



**INSOL International**



**The World Bank**

***FIRST ASIA PACIFIC REGION  
JUDICIAL ROUND TABLE  
ON INSOLVENCY***

*Kowloon Shangri-La Hotel, Hong Kong  
Monday 24<sup>th</sup> March 2014*



INSOL/UNCITRAL/World Bank Asia Pacific Judicial Round Table on Insolvency  
Monday 24<sup>th</sup> March 2014  
Delegate List

<b>Name</b>	<b>Organisation</b>	<b>Country</b>
Justice Edward Bannister	Commercial Court	British Virgin Islands
Justice Vinodh Coomaraswamy	Supreme Court of Singapore	Singapore
Neil Cooper	INSOL International	
Justice Angus Foster	Grand Court of the Cayman Islands	Cayman Islands
Judge Fu Wang	Shanghai No. 2 Intermediate People's Court	P.R. China
Fabian Gleeson	Court of Appeal, Supreme Court of NSW	Australia
Ha Tuan Hiep	Interpreter	Vietnam
Justice Jonathan Harris	High Court of Hong Kong	Hong Kong, PRC
Hoang Ngoc Thanh	Chief Judge of Economic Court, People's Court of Hanoi Capital	Vietnam
Kanok Jullamon	Bankruptcy Division, The Supreme Court of Thailand	Thailand
Chief Justice Ian Kawaley	Supreme Court of Bermuda	Bermuda
Auen Kunkeaw	Civil Court	Thailand
Jejeong Lee	Judicial Research & Training Institute, Supreme Court	Republic of Korea
Justice Jayant Nath	Delhi High Court	India
Judge Giusung Oh	Goyang District Court of South Korea	South Korea
Justice Sarmad Osmany	Supreme Court of Pakistan	Pakistan
Sisira Ratnayake	High Court Judge & Secretary Judicial Service Commission	Sri Lanka
Joao Ribeiro	UNCITRAL	Republic of Korea
Justice Rajiv Shakhder	Delhi High Court	India
Justice Sikri	Supreme Court of India	India
Judge Bingkun Ye	Xiamen Intermediate People's Court, Fujian Province	P.R. China

**Asia Pacific Region Judicial Round Table on Insolvency,  
Kowloon Shangri-La Hotel, Hong Kong**

**Monday 24<sup>th</sup> March 2014**

Since 1995, INSOL International and UNCITRAL have jointly sponsored a series of unique and important international Judicial Colloquiums. In 2007, The World Bank joined INSOL and UNCITRAL to present the Seventh Judicial Colloquium and has continued to collaborate jointly on all subsequent Colloquia. These Colloquiums have brought together judges, regulators and judicial officials from around the world to consider a wide range of insolvency-related issues. These issues have included judicial co-operation in cases of cross-border insolvency, access to courts by insolvency practitioners and recognition of insolvency administrations by foreign courts. The Tenth Joint Multinational Judicial Colloquium on Insolvency was held in The Hague, 18-19<sup>th</sup> May 2013.

To complement these biennial Colloquia, INSOL, UNCITRAL and the World Bank collaborate to organise regional round tables to encourage discussion at a regional level and enable a greater number of judges and justice officials to participate. We are delighted to have participants from many of the judiciaries in the region as well as representation from the regional courts and judges from other jurisdictions with a particular interest in the region.

With the growth of cross-border trade, the number of insolvency cases where there are assets in more than one jurisdiction, or where there are cross-border groups, is continually increasing. This growth has implications for the demands placed on courts, not only with respect to numbers of cases, but also to their complexity and the need for an understanding of cross-border issues.

This round table is for judges, officials of justice ministries and regulators who hear insolvency or restructuring cases or who are involved in the development of insolvency laws and systems.

The round table will assist participants to understand the issues that arise in the handling of such cases. It will compare the judicial and juridical practice in dealing with practical and theoretical issues arising in cross-border insolvency cases in the different jurisdictions in the region with input from other jurisdictions involved in cases in that region such as the Caribbean offshore.

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## Judicial Round Table Programme

Monday 24<sup>th</sup> March 2014

9.00am-4.45pm

8.30 a.m. – 9.00 a.m. Delegate Registration

### Technical Programme

9.00 a.m. –9.15 a.m.

#### **Welcome & Opening Remarks**

Justice Jonathan Harris, High Court of Hong Kong  
Neil Cooper, Past-President, INSOL International

9.15 a.m. – 10.15 a.m.

#### **Judicial aspects of cross-border insolvency**

The issues and the resources that are available to judges (including the UNCITRAL Model Law on Cross-Border Insolvency and associated texts) drawing on the experience of relevant cases with cross-border aspects.

**Moderator: Chief Justice Ian Kawaley, Supreme Court of Bermuda**

10.15 a.m. – 10.35 a.m.

Networking Coffee Break

10.35 a.m. – 11.35 a.m.

#### **Bases of cross-border co-operation**

The use of cross-border protocols (UNCITRAL Practice Guide) and other methods of judicial co-operation in a region with multiplicity of legal systems, drawing on the experience of relevant multi-national cases.

**Moderator: Justice Edward Bannister, Commercial Court, British Virgin Islands**

11.35 a.m. – 12.05 p.m.

#### **Developments in international insolvency best practice for courts**

Recent revisions to the UNCITRAL Guide to Enactment and Interpretation of the Model Law on Cross-Border Insolvency to address, inter alia, issues relating to center of main interests

**Moderators: Neil Cooper, Past-President, INSOL International**

12.05 p.m. – 1.05 p.m.

Lunch

1.05 p.m. – 2.00 p.m.

#### **Comparison of approaches to cross-border insolvency issues within the region – country reports by sub-region**

Round table contributions by delegates and comparisons of the assistance available in courts of the region focusing on:-

Australasia – Pacific Region

PRC (including Hong Kong), and South Korea

**Moderator: Justice Jonathan Harris, High Court of Hong Kong**

2.00 p.m. – 2.20 p.m.

Coffee Break

- 2.20 p.m. – 3.15 p.m.      **Continuation of the above with contributions focusing on:**  
South Asia region  
South East Asia  
**Moderator: Justice Sikri, Supreme Court of India**
- 3.15 p.m. – 3.25 p.m.      Wrap up and close
- Delegates are invited to join the main conference breakout session C3  
Location: Grand Ballroom, Kowloon Shangri-La
- 3.45 p.m. – 4.45 p.m.      Model Law on cross-border insolvency in Asia – is there any hope?

The Technical Programme may be subject to change.

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Participants should note

- *The programme is subject to alteration depending on the ability of judges to attend.*
- *Chatham House Rules apply to all discussions at the Round Table.*
- *Only registered delegates and translators are permitted in the meeting rooms.*
- *Only registered delegates and accompanying persons who are registered with the organisers will be catered for at the reception and dinner. Lunches are only for delegates.*

## MATERIALS ON CROSS-BORDER INSOLVENCY

### UNCITRAL texts and materials

The following texts can be found on the UNCITRAL website (in the 6 United Nations languages) at:  
[http://www.uncitral.org/uncitral/uncitral\\_texts/insolvency.html](http://www.uncitral.org/uncitral/uncitral_texts/insolvency.html)

- *UNCITRAL Model Law on Cross-Border Insolvency (1997)*

*Guide to Enactment and Interpretation of the UNCITRAL Model Law (2013)* (published version should become available in November 2013)

- *UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation (2009)*. This text provides a general introduction to cross-border insolvency cooperation and discusses a number of cross-border insolvency agreements (protocols).

- *UNCITRAL Model Law on Cross-Border Insolvency: the Judicial Perspective (2011)* (the second updated version should be available in December 2013/January 2014). This text includes references and discussion of a number of cases, as well as summaries of the facts of those cases.

Abstracts of case law interpreting the UNCITRAL Model Law can be found at:  
[http://www.uncitral.org/uncitral/en/case\\_law/abstracts.html](http://www.uncitral.org/uncitral/en/case_law/abstracts.html)

The fastest way to find cases is to search under the Model Law or to look specifically at  
A/CN.9/Series.C/Abstracts 72, 73, 76, 92, 101, 125, 126, and 133 (for cases published up to August 2013).

### Full text judgements

The full original language version of a number of these judgements is available at:  
<https://www.insol.org/page/297/uncitral-model-law>.

Where available, an English translation of judgments given in other languages is also posted. The INSOL page links to the UNCITRAL website.

The following evaluations are available on the INSOL website at [www.insol.org](http://www.insol.org):

First Judicial Colloquium - Toronto, March 1995

Second Judicial Colloquium - New Orleans, March 1997

Third Judicial Colloquium - Munich, October 1999

Fourth Judicial Colloquium - London, July 2001

Fifth Judicial Colloquium - Las Vegas, September 2003

Sixth Judicial Colloquium - Sydney, March 2005

Seventh Judicial Colloquium - Cape Town 2007

Eighth Judicial Colloquium - Vancouver 2009

Ninth Judicial Colloquium - Singapore 2011

Tenth Judicial Colloquium - The Hague 2013

First Caribbean Region Judicial Colloquium - Cayman Islands 2013

Further information including Judicial Judgments and Judicial Guidance can also be found on the INSOL web site.

The following Reports of the World Bank Global Judges Forum are available on the World Bank Global Insolvency Law Database at [www.worldbank.org/gild](http://www.worldbank.org/gild)

Global Judges Forum 2003, Malibu, USA, May 2003

Global Judges Forum 2004, Rio de Janeiro, Brazil, June 2004

Global Judges Forum 2005, Washington, USA, November 2004

Global Judges Forum 2006, Buenos Aires, Argentina, June 2006

## United Nations Commission on International Trade Law

### Working Group V (Insolvency Law): update on recent developments and future work “Centre of main interests” and the directors’ responsibilities in the twilight zone<sup>1</sup>

On 18 July 2013, UNCITRAL approved several texts on insolvency law. The first, the Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross-Border Insolvency (the Model Law), is a revision of the 1997 Guide to Enactment. The purpose of the revision is to provide more information and guidance on the interpretation and application of selected aspects of the Model Law, particularly the concept of the debtor’s “centre of main interests” or, more commonly, “COMI”, as well as various elements of the definition of “foreign proceeding” under article 2 of the Model Law. These revisions do not in any way affect the text of the Model Law as drafted. The second text is a new part (four) of the 2004 UNCITRAL Legislative Guide on Insolvency Law that addresses directors’ obligations in the period approaching insolvency. These two texts were developed between 2010 and 2013 by UNCITRAL’s Working Group V (Insolvency Law) (WG V). The Commission also noted a new edition of the UNCITRAL Model Law on Cross-Border Insolvency: the Judicial Perspective, which is to be updated on a regular basis to ensure its current relevance. These updates include cases decided between July 2011 and April 2013, as well as the new text from the Guide to Enactment and Interpretation of the Model Law.

#### 1. Revision of the Guide to Enactment of the Model Law on Cross-Border Insolvency

Revision of the Guide to Enactment was based upon a 2010 proposal by the United States to address the lack of predictability in the interpretation and application of COMI by providing specific guidance on various aspects of that concept as used in the Model Law. The revisions adopted include:

(a) A shorter, more focused introduction to the Model Law and its key concepts;

(b) Clarification of the use of the term “insolvency” in the Model Law; and

(c) Provision of more information on (i) the elements of what constitutes a “foreign proceeding” for the purposes of article 2, (ii) the characteristics of “main” and “non-main” proceedings, and (iii) the articles dealing with recognition of a foreign proceeding, in particular article 16 and the factors that are relevant to rebuttal of the presumption that the debtor’s centre of main interests is its place of registration, as well as the time by reference to which COMI is to be considered in deciding on recognition under article 17.

#### *Use of the word “insolvency” in the Model Law*

The word “insolvency” is used in the Model Law to refer to various types of collective proceedings commenced with respect to debtors that are in severe financial distress or insolvent. The revisions confirm that a judicial or administrative proceeding to wind up a solvent entity where the goal is simply to dissolve the legal entity is not regarded as likely to fall within the definition of a foreign proceeding in article 2(a). Where a proceeding serves several purposes, including the winding up of a solvent entity, it would fall under article 2(a) only if the debtor was insolvent or in severe financial distress and the other requirements of the definition were satisfied.<sup>2</sup>

#### *Article 2(a)<sup>3</sup> - collective proceeding*

A key consideration in evaluating whether a particular proceeding is a collective proceeding (and thus a proceeding subject to the regime provided by the Model Law) within the meaning of article

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<sup>1</sup> Prepared by Jenny Clift, Senior Legal Officer, ITLD/OLA (UNCITRAL Secretariat). The views expressed in this article are those of the author and do not necessarily reflect those of the United Nations.

<sup>2</sup> Guide to Enactment and Interpretation, para. 48.

<sup>3</sup> Article 2(a) defines a foreign proceeding as meaning “a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation”.

2(a) is whether substantially all of the assets and liabilities of the debtor are to be dealt with in that proceeding, subject to local priorities and statutory exceptions and local exclusions relating to the rights of secured creditors. A proceeding should not be considered to fail the test of collectivity purely because a class of creditors' rights is unaffected by it. Examples of the manner in which a collective proceeding might deal with creditors include, providing adversely affected creditors with a right to submit claims, to participate in the proceedings and to receive notice of the proceeding.<sup>4</sup>

It is not intended that the Model Law be used merely as a collection device for a particular creditor or group of creditors who might have initiated a collection proceeding in another State. Nor is it intended that it serve as a tool for gathering up assets in a winding up or conservation proceeding that does not also include provision for addressing the claims of creditors. The Model Law may be an appropriate tool for certain kinds of actions that serve a regulatory purpose, such as receiverships for such publicly regulated entities as insurance companies or brokerage firms, provided the proceeding is collective as that term is used in the Model Law. If a proceeding is collective it must also satisfy the other elements of the definition, including that it be for the purposes of liquidation or reorganization.

#### *Article 2 (a) - control or supervision by a foreign court*

The Model Law specifies neither the level of control or supervision required to satisfy this aspect of the definition nor the time at which that control or supervision should arise. Although it is intended that the control or supervision required under subparagraph (a) should be formal in nature, it may be potential rather than actual. A proceeding in which the debtor retains some measure of control over its assets, albeit under court supervision, such as a debtor-in-possession, would satisfy this requirement. Control or supervision may be exercised not only directly by the court but also by an insolvency representative where, for example, the insolvency representative is subject to control or supervision by the court. Mere supervision of an insolvency representative by a licensing authority would not be sufficient.

#### *Foreign main and non-main proceedings*

The Guide to Enactment and Interpretation now includes explanatory material taken from the Virgos Schmit Report,<sup>5</sup> which is generally regarded as an aid to interpretation of the concepts of COMI and establishment as those terms are used in the EC insolvency regulation.

#### *Rebutting the presumption in article 16(3)*

Article 16(3) provides a rebuttable presumption that the debtor's registered office is presumed to be its centre of main interests.

The Guide notes that where the debtor's centre of main interests is at the same location as its place of registration, no issue concerning rebuttal of the presumption is likely to arise. It is likely that the majority of applications for recognition made under the Model Law fall into this category.

However, when a foreign representative seeks recognition of a foreign proceeding as a main proceeding and there appears to be a separation between the place of the debtor's registered office and its alleged centre of main interests, the party alleging the centre of main interests is not at the place of registration will be required to satisfy the court as to the location of the centre of main interests. In those circumstances, the centre of main interests will be identified by other factors which indicate to those who deal with the debtor (especially creditors) where the centre of main interests is. The essential attributes of the debtor's centre of main interests correspond to the attributes that will enable those who deal with the debtor (especially creditors) to ascertain the place where an insolvency proceeding concerning the debtor is likely to commence. The court of the enacting State will be required to consider independently where the debtor's centre of main interests is located.

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<sup>4</sup> Ibid, para. 70.

<sup>5</sup> M. Virgos and E. Schmit, Report on the Convention on Insolvency Proceedings, Brussels 3 May 1996. The report was published in July 1996 and is available from <http://aei.pitt.edu/952> (last visited 1 August 2013).

It was agreed that two principal factors will tend to indicate whether the location in which the foreign proceeding commenced is (or was at the time the proceeding commenced) the debtor's centre of main interests. The factors are the location:

- (a) Where the central administration of the debtor takes place, and
- (b) Which is readily ascertainable by creditors.

When these principal factors do not yield a ready answer, the court may consider any number of additional factors, some of which are listed in the Guide.<sup>6</sup> A court might need to give greater or less weight to a given factor, depending on the individual circumstances of the particular case. It is noted that in all cases the endeavour "is an holistic one, designed to determine that the location of the proceeding in fact corresponds to the actual location of the debtor's COMI as readily ascertainable by creditors".<sup>7</sup>

#### *Date at which to determine centre of main interests and establishment*

As to the date relevant to the determination of the debtor's COMI (or establishment), courts have adopted one of two alternatives - the date of commencement of the foreign proceeding seeking recognition or the date of the application for recognition. Having considered the case in support of each of those dates, the Commission adopted the solution proposed by WG V that the question be considered by reference to the date of commencement of the foreign insolvency proceeding, not the date of the application for recognition of that proceeding.<sup>8</sup>

The Guide notes that where the business activity of the debtor ceases after the commencement of the foreign proceeding, all that may exist at the time of the application for recognition to indicate the debtor's centre of main interests is that foreign proceeding and the activity of the foreign representative in administering the insolvency estate. In such a case, determination of the centre of the debtor's main interests by reference to the date of the commencement of those proceedings would produce a clear result. The same reasoning may also apply in the case of reorganization where, under some laws, it is not the debtor that continues to have a centre of main interests, but rather the reorganizing entity. In such a case, the requirement for a foreign proceeding that is taking place in accordance with article 17, subparagraph 2 (a) is clearly satisfied and the foreign proceeding should be entitled to recognition. Moreover, taking the date of commencement to determine centre of main interests provides a test that can be applied with certainty to all insolvency proceedings.

#### *Movement of COMI*

The Guide acknowledges that a debtor's centre of main interests may move prior to commencement of insolvency proceedings, in some instances in close proximity to commencement and even between the time of the application for commencement and the actual commencement of those proceedings. Whenever there is evidence of such a move in close proximity to the commencement of the foreign proceeding, it may be desirable for the receiving court, in determining whether to recognize those proceedings, to consider the additional factors identified in the Guide more carefully and to take account of the debtor's circumstances more broadly. In particular, the test that the centre of main interests is readily ascertainable by third parties may be harder to meet if the move of the centre of main interests occurs in close proximity to the opening of proceedings.

## **2. Legislative Guide on Insolvency Law, part four**

The second text adopted by the Commission deals with the obligations that would apply to a director of a company when (a) insolvency was likely or unavoidable; and (b) the person owing the obligation knew, or ought reasonably to have known, that insolvency was likely or unavoidable. This new part four of the Legislative Guide, developed in response to proposals by the United Kingdom,

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<sup>6</sup> Ibid, para. 147.

<sup>7</sup> Ibid, para. 146.

<sup>8</sup> Ibid, paras. 157-160.

INSOL and the III, follows the format of that text, including commentary and a set of legislative recommendations.

Two obligations would apply: to have due regard to the interests of creditors and other stakeholders and to take reasonable steps to avoid insolvency or to minimize the extent of insolvency where it is unavoidable. A number of the steps that might be taken are listed in the recommendations and include: directors ensuring that they are fully informed about the affairs of the company; seeking professional advice where appropriate; and ensuring the assets of the company are protected. Liability for breach of such an obligation would be limited to the harm caused, with remedies including payment in full to the insolvency estate of any damages assessed.

The obligations would be owed by any person defined under national law as fulfilling the role of a director, such as a formally appointed director. The text relies upon the commentary identifying the types of functions that might lead to other persons being considered a director, for example, those exercising factual control, performing the functions or undertaking the responsibilities of a director.

### **3. Future work**

In December 2013, WG V held a three-day colloquium and two-day working session to consider how work on remaining elements of its current agenda might proceed and which of a number of new topics merited future work and in what order of priority.

#### *Cross-border treatment of enterprise groups in insolvency*

WG V agreed to develop provisions that would extend the UNCITRAL Model Law and part three of the UNCITRAL Legislative Guide by addressing a number of issues relating to the insolvency of enterprise groups, including: access to foreign courts and standing for foreign representatives and creditors of insolvency proceedings involving different enterprise group members; recognition of foreign proceedings and foreign representatives (as between different proceedings concerning different group members); recognition of one foreign proceeding as the coordinating proceeding or identification of the “parent” and/or “primary group members” of an enterprise group in order, for example, to facilitate development of a reorganization (or liquidation) plan and coordinate proceedings; joint appointment of insolvency representatives to insolvency proceedings concerning different group members; voluntary participation of group members in the insolvency proceedings of the parent group member; use of “synthetic secondary proceedings”; use of protocols to clearly define procedures and roles; joint/coordinated disclosure statements and plans of reorganization; and relief that may be provided to assist the conduct of the proceedings of several group members.

#### *Obligations of directors of enterprise group companies in the period approaching insolvency*

WG V acknowledges the importance of this topic, noting the difficult problems that are being encountered in practice and that were addressed, at least in the context of individual enterprises, in part four of the Legislative Guide (finalized in 2013). In the group context the problems are potentially more complex and the solutions more difficult to identify. WG V accepts that those solutions should not hinder business recovery and make it difficult for directors to continue working to facilitate that recovery. The application of part four of the Legislative Guide to enterprise groups is to be studied, together with any additional issues, such as conflicts of interest and governing law, which might need to be addressed.

#### *Insolvency of large and complex financial institutions*

WG V has been monitoring the work of international and regional organizations over the last few years, particularly where it touches upon its own work on enterprise groups and cross-border insolvency. In October 2013, the Financial Stability Board (FSB) established a legal experts group (LEG) to address certain gaps in the implementation of Key Attribute 7.5 and ensure that countries develop expedited processes to give effect to foreign resolution actions. Preliminary conclusions and recommendations are to be presented by the LEG in autumn 2014. Developments in the LEG and in other organizations, such as the EU, will continue to be monitored.

### *An international convention*

Throughout the preparatory work for the UNCITRAL Model Law, the drafters proceeded on the assumption that the final text would be a model law rather than a convention. One reason for this approach was the close relationship between insolvency law and national judicial and civil procedure laws, which varied greatly from State to State. A second reason was the desire to complete the work in 1997; there was a general recognition that negotiation of a treaty would require more work, was technically much more difficult than a model law and the resulting text would not only prove difficult to accept, requiring a more complicated adoption procedure, but would not provide any short term improvement in the cross-border insolvency situation. In adopting the Model Law, the Commission decided that it should evaluate the impact of, and its experience with, the Model Law before making a decision to draft a treaty.

The Union Internationale des Avocats (UIA) has proposed taking up the negotiation of a convention that would deal with access to courts for foreign insolvency representatives; recognition of foreign insolvency proceedings (with the effect of granting the foreign proceeding the rights of a national proceeding or triggering a secondary proceeding); and cooperation and communication between insolvency representatives and courts. While these issues are addressed in the Model Law, they apply only to the insolvency of individual debtors; the intention is that a convention would apply also to enterprise groups. A convention might also address competence for the commencement of insolvency proceedings, whether main or non-main, and applicable law.

There is support in WG V for the negotiation of a convention on the basis of a need for binding norms to facilitate execution of insolvency decisions, to coordinate many aspects of cross-border insolvencies, particularly in the group context, and to deal with concerns that the Model Law should apply only on a reciprocal basis. There are also, however, a number of reservations about the feasibility such a project, including whether there would be sufficient support from States, the competence of member States of regional economic integration organizations to participate in the negotiations, the length of time the project might take, and the benefits of a convention over the existing Model Law.

The discussion in WG V led, perhaps inevitably, to the question of why the Model Law had not been more widely adopted. Although it is hard to assess precisely why States have not enacted it, in the last decade or so many States have been focusing on reform of their domestic insolvency laws and asking them to consider cross-border insolvency law at the same time has been unrealistic. Moreover, in some parts of the world the impact of cross-border insolvency cases is only beginning to be observed and the need to adopt an appropriate mechanism, such as the Model Law, acknowledged. Adoption of the Model Law is part of a broader insolvency law reform program around the world and several more States are expected to enact the Model Law by the end of 2014; perhaps more than 20 additional States. The feasibility of developing a convention is to be studied and information gathered on the obstacles to wider adoption of the Model Law.

### *New topics*

The new topics discussed in December included (i) choice of law; (ii) issues concerning creditors and claims, such as establishing global standards for claims adjudication and ranking of claims; guidelines for relative voting rights of debt and equity holders; and coordinating creditor access to information and collective representation; (iii) the insolvency treatment of financial contracts and netting in the UNCITRAL Legislative Guide; (iv) regulation of insolvency practitioners; (v) enforcement of insolvency-derived judgements; and (vi) treatment of intellectual property contracts in cross-border insolvency cases.

There was particular interest in topics (i), (iii) and (v), and WG V agreed that a mandate from the Commission to take up topic (v) should be sought at an appropriate time. Topics (i) and (iii) also raised interesting issues and it was recommended that they be retained with priority for future work. Questions of choice of law, as well as a number of the issues associated with creditors and claims might be included in the work to be done on enterprise groups. While there was interest in topic (iv), it was suggested that that work might be developed informally in cooperation with relevant professional

bodies, such as the International Association of Insolvency Regulators (IAIR). Topic (vi) also presented issues of some importance and, were it to be taken up, might be developed as a supplement to the UNCITRAL Legislative Guide.

*Insolvency of MSMEs*

UNCITRAL has conducted two colloquia in the area of microfinance and the creation of an enabling legal environment for micro, small and medium-sized enterprise (MSMEs). In 2013, the Commission agreed that work aimed at reducing the legal obstacles faced by MSMEs throughout their life cycle and, in particular, those in developing economies should be added to its work program, starting with the legal questions surrounding the simplification of incorporation. A new working group to consider that issue will hold its first meeting in February 2014. On the insolvency of MSMEs, WG V has been asked to consider, at its next session in April 2014, whether the tools included in the UNCITRAL Legislative Guide are appropriate for these types of enterprise and if not, what more might be required and report back to the Commission in July 2014.

For more information about receiving information or joining the INSOL Judicial Group please contact Penny Robertson,  
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