REPORT

UNCITRAL finalising micro and small business insolvency legislative guide

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The IBA Delegation provided technical support to the UNCITRAL Secretariat during several informal consultations held by video link instead of the regular Spring 2020 plenary session of Working Group V (Insolvency Law).

Working Group V is completing legislative recommendations for special treatment of insolvency of micro and small enterprises (MSE). This project was mandated by the Commission in 2013 and grew out of recognition that the insolvency rules generally applicable to mid-sized and large business enterprises do not well serve very small businesses, which are important to the economic life of many countries throughout the world. Concurrently, the Commission asked Working Group I to focus on recommendations to reduce legal obstacles faced by micro and small businesses throughout their life cycles, especially in developing countries. The efforts of both Working Group I and V in this area were tasked with promoting achievement of the UN's sustainable development goals.

Since then, the IBA Insolvency Section has been contributing to these MSE Insolvency deliberations at the World Bank and UNCITRAL, which have focused on mechanisms to bring micro and small business debtors into a formal insolvency system which provides for rehabilitation with a prompt discharge of debts and a reasonable plan for payment of creditors. This year, our Insolvency Section UNCITRAL Delegation has been actively discussing drafts and providing comments to Working Group V as it attempts to finalise recommendations on MSE Insolvency for consideration by the Commission.

An issue drawing considerable current attention in WGV is the need to soften, in the context of MSE Insolvency, the recommendations of the UNCITRAL Legislative Guide on obligations of owners and managers when the debtor is approaching insolvency. This comes at a time when many countries that were proponents of UNCITRAL's tough recommendations on this subject are themselves loosening or suspending their own national 'trading whilst insolvent' liability rules. The IBA Delegation continues to support those national delegations and development-focused NGOs who suggest a non-punitive rehabilitation of MSE debtors and their owners, with the aim of promptly restoring their economic productivity.[1]

Note

1 The Insolvency Section Delegation to WGV includes Gregor Baer, Chris Besant, Alexander Klauser, Constantinos Klissouras, Lewis Kruger and Richard Minor.