predictability. However, other delegations considered that “legitimate interests” would be more appropriate in the context of set-off, noting in particular that, unlike avoidance, there might be no clear expectation at the time when the right of set-off arose, especially given that the relevant claims might be created at different times and under different legal relationships. On that basis, it was suggested that “legitimate expectations” might not adequately capture the complexity of set-off.

23. It was also clarified that the provision concerned the relationship between two or more claims and should not be framed by reference to a single transaction. Furthermore, it was considered appropriate to narrow the scope of the protected persons under draft article 7(2) by referring specifically to the party invoking the set-off, as that party was the one whose position was most directly affected.

24. The Working Group heard that, like draft article 7(1) (see para. 15 above), the provision should not expressly address the burden of proof, and that such matters could instead be clarified in the guide to enactment or left to applicable procedural law. In addition, it was agreed that the phrase “in a proceeding under [*identify laws of the enacting State relating to insolvency*]” should be deleted throughout the provision, as it was considered implicit in the light of article 6, and that the provision should refer to the “treatment of set-off”, as mentioned in draft article 6(i).

25. Different views were also expressed as to whether reference in the provision should be made specifically to the debtor’s claim. Some delegations supported such a clarification for greater precision. Other delegations considered it unnecessary.

26. With reference to paragraph 3, the Working Group discussed whether and if so, how, paragraphs 2 and 3 should be more closely aligned. It was observed that, where the law of the forum permitted set-off, the value of that right might be preserved, whereas where it did not, the value of the right in rem might be impaired. In that context, reference was made to different possible connecting factors, including the *lex compensationis* and the law of the State of the debtor’s COMI at a prior point in time. It was suggested that, rather than attempting to resolve those complex issues exhaustively in the text of the model law at such a late stage of the project, further explanation should be provided in the guide to enactment.

27. After further discussion, a suggestion was made to amend option 2 as follows: “Notwithstanding article 6(i) of this Law, the treatment of set-off shall be governed by the insolvency law of the State where the debtor had its centre of main interests if the set-off right would have been available but for the shift of the COMI, to the extent that applying that law is necessary to protect the legitimate expectations of [the parties to the transaction or other legal relationship] [the party seeking set-off].” This was in response to concerns raised that it might be inappropriate to refer to the time the claim giving rise to a right of set-off arose instead of to the time the claim was created.

28. The Working Group deferred a decision on the final formulation of the provision pending resolution of outstanding issues, which were similar to those raised in conjunction with draft article 7(1) (see section A above), including the burden of proof and the scope of the protection. As regards the latter, views differed on whether the protection should extend to all parties to the transaction or other legal relationship, or be limited to the party seeking to invoke set-off.

C. Rights in rem (article 7(3))

29. The Working Group received the following proposal for replacement of draft article 7(3):

“Notwithstanding article 6(j) of this Law, the treatment of the rights in rem in respect of the debtor’s assets in a proceeding under [*identify the laws of the enacting State relating to insolvency*] shall be governed by the insolvency law of the State where the rights in rem were created and initially attached to the asset if the law of this State, [under its own rules of private international law, does not apply to the insolvency-related treatment of the rights in rem at issue, and if the law of this State,] as compared to that other law:

(a) [*the same as in draft article 7(3)*];

(b) [*the same as in draft article 7(3)*].

Possible additional safeguard: If the law identified in the preceding paragraph bears no substantial connection to the asset subject to the rights in rem, a court in this State may apply the insolvency law of another appropriate jurisdiction, including that of the debtor’s COMI.”

30. The Working Group emphasized the need for a provision that would ensure legal certainty and predictability, while remaining practical and capable of consistent

application by courts. Views were expressed that, as currently drafted, article 7(3) might be difficult to apply in practice and might rarely be invoked.

31. Divergent views were expressed as to the nature of the provision. One view was that a provision on rights in rem should become an exception to the *lex fori concursus* and hence moved from draft article 7 to draft article 9 and reformulated as follows: “The effects of the insolvency proceeding on the rights in rem in the debtor’s assets should be governed by the insolvency law of a State whose law is applicable to validity and effectiveness of that right in rem outside insolvency proceedings.” It was explained that the proposed approach avoided many issues, including difficulties with the localization of certain assets and the need for comparison between the *lex fori concursus* and another law. Other delegations considered that a provision on rights in rem should remain a safeguard to the application of the *lex fori concursus*.

32. The Working Group acknowledged the complexity of determining the location of assets, particularly in the case of intangible assets or assets that were mobile. It was observed that the traditional *lex rei sitae* rule might not be suitable in all cases and that, in certain legal systems, other connecting factors, such as the location of the debtor, might be relevant. The Working Group generally agreed that the provision should avoid overly detailed rules on localization and that a simplified approach would be preferable.

33. The proposal received at the session (see para. 29 above) was welcome in that regard, noting in particular that it avoided reference to the *lex rei sitae* and localization rules. Suggestions were made to amend the proposal, including by deleting certain elements and introducing a more appropriate connecting factor for determining the applicable law. A prevailing view was that the place where the right in rem was created should not be determinative. Rather, the key consideration should be whether the right was effective against third parties. Several delegations expressed a preference for referring to the law governing the opposability of the right in rem against third parties, noting that that concept better reflected the practical operation of such rights.

34. The Working Group considered the relevant point in time for determining whether a right in rem was effective. There was general agreement that the relevant time should be the commencement of insolvency proceedings and that the provision should refer to rights that were effective, or made effective, against third parties at that time. It was also noted that questions concerning when a right became effective and whether it remained effective should be addressed in a coherent manner.

35. The view was expressed to retain an explicit reference to private international law rules for the purpose of determining the applicable law. It was observed that, while courts would in any event apply such rules, an express reference would enhance clarity and predictability.

36. The Working Group held extensive discussions on the use of the qualifiers “substantially” in subparagraph (a) and “unduly” in subparagraph (b). Concerns were raised that such terms might introduce uncertainty and subjectivity, leading to inconsistent application and increased litigation. While some delegations supported retaining such qualifiers in order to preserve flexibility, the prevailing view favoured their deletion.

37. In that context, a possible compromise was discussed, namely, to delete both qualifiers and instead introduce an objective threshold, such as “not significant”, “insignificant”, “not material” or “immaterial”, which would give effect to the underlying understanding of the Working Group that minor impairment or interference would not be sufficient. Some support was expressed for that proposal.

38. The Working Group also discussed the formulation of subparagraph (b), in particular the reference to the “timely liquidation of the right in rem”. It was widely observed that what was liquidated was the asset subject to the right, rather than the right itself. Alternative formulations were proposed, including references to the “exercise” as well as the “realization or use” of the right in rem. The view was expressed that all elements of such realization and use, including benefits to be

derived therefrom in a timely manner, should be encompassed either in the provision itself or explained in the guide to enactment.

39. Some delegations suggested that, if subparagraph (b) were broadened, subparagraph (a) might become unnecessary. Other delegations considered subparagraph (a) to be an essential element of the compromise reflected in the provision. The Working Group agreed to retain subparagraph (a).

40. The Working Group underscored the importance of protecting the legitimate expectations of parties, in particular secured creditors. It was noted that the guide to enactment should elaborate on that concept and clarify that the effectiveness of rights in rem against third parties was distinct from their treatment under insolvency law, which might include stays or other limitations, particularly in the context of reorganization.

41. The Working Group agreed that further consideration should be given to the appropriate formulation of article 7(3) such as:

“Notwithstanding article 6(j) of this Law, the treatment of a right in rem in respect of the debtor’s assets shall be governed by the insolvency law of the State where the right in rem became effective against third parties [as determined by the private international law rules of this State] if the law of this State, as compared to that other law: (a) impairs the value of the right in rem; or (b) interferes with [a timely liquidation of the right in rem] [the timely realization or use of the right in rem], unless such impairment or interference is [not significant] [insignificant] [not material] [immaterial].”

D. Definition of “rights in rem” (article 2(v))

42. A suggestion was made to refer specifically to the debtor’s assets, as defined in draft article 2(h), rather than to assets more generally, or alternatively to define “assets” by drawing on elements of the definition “debtor’s assets”.

43. Views differed on whether the definition should refer to rights being “effective against third parties,” in line with amendments made in draft article 7(3) (see para. 41 above), or “effective against all” as currently drafted. The prevailing view was to retain the existing wording. Similarly, views differed on whether to retain the term *erga omnes*, with the prevailing view favouring its retention.

44. Some support was expressed for option 2, subject to the addition of “and other similar rights” and the possible inclusion of elements from option 4, including deference to a list to be determined by the enacting State. However, concerns were raised that the approach taken in option 4 would undermine uniformity by leaving a key definition to enacting States’ discretion.

45. Other delegations preferred options 1 or 4, noting that enacting States would likely not adjust their existing concept of rights in rem solely for the purposes of the model law.

46. The prevailing view was in favour of option 1, with suggestions to supplement it, if necessary, by adding “and other similar rights” to encompass, for example, statutory liens, and to include illustrative examples in the guide to enactment.

E. Dispute resolution (article 7(4))

47. The Working Group considered paragraph 4 of draft article 7 on the effects of insolvency proceedings on pending litigation and arbitration.

48. It was suggested that references to “the law of this State” be replaced with the *lex fori concursus* for clarity. Questions were also raised as to the broad reference to article 6 without specifying relevant subparagraphs, and concerns were expressed regarding the term “unduly interfere”, as in draft article 7(3) (see para. 36 above).

49. The Working Group discussed the policy underlying paragraph 4. It was noted that the provision sought to address the potentially problematic extension of the effects of the *lex fori concursus* under article 6 to foreign proceedings. It was further explained that, while matters such as stays and their duration were governed by the *lex fori concursus*, paragraph 4 served as a safeguard, linking chapters II and III and ensuring that receiving courts gave effect to the *lex fori concursus* as regards those matters.

50. Other delegations considered that the interplay between paragraph 4 of draft article 7 and draft article 6 lacked clarity and that the issues should instead be addressed more comprehensively in chapter III.

51. The prevailing view was to delete paragraph 4 from draft article 7 and to reflect its essential elements, as appropriate, in chapter III, including in connection with the additional provision included after draft article 9 in A/CN.9/WG.V/WP.207. It was considered essential to ensure the close alignment of the resulting chapter III provision with articles 19–21 of the UNCITRAL Model Law on Cross-Border Insolvency (MLCBI).¹

52. A new proposal was introduced that read as follows:

“4. Notwithstanding article 6 of this law, the effects of the opening of insolvency proceedings on foreign pending litigation, arbitration proceedings concerning the debtor’s assets, rights, obligations or liabilities shall be governed by the law of the State where the litigation proceeding is taking place or, respectively, by the law applicable to the arbitration. The effects provided by the law of the State where the litigation proceeding is taking place or, respectively, the law applicable to arbitration shall include the stay of the pending litigation or arbitration and proceedings. The stay shall remain in effect until the debtor or, if applicable, the insolvency representative has been allowed to intervene in the pending proceeding, or until it is lifted by a court of the State in which the pending proceedings are conducted.”

53. While some support was expressed for the proposal, other delegations indicated that further consideration was needed. Questions were raised regarding its scope, including the application to different types of proceedings, the duration of the stay, and its placement within the model law. Concerns were also expressed about the appropriateness of prescribing the content of another State’s applicable law.

54. In subsequent deliberations, no sufficient support was expressed for the proposal.

F. Applying the law of another State in concurrent proceedings (article 8)

55. Draft article 8 was considered a useful and innovative provision with significant potential. It was suggested that it be supported by detailed commentary, including practical examples (e.g. employees’ claims), to illustrate its application.

56. It was agreed to revise the title to read: “Applying the law of another State to facilitate cooperation and coordination”, to delete the chapeau, and to clarify that paragraph (a) should refer to “the insolvency law” rather than “the law”. The Working Group also agreed to retain the reference to facilitating the treatment and ranking of claims, without including the concept of synthetic treatment and ranking. However, doubts were expressed as to whether “facilitating the ranking of claims” was appropriate drafting, and it was suggested that that aspect be refined. It was further suggested to renumber subparagraphs (a)–(c) as (1)–(4) and to reconsider their order.

57. It was suggested that subparagraph (a) be divided into two provisions to improve clarity.

¹ Available at https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency.

58. Some delegations suggested that draft article 8 could be split, as it addressed functions of a different nature.

59. With respect to paragraph (a), it was agreed to delete the reference to the ranking of claims and to retain only the treatment of claims, on the understanding that the guide to enactment would clarify that “treatment” encompassed ranking. That approach was considered to align the provision more closely with the relevant provisions of the UNCITRAL Model Law on Enterprise Group Insolvency (MLEGI),² notwithstanding the separate reference to treatment and ranking in article 6 of the draft model law. It was further suggested that the guide should elaborate on how the provision would contribute to ensuring horizontal equity among creditors, noting in particular that undertakings should reflect what creditors would receive in an actual insolvency proceeding in the relevant jurisdiction if such a proceeding were commenced, rather than full payment based on priority rules.

60. Concerns were expressed that paragraph (c), together with the terms used therein, which also appeared in draft article 2, were derived from MLEGI, which had not been enacted in any State. Suggestions were made to delete those terms and provisions or to reposition them within the text so that they would apply only to States that had enacted MLEGI.

61. While acknowledging concerns that such terms could be misunderstood outside the MLEGI framework, other delegations suggested that those concerns could be addressed in the context of the relevant definitions in article 2, including by clarifying or expanding them to ensure they were not dependent on the MLEGI context. In particular, it was proposed to broaden certain definitions, such as that of “foreign planning proceeding”, so as to make them more generally applicable. Those delegations also supported retaining paragraph (c) as an enabling and discretionary provision, noting that concepts and provisions from UNCITRAL insolvency model laws had been applied in practice in jurisdictions that had not enacted those model laws.

62. In response to a suggestion to move paragraph (c) to chapter III, the Working Group recalled the explanation in paragraph 142 of the draft guide and considered that the provision could remain in chapter II, subject to redrafting along the following lines: “The court may apply the insolvency law of the State of the foreign planning proceeding in a proceeding under [*identify laws of the enacting State relating to insolvency*] to facilitate the development or implementation of a group insolvency solution.” It was further suggested that paragraph 142 of the draft guide be expanded to clarify that article 8 applied irrespective of recognition and only in situations involving concurrent proceedings or where the commencement of such proceedings should be minimized.

63. With respect to paragraph (d), the Working Group requested the secretariat to refine the drafting to clarify that it applied to situations where proceedings in the enacting State took place concurrently with proceedings in other States, noting that the current wording was overly broad.

64. As regards earlier suggestions to split or reorder the provisions of draft article 8 (see paras. 56–58 above), the Working Group agreed to retain the existing scope and order. The following additional suggestions in relation to draft article 8 did not receive support: (a) to move draft article 8 to a separate chapter; (b) to add a provision addressing situations in which the originating court itself served as a planning proceeding; (c) to reconsider the earlier decision to insert the term “insolvency” before “law” (see para. 56 above); and (d) to delete the words “to the knowledge of the court” in paragraph (b).

² Available at <https://uncitral.un.org/en/MLEGI>.

G. Exceptions to the application of the *lex fori concursus* (article 9)

65. No comments were made with respect to paragraphs (1) and (2) of the draft article. In relation to the draft guide, it was noted that the use of the term “intrinsic” in paragraph 157 raised questions and would require clarification and discussion.

66. The Working Group considered a proposal to replace paragraph (3) with a safeguard to be inserted in draft article 7, which read as follows:

“7.4bis. Notwithstanding article 6 of this Law, the operation of a close-out netting arrangement in relation to a securities, commodities, derivatives, forward, options, swaps, securities repurchase and master netting contract or agreement outside of the systems, market and facilities covered by article 9(2), shall be governed by the law applicable to that arrangement to the extent that *the lex fori concursus* does not adequately prevent undue delay in the operation of such arrangements, creating a risk to financial market stability[, unless the law of the arrangement has no substantial relationship to the parties or the arrangement].”

67. The proponents explained that the proposal aimed to prevent possible abuses arising from the broad application of the exception in draft article 9(3), which in some jurisdictions operated as a “safe harbour”, and to avoid undermining the rescue of debtors. They indicated that, as a safeguard to the application of the *lex fori concursus*, the proposal would ensure that only interests requiring protection would benefit. It was further explained that the proposal incorporated a short stay mechanism based on the *Principles for Effective Insolvency and Creditor and Debtor Regimes of the World Bank Group* (Principle C.10.4 and footnote 9). It was also noted that the wording in square brackets, drawn from draft article 9(3), could be deleted.

68. Most delegations strongly supported maintaining article 9(3) as an exception, noting that the exception provided clarity and predictability for courts, whereas introduction of the proposed safeguard would add complexity, create uncertainty and increase the potential for litigation. They also supported deleting the final clause in the exception beginning with “unless”, on the basis that it introduced uncertainty, increased the risk of litigation and was irrelevant to the operation of close-out netting arrangements.

69. The importance of close-out netting as a risk mitigation tool ensuring legal and transactional certainty was emphasized, particularly in highly volatile markets such as energy and commodities markets. It was noted that such arrangements, typically documented under master agreements, enabled rapid risk management where the value of positions might change significantly within very short periods.

70. Concerns were raised that introducing the proposed safeguard, including the possibility of a stay, would be inconsistent with established practice in those markets, which were characterized by rapid price fluctuations, and where immediate close-out was essential to avoid unmanageable risk exposure. It was noted that, in such markets, parties could not await insolvency-related determinations without facing significant and potentially systemic losses.

71. It was further observed that, while the proposed safeguard drew inspiration from the above-mentioned parts of the Principles of the World Bank Group referring to a short stay mechanism (Principle C.10.4 and footnote 9) (see para. 67 above), those parts were primarily addressed to regulated financial institutions and domestic insolvency frameworks and did not address private international law matters. Several delegations emphasized that considerations relating to a possible short stay and related safeguards in those contexts should not be transposed to insolvency of non-financial institutions and markets beyond the financial sector, such as energy markets.

72. While few delegations questioned whether an exception was necessary, noting that many jurisdictions already provided for “safe harbour” protections, others considered that retaining the exception would enhance certainty and consistency, particularly in cross-border situations involving volatile markets beyond the financial sector.

73. A few delegations also expressed a concern about the potential breadth of the exception and the risk of abuse, including through overly broad definitions of protected arrangements or forum shopping. It was suggested that the scope of the exception should be carefully calibrated.

74. In that regard, it was suggested that safeguards against abuse could be addressed through the public policy exception and through further clarification in the guide to enactment. The need to clarify the scope of covered transactions, markets and stakeholders was emphasized.

75. The Working Group agreed to retain draft article 9(3), subject to the deletion of the text beginning with “unless”, which was considered to raise issues irrelevant to the operation of close-out netting arrangements. Divergent views were expressed as to whether the content of the accompanying footnote should remain in a footnote, be incorporated in the provision itself or be moved to the guide to enactment.

H. Additional provision placed after draft article 9

76. The Working Group agreed not to include in the model law the additional provision placed after draft article 9 in [A/CN.9/WG.V/WP.207](#).

I. Chapter III

77. The Working Group received the following proposal to replace draft article 10:

“Upon recognition of a foreign proceeding, the rules on the applicable law, including the ones set out in Chapter 2, may be given effect by the court of the recognizing State when deciding on the relief to a foreign proceeding in respect of the assets of the insolvent debtor located in the recognizing State, provided that the outcome of the application of those rules is not contrary to the fundamental principles of the insolvency law of the recognizing State or to its public policy. When granting relief, the court should consider whether the foreign proceeding is a foreign main proceeding.

The decision of the court of the recognizing State referred to in paragraph 1 shall be respected by the courts of the originating State, giving it the same legal effect in the originating State.”

78. The Working Group agreed to defer consideration of that proposal (see paras. 81–89 below for the subsequent consideration of that proposal).

79. Support was expressed for retaining article 11 as currently drafted. Some delegations reserved their position on that article pending the finalization of article 10, in light of the proposed replacement of the current draft of article 10 with the provision set out above (see para. 77) and the cross-reference to article 10 in draft article 11.

80. Support was expressed for the inclusion of the following provision in chapter III for further consideration: “Upon recognition of a foreign proceeding, any other pending proceedings in this State relating to the insolvency estate shall be stayed until timely intervention by the person authorized to do so under the law of the State in which the foreign proceeding was commenced, at its own motion or at the request of the court of this State, or until the stay is lifted by the court of this State.” It was noted that the provision departed from article 20 of the MLCBI, and that, if retained, the guide to enactment should explain the reasons for its inclusion.

81. The Working Group reverted to the proposal to replace draft article 10 introduced earlier during the session (see paras. 77–78 above).

82. Concerns were raised regarding the drafting of that proposal, in particular references to the “recognizing State” and the “originating State”, which were suggested to be replaced with references to the enacting State and its courts.

83. Concerns were also expressed with respect to the reference to the “fundamental principles of the insolvency law of the recognizing State” alongside public policy. It was observed that the concept was unclear, overly broad and insufficiently defined, and that it might overlap with or dilute the public policy exception. It was considered that, if such principles were violated, that would already fall within the scope of the public policy exception, rendering the additional reference unnecessary. A concern was expressed that the omission of the term “manifestly” in relation to public policy could lower the applicable threshold reflected in draft article 4. Questions were also raised as to the reference to “rules on the applicable law” in the proposal.

84. In response, the proponents explained that the reference to the “fundamental principles of the insolvency law of the recognizing State” was intended to cover situations that might not meet the high threshold of the public policy exception but would nevertheless conflict with core domestic insolvency principles, such as the equal treatment of creditors or the protection of secured creditors.

85. A number of delegations expressed reservations regarding the inclusion of a safeguard clause, noting that the use of the term “may” already rendered the provision discretionary. In that regard, it was questioned whether additional safeguards were necessary, particularly in the light of the safeguards already included in the draft model law, such as those found in draft articles 4 and 11.

86. Significant concerns were expressed with respect to paragraph 2 of the proposal. It was observed that its mandatory formulation created an imbalance with the discretionary nature of paragraph 1 of the proposal and raised questions as to its practical application. In addition, concerns were raised that the paragraph could affect State sovereignty and judicial independence by prescribing obligations for foreign States and requiring courts of the originating State to give effect to decisions of the recognizing State that might be inconsistent with their own law. More generally, it was noted that proposed paragraph 2 appeared to go beyond the scope of the model law as it addressed issues relating to the effects of recognition or refusal of recognition and the granting of relief, matters dealt with in MLCBI.

87. In response, it was explained that the proposal sought to strike a balance with the broad application of the *lex fori concursus* and reflected a broader objective of enhancing cross-border insolvency cooperation by ensuring mutual respect and acceptance of court decisions.

88. Some delegations questioned the necessity of the proposal in light of the existing draft article 10, which was considered to fit within the overall architecture of the UNCITRAL cross-border insolvency framework and to provide sufficient flexibility. It was suggested that, if gaps were identified, they could be addressed through targeted amendments to draft article 10 or through clarification in the guide to enactment.

89. After further deliberations, the Working Group agreed to retain article 10 as drafted. It noted that, while some support was expressed for the proposal, there were also strong objections, and therefore the proposal could not be accepted. At the same time, concerns raised by the proponents were considered worth discussing among interested delegations informally, and possibly reflecting them in the guide to enactment, instead of attempting to address them in a model law provision.

J. Additional provision placed after draft article 11

90. No support was expressed for including in the model law the additional provision placed after draft article 11 in [A/CN.9/WG.V/WP.207](#), and the Working Group agreed to delete it.

K. Other definitions (article 2)

91. The Working Group agreed to delete definitions (b), (g), (i) and (q). It noted that, as a consequence of amendments to draft articles 7(3) and 8(d), definitions (d) and (t) would no longer be necessary.

92. In response to comments regarding the scope of the definition of “stay of proceedings” in draft article 2(x) in relation to set-off and termination of a contract, the Working Group agreed to retain the definition. Additionally, it was confirmed that set-off was covered by that definition.

93. In response to a query whether “or other individual actions” would prevent the definition from applying to class actions, it was clarified that it would not and that that understanding could possibly be clarified in the guide to enactment. Recalling that the definition was taken from other UNCITRAL insolvency texts, the Working Group agreed to keep it unchanged.

94. In response to a view that the definition of “foreign proceeding” might need to be reconsidered for the purpose of the model law, the Working Group agreed to retain it as drafted. It requested the secretariat to ensure that the term was used throughout the model law and the guide in the appropriate context, and another term would be introduced when reference needed to be made to “legal proceedings” other than those covered by the definition of “foreign proceeding”.

L. Scope of application (article 1)

95. A proposal was made to include the following sentence in article 1(2) or in the guide to enactment: “The law of any State specified by this Law means the rules of law in force in that State other than its rules on private international law[, unless provided otherwise in this law].”

96. It was recalled that paragraph 35 of the draft guide to enactment addressed that point. The secretariat was requested to reflect it appropriately in the commentary to article 1.

M. *Lex fori concursus* (article 6)

97. It was suggested that item (t) should be amended to make it clear that it encompassed both procedural aspects and substantive causes of action. In response, it was observed that the definition of related actions in draft article 2(u) and paragraphs 105–106 of the draft guide to enactment already addressed that point. In preparation for the next session, it was suggested that the issue might be further discussed informally between interested delegations.

N. Next steps

98. The Working Group completed its consideration of [A/CN.9/WG.V/WP.207](#). The Working Group noted that substantial progress had been achieved at the current session, including a deeper understanding of several complex issues. However, it was considered that at least one additional session would be required to complete the work, particularly in light of important changes introduced during the session. It was emphasized that those changes should be fully considered at the Working Group level and could not be deferred to the Commission. The Working Group considered that the efficient use of the Commission’s time and resources would be best served by completing such technical discussions within the Working Group.

99. It was noted that it would be impracticable to require Working Group experts to participate in the Commission session for two days at short notice, particularly given that the allocated time would be insufficient for detailed consideration of all

outstanding issues. The possibility of shortening the Commission session was also noted.

100. It was further noted that, ideally, the model law and the guide to enactment should be finalized together, given their interrelated nature. The Working Group expressed its intention to complete the project within a short and reasonable time frame.

V. Other business

101. The Working Group took note of the revised dates for its sixty-ninth session (7–11 December 2026), subject to confirmation by the Commission at its fifty-ninth session in 2026, and of the 20 per cent reduction of available meeting time at that session. The Working Group agreed to release Wednesday for informal consultations on any outstanding issues related to the applicable law project and any other matters arising during the session (see paras. 106–107 below).

102. A suggestion to adopt Working Group reports through a written (“silence”) procedure did not receive support. While it was acknowledged that such a measure could allow additional time for substantive deliberations during the session, it was considered preferable to review and adopt the report in session to enable direct discussion and timely resolution of issues.

103. The Working Group was informed of the status of updates to the 2009 UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation. It noted that, subject to available resources, the Practice Guide might be expanded to cover additional forms of relief relevant to cross-border insolvency cooperation, including those considered in the applicable law project.

104. The Working Group also considered a proposal to update the 2004 UNCITRAL Legislative Guide on Insolvency Law. It was noted that insolvency law and practice had evolved significantly since 2004, including developments in restructuring frameworks, enforcement practices, directors’ duties and digitalization. It was also considered necessary to align the Legislative Guide with subsequently adopted UNCITRAL instruments and ongoing projects, including in the area of secured transactions.

105. Broad support was expressed for exploring updates to the Legislative Guide, while maintaining its underlying principles and focusing on areas where changes were necessary. The project was considered complementary to the update of the Guide to Enactment and Interpretation of the MLCBI ([A/CN.9/1256](#)). At the same time, the need to complete the applicable law project before undertaking any new work was emphasized.

106. Some delegations also emphasized the need to clearly delineate the scope and approach to any update of the Legislative Guide, taking into account the work of other international organizations and the continuing relevance of existing guidance. They suggested further informal consultations on the proposal during the day released at the sixty-ninth session (see para. 101 above). Other delegations suggested holding a colloquium with the participation of external experts.

107. After deliberations, it was agreed that the informal consultations at the sixty-ninth session could serve as a preparatory step towards a colloquium that might be held in the first half of 2027. It was understood that the Commission could consider the report of the colloquium at its sixtieth session, in 2027. The Working Group requested the Commission to consider, at its fifty-ninth session in 2026, the possibility of the secretariat organizing such a colloquium.