

## CONCEPT NOTE

### UNCITRAL LAC DAY 2022

**“An enabling legal environment for micro and small enterprises (MSEs) such as simplified incorporation, business registration, access to credit, insolvency law including in the context of crises (e.g. Covid-19)”**

#### **2022 Promotional teaser (to be included in UNCITRAL webpage)**

Micro and small enterprises (MSEs), together with medium-sized enterprises, are the backbone of many economies worldwide and are highly varied in nature and size. However, they broadly shared similar characteristics, such as: i) their relatively small size; ii) the disproportionate impact on them of burdensome regulatory hurdles (including complex incorporation rules, lengthy procedures for business registration, lack of faster, simpler, accessible and affordable insolvency procedure); iii) a common reliance on family and friends for loans or risk-sharing; iii) frequent inability to partition assets, so business failure often means that personal assets are also lost; iv) vulnerability to financial distress; and v) difficulty in transferring or selling a business and in profiting from both tangible and intangible assets (such as client lists or relationships with customers). Because of these similar characteristics, micro and small enterprises in particular face legal obstacles through their life cycle.

As discussed in UNCITRAL’s 55<sup>th</sup> annual session, in July 2022, the impact of the pandemic on international commerce remains significant and that UNCITRAL instruments can support States in developing effective policy and legislative responses to unforeseen global crises, in minimizing disruption to trade, business and investment and in promoting recovery efforts thereafter. They can also help contractual parties to develop operational responses.

Academic activities during 2022 LAC DAY series contribute and support discussion on how UNCITRAL instruments – as included in the proposed theme for this edition - could be useful to allow MSMEs to be prepared in case of a crisis such as Covid-19. The 2022 theme will also explore the macroeconomic environment, such as reducing trade disruption, facilitating cross-border commerce and international cooperation and coordination.

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#### **Introduction**

1. As its 54<sup>th</sup> Session in July 2021, the Commission welcomed the successes of the annual UNCITRAL Day<sup>1</sup> The UNCITRAL Day comprises a series of academic events that UNCITRAL secretariat co-hosts with institutions of higher learning during the last trimester of every year. The inaugural event in 2020 brought together 34 universities and institutions from 16 jurisdictions across the region and co-hosted 30 online academic events about UNCITRAL legislative work on transparency in treaty-based Investor-State Arbitration. The second edition in 2021 gathered 27 universities and institutions from 20 jurisdictions and co-hosted 30 online academic events about the new texts on international mediation and arbitration.

2. In 2022, the UNCITRAL Days will be held between September and December in three regions. In Asia-Pacific, the events will focus on RCAP’s 10th anniversary, and the next 10 years of international trade and legal harmonization in the Asia Pacific, in Latin America and the Caribbean the focus will be on micro, small- and medium-sized enterprises (MSMEs), including insolvency law for micro and small enterprises (MSE),<sup>2</sup> and in Africa, the focus will be on the legal infrastructure necessary to implement

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<sup>1</sup> *Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 17 (A/76/17)*, paras. 289-315

<sup>2</sup> Further information is available in the second part of this concept note

in the African Continental Free Trade Area Agreement's international trade law commitments, including transparency in ISDS and the digitization of the economy;

3. This concept note has two parts. The first part contains background information on the UNCITRAL Day. The second part highlights issues for consideration for the 2022 UNCITRAL LAC DAY. In annex, UNCITRAL instruments and additional resources are listed.

## **Part I: Background information**

### History

4. In 2014, the UNCITRAL Day was first launched as the UNCITRAL Asia Pacific Day by the Regional Centre for Asia and the Pacific (UNCITRAL RCAP), to celebrate the establishment of UNCITRAL by the United Nations General Assembly, in Resolution 2205 (XXI) of 17 December 1966.

5. Since 2014, the UNCITRAL Day has become an annual flagship event for UNCITRAL RCAP and the UNCITRAL secretariat as a whole. Since 2020, two editions of the UNCITRAL Latin American and Caribbean Day (LAC Day) had been organized, following the UNCITRAL Asia Pacific Days approach. Reports of the 2020 and 2021 UNCITRAL Days activities are available on the UNCITRAL website.<sup>3</sup>

### Participation and format

6. As UNCITRAL Day' activities are academic in nature, they are held without admission charges and, within the parameters of partner institutions, are open to a broad range of participants, including law students, researchers and other members of the academic faculty, and other stakeholders, such as public and private experts and practitioners. In previous editions of UNCITRAL Day, external panellists have comprised academics, practitioners, high-level government officials, UNCITRAL delegates and bureau members (such as the Chair of UNCITRAL), and members of the judiciary. Many panellists have published materials on UNCITRAL instruments and/or participated in UNCITRAL activities such as Working Groups, colloquia, etc.

7. The UNCITRAL Day events have no specific format and vary according to the capacity and preferences of the partner institutions. They have ranged from informal meetings and brown bag-lunches to multi-day international academic conferences, including seminars, workshops, round tables, panels and/or lectures and online events.

### Institutional support from UNCITRAL secretariat

8. The UNCITRAL secretariat supports the development of a programme and format through dialogue with the partnering organisation. Once there is agreement on these matters, the Secretariat provides additional institutional support for UNCITRAL Day' events, such as its logo for inclusion into the publicity materials issued by the partnering institutions, and publicity via UNCITRAL's webpages and social media platforms. The partnering organization is responsible for hosting and organizing the event, including reaching out to speakers and participants.

9. UNCITRAL secretariat staff participation in the activities themselves is most commonly delivered using video or other remote participation (e.g., as a moderator, panellist, or speaker) and/or pre-recorded video messages, reflecting budgetary and manpower constraints in the Secretariat.

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<sup>3</sup> Available at <https://uncitral.un.org/en/gateway/meetings/events>

10. The UNCITRAL secretariat is unable to offer financial support to partnering organisations.

### Themes

11. The UNCITRAL Days activities comprise academic gatherings organized with universities and institutions of higher learning in the region, which discuss and consider issues arising in UNCITRAL's areas of work, i.e. the progressive harmonization and modernization of international commercial law through the issue, use and implementation of legal texts.<sup>4</sup> The events seek to raise awareness of UNCITRAL instruments and the importance of legal harmonization amongst the next generations of legal thinkers and potential policymakers.

12. Each edition of the UNCITRAL Days' activities has an overarching theme, which reflects regional topic(s) of interest, and which is agreed between the academic institutions as partners in the region and the UNCITRAL secretariat. The events seek to reach a diverse audience across the region.

### Benefits of UNCITRAL Days

13. The benefits of these events to national academic institutions are multiple. For example, universities and higher learning institutions reinforce their strengths in teaching and learning in the field of international commercial law and, by being part of the United Nations' latest discussions, enhance their relevance to internationally minded students and others in their academic faculty. They can also become a hub for world-class experts on UNCITRAL topics and international commercial law more generally.

14. The benefits to participating jurisdictions are similarly significant. The UNCITRAL process is grounded in the exchange of experience and views in a multilingual and inclusive context, which itself relies on in-depth understanding of relevant issues in the national context. By allowing jurisdictions to strengthen their ability to participate effectively in that process, the activities also demonstrate their commitments to inclusive commercial law reform and, as appropriate, their capacity to shape the debate in UNCITRAL itself. The UNCITRAL Days also strengthen UNCITRAL's local relationships, allowing for future technical assistance and capacity-building activities in the region concerned.

## **Part II: Issues for consideration for the 2022 UNCITRAL LAC DAY**

### Participation and Format

15. Given the success of the 2020 and 2021 UNCITRAL LAC Day editions,<sup>5</sup> it is assumed that the 2022 UNCITRAL LAC Day would continue to be organized online to allow universities and representatives from other countries in the region and beyond to participate, where in person participation is not possible. To enhance regional inclusiveness and promote multilingualism, the UNCITRAL secretariat encourages events to be held in the language(s)<sup>6</sup> that would be most appropriate for the targeted audience.

16. The timeframe for LAC Day events is flexible, and institutions are welcome to organize LAC Day events between **mid-September through mid-December 2022**.

### Institutional support from the UNCITRAL secretariat

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<sup>4</sup> For further information about UNCITRAL, its mandate and work, see <https://uncitral.un.org/>.

<sup>5</sup> Both editions were organized in a virtual format.

<sup>6</sup> Relevant official UN languages include English and Spanish. The 2020 and 2021 UNCITRAL LAC Day editions comprised events in Portuguese (Brazil).

17. Subject to the agreement on the draft programme and format, the UNCITRAL secretariat will support activities in the UNCITRAL Day series through sharing the events in UNCITRAL social media platforms, permitting the use of the UNCITRAL logo in accordance with UN requirements, participating in panels and delivering contributions in English and/or Spanish (subject to time availability), and compiling highlights of events into a LAC Day final report. The final report is published in UNCITRAL Website and in the Commission website as non-official document.

18. The use of UNCITRAL's logo by institutions in promoting the LAC Day events shall strictly comply with United Nations guidelines. Drafts of materials related to the LAC Day events should also be provided in advance for UNCITRAL secretariat review, including draft flyers and programmes, or any other material.

19. Views expressed during presentations by non-UNCITRAL personnel at LAC Day events are not endorsed by UNCITRAL, thus UNCITRAL's logo may not be used on a publication, which includes the papers presented at such events in the absence of UNCITRAL secretariat's approval. Where possible, UNCITRAL secretariat will be happy to promote the LAC Day events on UNCITRAL's social media, including LinkedIn and Facebook. Event recordings would require prior consent from and participants

#### Theme (s)

20. The UNCITRAL DAY series events focus on areas of commercial law addressed in UNCITRAL texts. In recognition of the importance role that micro and small enterprises (MSEs) play in many economies worldwide; and in the LAC region, and in light of the Covid impact on MSEs, the proposed theme for the LAC Day 2022 is **“An enabling legal environment for micro and small enterprises (MSEs) such as simplified incorporation, business registration, access to credit, insolvency, including in the context of crises (e.g. Covid-19)”**.

21. , Micro and small enterprises, together with medium-sized enterprises are the backbone of many economies worldwide, account for most of the industrial fabric and create the majority of jobs in LAC.<sup>7</sup> They are highly varied in nature and size, however they broadly shared similar characteristics, such as: i) their relatively small size; ii) the disproportionate impact on them of burdensome regulatory hurdles iii) a common reliance on family and friends for loans or risk-sharing; iii) frequent inability to partition assets, so business failure often means that personal assets are also lost; iv) vulnerability to financial distress; and v) difficulty in transferring or selling a business and in profiting from both tangible and intangible assets.<sup>8</sup> Because of those shared features, micro and small enterprises face legal obstacles through their life cycle ranging from complex norms concerning incorporation to lengthy procedures for business registration, difficulties in access to credit and lack of faster, simpler, accessible and affordable insolvency procedures.<sup>9</sup>

22. During the 55<sup>th</sup> session the Commission it was said that the impact of the pandemic on international trade law was still significant and that UNCITRAL instruments could support States in developing effective policy and legislative responses as well as contractual parties in developing contractual responses in the event of unforeseen global crises, to minimize disruption to trade, business and investment as well as in the recovery efforts thereafter. LAC DAY activities will contribute to the discussion and analysis on which UNCITRAL texts – included in the proposed theme for 2022 LAC DAY - could be useful to assist MSMEs in a crisis (e.g. Covid-19)

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<sup>7</sup> See studies undertaken by UN Economic Commission for Latin America and the Caribbean (ECLAC) at <https://www.cepal.org/en/subtopics/micro-small-and-medium-sized-enterprises-msmes>

<sup>8</sup> See para 12 in A/CN.9/941 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/V18/031/29/PDF/V1803129.pdf?OpenElement>

<sup>9</sup>The Commission has been working since 2013 on reducing the legal obstacles encountered by MSMEs, through their life cycle. See *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17 (A/68/17)*, para. 321

23. The UNCITRAL DAY theme proposal provides a unique opportunity for the future leaders of the legal profession to discuss how existing UNCITRAL legal texts address these legal obstacles and support MSEs throughout their lifecycle. This theme has a special focus on

- a. On a limited liability organization,
  - i. the Legislative Guide on Limited Liability Enterprises;<sup>10</sup>
- b. On a streamlined and simplified registration procedures for business
  - i. the Legislative Guide on Key Principles of a Business Registry;<sup>11</sup>
- c. On facilitating access to credit
  - i. The UNCITRAL Model Law on Secured Transactions;<sup>12</sup> and
- d. On insolvency law for MSEs
  - i. UNCITRAL Legislative Guide on Insolvency Law. Part five: Insolvency law for micro-and small enterprises<sup>13</sup>.

24. The 2022 LAC DAY theme will contribute to discussions and analysis of how UNCITRAL instruments – as included in the proposed theme for this edition - could be useful to allow MSEs to be prepared in case of a crisis such as Covid-19. The theme will also explore the macroeconomic environment, such as reducing trade disruption, facilitating cross-border commerce and international cooperation and coordination.

25. Partnering institutions are welcome to develop their own themes in consultation with UNCITRAL secretariat.

26. In addition, the UNCITRAL secretariat continues to encourage partnering institutions to introduce UNCITRAL’s first online training course - “Introduction to the United Nations Commission on International Trade Law” - as part of the LAC Day activity. Developed in collaboration with the International Training Centre of the International Labour Organization (“ITCILO”), this interactive and self-paced course introduces users to legal harmonization and promoting international trade, UNCITRAL’s methods of work, and how UNCITRAL texts contribute to the achievement of the sustainable development goals. The online course is free of charge and an electronic certificate is downloadable from the platform for users who complete all three modules. The course is available at: <https://uncitral.un.org> or directly on ITCILO’s website at <https://ecampus.itcilo.org/course/view.php?id=1637.10>

#### Benefits and additional information

27. A potential benefit of UNCITRAL LAC DAY for the region would be to enhance participation of LAC countries in UNCITRAL’s work, ensuring that this work takes account of regional interests, and possibilities for provision of technical assistance and capacity-building tools to enhance the effective understanding and use of UNCITRAL texts throughout the region.

#### Reach out to UNCITRAL secretariat

25. UNCITRAL secretariat warmly welcomes expressions of interest from institutions interested in co-organizing an activity under the LAC Day 2022 and looks forward to exploring collaboration opportunities.

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<sup>10</sup>See [https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/uncitral\\_legislative\\_recommendations\\_on\\_limited\\_liability\\_enterprises.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/uncitral_legislative_recommendations_on_limited_liability_enterprises.pdf)

<sup>11</sup> See [https://uncitral.un.org/en/texts/msmes/legislativeguides/business\\_registry](https://uncitral.un.org/en/texts/msmes/legislativeguides/business_registry)

<sup>12</sup> See [https://uncitral.un.org/en/texts/securityinterests/modellaw/secured\\_transactions](https://uncitral.un.org/en/texts/securityinterests/modellaw/secured_transactions)

<sup>13</sup> See <https://uncitral.un.org/en/lrimse>

## **Annex**

### *Reference materials*

#### **UNCITRAL Legislative Recommendations on Limited Liability Enterprises (2021)**

[https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/uncitral\\_legislative\\_recommendations\\_on\\_limited\\_liability\\_enterprises.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/uncitral_legislative_recommendations_on_limited_liability_enterprises.pdf)

#### **UNCITRAL Legislative Guide on Key Principles of a Business Registry (2019)**

[https://uncitral.un.org/en/texts/msmes/legislativeguides/business\\_registry](https://uncitral.un.org/en/texts/msmes/legislativeguides/business_registry)

UNCITRAL Model Law on Secured Transactions (2016); UNCITRAL Model Law on Secured Transactions: Guide to Enactment (2017) and UNCITRAL Practice Guide to the Model Law on Secured Transactions (2019)

<https://uncitral.un.org/en/texts/securityinterests>

#### **UNCITRAL Legislative Guide on Insolvency. Part V: Insolvency law for micro and small enterprises (2021)**

<https://uncitral.un.org/en/lrimse>

#### **The impact of COVID-19 on international trade law**

Official Document, Seventy-fifth Session of the General Assembly, Supplement No.17 [A/75/17](#), part two), para. 89

Commission Document, [A/CN.9/1039/Rev.1](#)

Official Document, Seventy-sixth Session of the General Assembly, Supplement No.17 [A/76/17](#) para 241

Commission Working Documents: [A/CN.9/1080](#) and [A/CN.9/1081](#)

Official Document, Seventy-seven Session of the General Assembly, Supplement No.17 [A/77/17](#)

Commission Working Document [A/CN.9/1119](#)

### *Additional resources*

#### **Working Group I: Micro, Small and Medium sized enterprises**

[https://uncitral.un.org/en/working\\_groups/1/msmes](https://uncitral.un.org/en/working_groups/1/msmes)

#### **Working Group V: Insolvency**

[https://uncitral.un.org/en/working\\_groups/5/insolvency\\_law](https://uncitral.un.org/en/working_groups/5/insolvency_law)

#### **A guide to UNCITRAL: Basic facts about the United Nations Commission on International Law**

<https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/12-57491-guide-to-uncitral-e.pdf>

#### **Webpage on Crisis impact on international law: Covid 19 and beyond**

<https://uncitral.un.org/en/content/crisis-impact-international-trade-law-covid-19-and-beyond>