

FAIR 2021

UNCITRAL Model Law on Enterprise Group Insolvency with Guide to Enactment (2019)

The UNCITRAL Model Law on Enterprise Group Insolvency¹ (the Model Law), focuses on insolvency proceedings relating to multiple debtors that are members of the same enterprise group. It is designed to equip States with modern legislation addressing the domestic and cross-border insolvency of enterprise groups, complementing the UNCITRAL Model Law on Cross-Border Insolvency (MLCBI) and part three of the UNCITRAL Legislative Guide on Insolvency Law (the Legislative Guide, part three).

Why is it relevant to international trade?

The increasing globalization of economic activity has led to significant growth in the number of enterprise groups active in international trade and commerce, whether such groups are formed domestically or internationally. When members of an enterprise group experience severe financial distress or insolvency, it is important that a transparent and predictable regime exists to ensure adequate and coordinated approaches to the insolvency of group members and treatment of the group, and that it facilitates, rather than hinders, the fast and efficient conduct of insolvency proceedings. By providing a comprehensive framework for the conduct of insolvency proceedings affecting two or more enterprise group members, the Model Law protects the value of the assets of such members and the group, and improves prospects for their rescue, thus fostering international economic development and investment, as well as supporting entrepreneurial activity and employment.

Key provisions

The Model Law includes provisions on coordination and cooperation between courts, insolvency representatives and a group representative (where appointed), with respect to multiple insolvency proceedings concerning members of an enterprise group; development of a group insolvency solution for the whole or part of an enterprise group through a single insolvency proceeding commenced at the location where at least one group member has the centre of its main interests (COMI); voluntary participation of multiple group members in that single insolvency proceeding (a planning proceeding) for the purposes of coordinating a group insolvency solution for relevant enterprise group members and access to foreign courts for enterprise group members and representatives; appointment of a representative (a group representative) to coordinate the development of a group insolvency solution through a planning proceeding; approval of post-commencement finance arrangements in the enterprise group insolvency context and authorization of the provision of funding under those arrangements, as required; the cross-border recognition of a planning proceeding to facilitate the development of the group insolvency solution, as well as measures to support the recognition and formulation of a group insolvency solution; measures designed to minimize the commencement of non-main insolvency proceedings relating to enterprise group members participating in the planning proceeding, including measures to facilitate the treatment of claims of creditors of those enterprise group members, including foreign claims, in a main proceeding; and the formulation and recognition of a group insolvency solution.

Additional information

The Model Law is accompanied by a Guide to Enactment, which provides information to assist States in enacting its provisions and to offer guidance to users of the text.

¹ <https://uncitral.un.org/en/texts/insolvency/modellaw/mlj>