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Report of Working Group V (Insolvency Law) on the work of its forty-fifth session (New York, 21-25 April 2014)

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I. Introduction

1. At its forty-sixth session in 2013, after adopting the Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross-Border Insolvency (the Model Law) and part four of the UNCITRAL Legislative Guide on Insolvency Law the Legislative Guide), the Commission decided that Working Group V should hold a colloquium in the first few days of the working group session scheduled for the second half of 2013 to clarify how it would proceed with the enterprise group issues and other parts of its current mandate and to consider topics for possible future work, including insolvency issues specific to micro, small and medium-sized enterprises (MSMEs). The conclusions of that colloquium were not to be determinative, but to be considered and evaluated by the Working Group in the remaining days of the session, in the context of the existing mandate. Topics identified for possible future work should be reported to the Commission in 2014.[1]

2. The colloquium was held from 16-18 December 2013, during the forty-fourth session of the Working Group from 16-20 December. During its deliberations on 19-20 December, the Working Group agreed to continue its work on the cross-border insolvency of multinational enterprise groups by developing provisions on a number of issues, some of which would extend the existing provisions of the Model Law and part three of the Legislative Guide and involve reference to the Practice Guide on Cross-Border Insolvency Cooperation (A/CN.9/798, para. 16).

3. At its forty-sixth session in 2013, the Commission requested Working Group V to conduct, at its Spring 2014 session, a preliminary examination of issues relevant to the insolvency of MSMEs, and in particular to consider whether the UNCITRAL Legislative Guide on Insolvency Law provided sufficient and adequate solutions for MSMEs. If it did not, the Working Group was requested to consider what further work and potential work product might be required to streamline and simplify insolvency procedures for MSMEs. Its conclusions on those MSME issues were to be included in its progress report to the Commission in 2014 in sufficient detail to enable the Commission to consider what, if any, future work might be required.[2]

II. Organization of the session

4. Working Group V, which was composed of all States members of the Commission, held its forty-fifth session in New York from 21-25 April 2014. The session was attended by representatives of the following States Members of the Working Group: Algeria, Argentina, Armenia, Brazil, Canada, China, Colombia, Denmark, Ecuador, France, Germany, Greece, India, Indonesia, Iran (Islamic Republic of), Israel, Italy, Kenya, Mexico, Namibia, Nigeria, Pakistan, Philippines, Republic of Korea, Russian Federation, Sierra Leone, Spain, Switzerland, Thailand, Uganda, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela (Bolivarian Republic of).

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[1] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 325.

[2] Ibid., para. 326.

5. The session was attended by observers from the following States: Chile, Guatemala, Iraq, Libya, Poland, Saudi Arabia and Senegal.

6. The session was attended by the following non-member States having received a standing invitation to participate as observer in the sessions and the work of the General Assembly: Holy See.

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

(a) *Organizations of the United Nations system*: International Monetary Fund, United Nations Conference on Trade and Development and World Bank;

(b) *Invited intergovernmental organizations*: Maritime Organization of West and Central Africa (MOWCA) and Secretaría De Integración Económica Centroamericana (SIECA);

(c) *Invited international non-governmental organizations*: American Bar Association (ABA), Business Recovery and Insolvency Practitioners Association of Nigeria (BRIPAN), European Law Students Association (ELSA), INSOL International (INSOL), Inter-Pacific Bar Association (IPBA), International Bar Association (IBA), International Insolvency Institute (III), International Women's Insolvency and Restructuring Confederation (IWIRC), New York City Bar (NYCBAR) and Union Internationale des Avocates (UIA).

8. The Working Group elected the following officers:

Chairman: Mr. Wisit Wisitsora-At (Thailand)

Rapporteur: Ms. Dalit Zamir (Israel)

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

(a) Annotated provisional agenda (A/CN.9/WG.V/WP.119);

(b) A note by the Secretariat on facilitating cross-border insolvency of multinational enterprise groups (A/CN.9/WG.V/WP.120);

(c) A note by the Secretariat on mechanisms suitable for the insolvency of micro, small and medium-sized enterprises: the UNCITRAL Legislative Guide on Insolvency Law (A/CN.9/WG.V/WP.121); and

(d) Comments of the United States of America on the Secretariat's note on facilitating cross-border insolvency of multinational enterprise groups (A/CN.9/WG.V/WP.122).

10. The Working Group adopted the following agenda:

1. Opening of the session.
2. Election of officers.
3. Adoption of the agenda.
4. Consideration of: (a) cross-border insolvency of multinational enterprise groups; and (b) solutions provided by the UNCITRAL Legislative Guide on Insolvency Law for the insolvency of MSMEs.
5. Other business.
6. Adoption of the report.

III. Deliberations and decisions

11. The Working Group engaged in discussions on the cross-border insolvency of multinational enterprise groups on the basis of documents A/CN.9/WG.V/WP.120 and A/CN.9/WG.V/WP.122 and solutions provided by the UNCITRAL Legislative Guide on Insolvency Law for the insolvency of MSMEs on the basis of document A/CN.9/WG.V/WP.121. The deliberations and decisions of the Working Group on these topics are reflected below.

IV. Solutions provided by the Legislative Guide on Insolvency Law for the insolvency of MSMEs

12. The Working Group commenced its discussion of this topic on the basis of document A/CN.9/WG.V/WP.121, with a view to advising the Commission whether the Legislative Guide provided sufficient and adequate solutions for the insolvency of MSMEs, and if not, what further work might be required.

13. The Working Group agreed on the importance of the topic, particularly for those countries in which MSMEs have a significant impact on the economy and economic development. The Working Group was strongly of the view that given its extensive experience in developing solutions for insolvency-related challenges, it was the appropriate forum to develop insolvency regimes for MSMEs. There was also agreement on the need to ensure that mechanisms to address the insolvency of MSMEs be fast, flexible, and cost efficient, and that the focus in establishing such mechanisms should be on natural or legal persons engaged in economic activity. However, the Working Group was also of the view that establishing thresholds to delimit micro, small and medium-sized enterprises should be left to States to resolve in light of their particular economic circumstances and policy interests. The Working Group further agreed that the mechanisms provided by the Legislative Guide were not sufficient to address all of the needs of MSMEs; thorough treatment of the issues would require both a consideration of matters not yet addressed in the Legislative Guide as well as the tailoring of solutions already in the Legislative Guide to specifically address MSMEs. For example, the application of elements of the insolvency law, such as creditor committees, the central role of the courts and extensive involvement of insolvency professionals, might not be appropriate for MSME regimes.

14. The Working Group agreed that the issues facing MSMEs were not entirely novel and that solutions for them should be developed in light of the key insolvency principles and the guidance already provided by the Legislative Guide. The Working Group further agreed that it would not be necessary to wait for the results of the work being done by Working Group I in order to commence the study of insolvency regimes for MSMEs. As to the form that work might take, the Working Group agreed that, while such work might form an additional part to the Legislative Guide, no firm conclusion on that point could be taken in advance of undertaking a thorough analysis of the issues at stake.

V. Facilitating the cross-border insolvency of multinational enterprise groups

15. The Working Group commenced its discussion of the topic on the basis of the list of issues contained in document A/CN.9/WG.V/WP.120, which had been agreed by the Working Group at its forty-fourth session as establishing the basis for future discussions.

A. Definitions

16. The view was expressed that there was a need to ensure that the text produced was forward-looking and that constraining the work by a narrow definition of what constituted a group was not necessarily helpful in view of rapid changes in international business structures. Adoption of broad definitions was encouraged. The Working Group agreed to adopt the definitions of "enterprise group" and "enterprise" from part three of the Legislative Guide as working definitions.

B. Guiding Principles

17. The Working Group discussed the application of the guiding principles of affirmation of the corporate identity and independence of group members and the distinction between main and non-main insolvency proceedings in group enterprise insolvencies, and agreed that these principles should be kept in mind in light of their general importance. It was observed that the discussion on substantive issues might suggest instances in which these principles might need to be refined in the group context. The discussion further identified two additional guiding principles to follow when considering the application of synthetic proceedings (see paras. 21-22 below) and other group solutions. Those additional principles, which were not mutually exclusive, were to consider the overall net benefit for pursuing a group solution over separate individual insolvency proceedings and secondly, that the benefit to creditors should be at least that which would have been achieved had those separate local insolvency proceedings been commenced in isolation. In addition to these guiding principles, it was suggested that the development of options for facilitating the cross-border insolvency of multinational enterprise groups should also consider the key objectives of effective insolvency regimes contained in the recommendations of the Legislative Guide.

C. Access and standing

1. Access to foreign courts for foreign representatives and creditors of insolvency proceedings involving enterprise group members

18. The Working Group considered the materials provided in A/CN.9/WG.V/WP.120 and the questions raised in paragraph 16 of that document concerning which parties should have access to the various insolvency proceedings concerning group members. It was observed that a distinction could be drawn between access in the context of the Model Law where a single insolvency estate was involved, and the group context, which involved multiple group members and

multiple estates in various countries. It was noted that different rights of access for different parties might be required depending upon the nature of the insolvency proceedings affecting the group. In reorganization, for example, the existence of arrangements such as common financing and shared services and employees might indicate the need for broader rights of access than might be the case where these elements were not present in the group.

19. After discussion, the Working Group agreed that a foreign representative or a representative of a solvent group member in an enterprise group context should have a right of access analogous to article 9 of the Model Law. With respect to creditors of other group members, both solvent and insolvent, access should only be available in specific circumstances. A similar approach should be taken with respect to access of group members, including solvent group members, to insolvency proceedings concerning other members of the same group. This would be of particular importance where there were economic connections between the solvent group members and other insolvent group members. Those connections might generate value where there was insolvency in the group but not necessarily of the entire group, and the solvent member might be affected by, and could contribute to, the insolvency solution adopted. Where synthetic proceedings were used, it might be necessary to consider allowing foreign creditors greater access to ensure that their interests were adequately protected. In addition to the fundamental right of access to insolvency proceedings, the Working Group noted that it would need to consider what access entitled the relevant party to do in the group context. The Model Law, for example, provided the foreign representative with the right to intervene in insolvency proceedings (article 24) and the right to apply for recognition of a foreign proceeding (article 15).

2. "Standing" for all group members in any insolvency proceeding applied for by a member of the enterprise group

20. It was observed that it was important for a court that received an application from a foreign representative to consider issues such as the standing of the foreign representative making the application within the corporate group, i.e. which member of the corporate group was represented, where that group member stood in the group, and whether or not there was a coordinating court. There might also be an issue of competing claims for relief from different foreign representatives. It was further observed that the standing of foreign representatives related to issues of standing of creditors and the extent to which creditors' rights to make representations might be replaced by an insolvency representative making representations on their behalf.

D. Minimizing parallel proceedings

1. Use of "synthetic non-main proceedings" (where creditors are treated in the main proceeding as if a non-main proceeding had opened) to reduce cost and expense

21. The Working Group expressed interest in exploring the use of synthetic proceedings (as described in document A/CN.9/WG.V/WP.120, paras. 47-52) and how they might facilitate the conduct of enterprise group insolvencies. It was noted that work was being done on the use of such proceedings in the context of revision

of the European Council (EC) Regulation No. 1346/2000 of 29 May 2000 on insolvency proceedings (the EC Regulation) and that there were examples of the use of such proceedings in practice. It was emphasized that synthetic proceedings were typically intended to limit the commencement of unnecessary proceedings, achieving the same outcome as if there were multiple proceedings without the cost and complexity of those multiple proceedings. A point was made that, although it might appear that the use of such proceedings prevented a State from commencing local insolvency proceedings, in fact, such proceedings were either voluntary or the court would forbear from commencing local proceedings because there was no need to do so. The Working Group pointed out a number of issues with respect to such proceedings to be considered, including:

(a) How they might be used in respect of individual debtors, and building upon that, how they might be used in the group context; for example, where there were a number of group members with common centres of main interests (COMI) or alternatively, a number of group members with no common COMI;

(b) The need to safeguard the interests of local creditors, such as by ensuring that the use of such proceedings would not amount to a denial of justice and creditors would be no worse off in the synthetic proceeding than they would have been had a local insolvency proceeding commenced, or where that could not be guaranteed, by commencing a local proceeding;

(c) Recognition of those proceedings in third States, i.e. those in which there were no related group insolvency proceedings;

(d) Possible choice of law and conflicts issues, including those arising from the need to balance the interests of the group with those of individual group members; and

(e) The value of the receiving court being able either to decline to commence local proceedings, or instead to commence such proceedings with a view to the efficacy of the foreign synthetic proceeding.

22. After discussion, the Working Group agreed that it should explore the feasibility of using synthetic proceedings as one of the tools for handling group insolvency proceedings, identifying the different levels of difficulty associated with individual debtors and groups and the entities that may participate in synthetic proceedings (in particular, solvent group members). The Secretariat was requested to prepare appropriate text for consideration at a future session.

E. Cooperation and coordination

23. The Working Group noted that part three of the Legislative Guide (recommendations 240-250) already dealt with many of the issues of cooperation and coordination that might be relevant in the group context and considered whether further provisions might be required. It was noted, for example, that access for solvent group members had been considered and it was suggested that provision might also need to be made for those members to participate in cooperation and coordination. Because an enterprise group could include both solvent and insolvent members, and the solvent members might be prohibited by domestic law from assisting insolvent members of the group, the principles of cooperation and

coordination should be specifically extended to include solvent group members. This would ensure that there could be a convergent effort of all group members towards reorganization. This suggestion was widely supported, provided that the participation of a solvent entity was voluntary and not in response to mandatory provisions.

24. The Working Group noted that recommendation 238 of part three of the Legislative Guide permitted, in a domestic context, a solvent group member to voluntarily participate in a reorganization plan proposed for one or more members of an enterprise group that were subject to insolvency proceedings. It was further noted that the essence of this voluntary participation was already discussed in the commentary supporting recommendation 238 of part three of the Legislative Guide. It was generally agreed that recommendation 238 should be extended to the international context, but that the scope should be broadened to encompass more in terms of coordination and cooperation, for example, in the context of liquidation of a group member or members on a going concern basis.

25. After discussion, the Working Group requested the Secretariat to draft a text for consideration at a future session that reflected the issues raised in the discussion, covering areas beyond the scope of recommendation 238 with appropriate safeguards.

F. Recognition

26. The Working Group agreed on the importance of considering the issue of recognition, but noted that it needed to be considered in the context of different scenarios of enterprise group insolvency and how it might be used in such scenarios. One scenario might be where insolvency proceedings had commenced with respect to numerous group members in the same jurisdiction and the interests of creditors in other jurisdictions were dealt with by way of a synthetic proceeding. A second scenario would be where insolvency proceedings had commenced for different group members in different jurisdictions. The focus of recognition in the first scenario might be to minimize the commencement of secondary proceedings in different jurisdictions, while the focus in the second scenario might be to seek relief and ensure cooperation and coordination. A third scenario might involve the use of one of the proceedings as a coordinating proceeding or appointment of a group coordinator, a possibility currently being considered in the context of revision of the EC Regulation. Consideration of these scenarios gave rise to various issues, including the reasons for seeking recognition, the suitability of the distinction between main and non-main proceedings in the enterprise group context based on the concept of COMI, questions of jurisdiction, appropriate safeguards for creditors, and the relationship of recognition to other possible solutions for enterprise group insolvency.

G. Relief

27. The Working Group noted that part three of the Legislative Guide did not address the relief that might be provided by a recognizing court to the foreign representative(s) presiding over proceedings of several group members commenced

in the same forum nor the relief that might be provided by a recognizing court to the foreign representative(s) presiding over a coordinating proceeding. The relief provided by the Model Law was noted and the view expressed that it could be extended to cover enterprise groups. However, while the stay provided by articles 20 and 21 of the Model Law covered only individual actions with respect to the debtor's assets, it was suggested that the most obvious form of relief applicable in a group context might be the application of the stay to limit the commencement of local insolvency proceedings or to deter further action by local creditors that might be damaging to the group solution. (It was noted that article 28 of the Model Law permitted commencement of a local proceeding following recognition of a foreign main proceeding.) It was also noted that the application for relief in a group context might involve different debtors in different jurisdictions where the only connection was membership of the same group.

28. It was also observed that there may be conflicting applications in a group context, for example, an application by local creditors to commence a local proceeding and an application by a foreign insolvency representative to stay commencement of that local proceeding. Specific rules might be required to enable the application to limit commencement of a local proceeding to prevail over the application of local creditors. Those rules might require such a decision to be based upon considerations such as what was in the global best interests of all members of the group taken together and what was required to protect the interests of local creditors.

29. After discussion, the Working Group agreed that there should be further consideration of the relief that might be required in the group context. There was support for developing the possibility of a stay to limit the commencement of proceedings and explore its relevance to the use of synthetic proceedings. The Secretariat was requested to prepare appropriate materials to assist further consideration of these issues.

H. Post-application and post-commencement finance

30. There was broad agreement on the importance of post-application and post-commencement finance in the group context. One view was that nothing more than the treatment already developed in part three of the Legislative Guide was required. A different view was that more was required, but it was unclear at this stage of the discussion what the scope and content of appropriate provisions might be. Issues to be considered included questions of priority, applicable law, social policies, safeguards, and the balance between the interests of the group and individual group members. One proposal for addressing post-application and post-commencement financing in the group context was to consider it in terms of relief. It might be possible, for example, that part of the relief sought in the context of an application for recognition would involve approval for post-commencement finance granted elsewhere and the priority accorded to it, as well as use of assets in the recognizing jurisdiction to secure post-commencement finance provided to a group member located elsewhere. Appropriate safeguards would again be the global best interests of all members of the group taken together and protection of the interests of local creditors.

31. The Working Group agreed that the proposal to consider post-commencement finance in the context of relief might provide an appropriate starting point for further deliberations on this issue.

I. Participants

1. Joint appointment of insolvency representatives to insolvency proceedings concerning different group members

32. The Working Group noted that recommendations 251 and 252 of part three of the Legislative Guide addressed the possibility of joint appointment of insolvency representatives in the international context. To facilitate such joint appointments, it was suggested that it might be useful to note the possibility of a court recognizing licensed foreign practitioners for appointment in the court's jurisdiction. Various means might be used to facilitate that recognition including: the appropriate licensing body in a recognizing State might indicate which State's practitioners might be recognized for the purposes of such an appointment; or the court may approach it by way of a case-by-case assessment of their suitability. It was noted that the appointment of a foreign insolvency representative might raise regulatory issues, especially those of a disciplinary nature. The ability to recognize a foreign practitioner may depend, for example, upon the extent to which the foreign regime could hold its practitioners liable for their actions in foreign States. It was recalled that the definition of a foreign representative in the Model Law included debtors in possession and agreed that it was necessary to maintain that possibility in discussing joint appointments in a group context.

2. Creditors

33. It was generally agreed that participation by creditors and interested parties in a group context could be strengthened. One proposal was to establish a group creditor committee to facilitate provision of notice to creditors and their access to information, as well as to streamline decision-making, subject to appropriate safeguards to avoid domination of such a committee by a few powerful creditors. Such a creditor committee, it was observed, could provide significant value to the court process and ensure that all necessary issues were brought to the court. Although most useful in a group reorganization, there might also be liquidation scenarios that would benefit from the creation of such a committee. Another proposal was to consider duplicating, at the global level, local mechanisms for creditor participation, such as the appointment of a person to represent the creditors of each group member. A further proposal noted the potential need to appoint a representative for solvent group members that might be involved in group reorganization (reference was made to articles 21(1)(e) and 27(a) of the Model Law). It was also suggested that what could be envisaged was a group committee that could involve all group representatives, including those of solvent entities, facilitate coordination between group members and would be in a position to work with creditors to, for example, negotiate reorganization plans, coordinate synthetic proceedings, and discuss post-commencement finance issues.

34. There was support for development of some of the mechanisms suggested above. It was noted that a number of the issues discussed were already addressed in

the Legislative Guide and to some extent in the Model Law. The Working Group agreed, however, that the solutions provided were not sufficient for enterprise group insolvency and that further consideration of the treatment of these issues in both the Model Law and the Legislative Guide was required. It was also agreed that a number of different concerns relating to participation, relief, access, and synthetic proceedings that had been raised in the course of discussing these topics were interrelated and that any text developed would have to ensure that they were properly integrated. There was no clear consensus on the form the solutions should take.

J. Reorganization

Provision for joint/coordinated disclosure statements and plans of reorganization

35. The Working Group considered a number of group scenarios involving reorganization. The first involved parallel proceedings for multiple group members requiring coordination of those multiple proceedings (the "horizontal scenario"). The second involved a main proceeding (or a number of main proceedings) and a synthetic proceeding which involved application of the law of the creditors' respective jurisdictions for resolution of their claims. The third scenario involved several proceedings in several different jurisdictions where the court of one State had a lead coordinating role. In that scenario, the issue was one of leadership and required deference to the role of the lead coordinating court (the "vertical scenario"). The key issue in that scenario was identification of the lead coordinating court. A variation of the third scenario would involve centralization of certain aspects of group insolvency proceedings, such as development of the reorganization plan, in combination with decentralized aspects, such as implementation of the plan. That scenario would avoid the need for multinational coordination in development of the plan, as well as the need for enforcement of decisions made by the lead coordinating court in other jurisdictions. Criteria proposed for identifying the lead coordinating court included the location of the seat of management or key business activities of the group. Another approach suggested was that rather than looking back at the activities of the group members and where they had been conducted in the past, a forward-looking approach should be taken in order to assess which jurisdiction was the most suitable for the group reorganization, such as by reference to viability of finance and where a reorganization plan could be presented. That jurisdiction should be able to lead the process, provided that the choice of that jurisdiction was rational and there was at least a minimum connection to the group.

36. In response to concerns as to the role to be played by the lead coordinating court, it was clarified that that court should not have the power to impose a reorganization on other jurisdictions, but would rather play a lead coordinating role and evaluate the feasibility of the plan, with approval of the plan to be dealt with by each of the local courts concerned. The lead coordinating court could be identified by other courts deciding, in keeping with the principles of requiring a net global benefit for the group and the protection of interests of local creditors, that the proceedings should be coordinated by that other court. It was observed that courts were more likely to take a permissive approach rather than actively promoting a group reorganization through another court and also that promotion and coordination of reorganization plans was one of the key functions of the insolvency

representatives and representatives of solvent group members (if any), rather than the courts.

37. Another proposal concerned the use of "living wills" for enterprise groups, drawing upon the experience of the use of living wills for financial institutions. It was suggested that the use of such living wills, which would lay out ideas for reorganization of the enterprise group that it would have rationally considered and publicly set out in a way ascertainable by third parties and creditors, could be expected to make the coordination process more transparent ex ante and encourage rational forward planning. Whilst it was observed that an entity engaged in that level of planning was unlikely to be an entity that needed to enter into insolvency, there was support for further exploration of the possible use of living wills.

K. Conclusions

38. Having concluded its deliberations on the major issues in document A/CN.9/WG.V/WP.120 and taken note of the use being made of the Model Law in group insolvency in practice, the Working Group considered the form its future work on these topics might take. It was suggested that the issues the Working Group had considered were not all on the same level and needed to be approached in different ways depending on the type of group insolvency scenario, e.g. horizontal as opposed to vertical, being considered. Each scenario might require different rules to deal appropriately with the issues raised. It was observed that having distilled the various issues in this manner, the Working Group would then be in a position to decide on the form the rules should take (e.g. model legislative provisions, guide to enactment, commentary such as that found in the legislative guide, or some combination thereof). An analogy to the process of the development of the Model Law was made.

VI. Other business

39. The Working Group discussed the progress of work on other topics covered by its current mandate, as well as those for possible future work:

(a) The Working Group was advised that a preliminary meeting of the open-ended informal group established to consider the feasibility of developing a convention on international insolvency issues and to study adoption of the Model Law (A/CN.9/798, para. 19) had taken place. The work to be undertaken and the manner in which it might be organized were discussed and the Secretariat agreed to contact group members with further details on how the work could be developed;

(b) The Working Group recalled that at its forty-fourth session (16-20 December 2013), it had noted that the Model Law on Cross-Border Insolvency did not provide explicit solutions for recognition and enforcement of insolvency-derived judgements which had led to uncertainty and could be an impediment to further adoption of the Model Law by States. Recognizing this absence of explicit solutions, and in order to enhance commercial certainty and other objectives of the Model Law, the Working Group recommends that it be granted a mandate to develop a model law or model legislative provisions to provide for the recognition and enforcement of insolvency-derived judgements;

(c) The Working Group further recalled that at its forty-fourth session the treatment of financial contracts in insolvency had been identified as one of four areas of potential future work. The Working Group took note of the interest and the support expressed by several delegations and observer groups for the formation of a study group to consider whether there were inconsistencies between the current treatment of financial contracts and netting in the Legislative Guide on Insolvency Law and recent developments and to provide a report to the Working Group. It was noted that participation in the study group was open to all interested delegates and experts and the involvement of other relevant organizations would be sought.