



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
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**Item No. 5 on the agenda: Amendments to the Work Programme of the Organisation
for the 2020-2022 triennium**

(memorandum prepared by the Secretariat)

<i>Summary</i>	<i>Amendments to the Work Programme of the Organisation for the 2020-2022 triennium</i>
<i>Action to be taken</i>	<i>To adopt the recommended amendments to the current Work Programme</i>
<i>Related document</i>	<i>(UNIDROIT 2021 – C.D. (100) B Misc. 2)</i>

I. INTRODUCTION

1. This document formally requests the General Assembly to consider adopting amendments to the Institute's 2020-2022 Work Programme, which were recommended by the Governing Council at its 100th session in September 2021 for consideration by the General Assembly at its 80th session (Rome, 9 December 2021) ([UNIDROIT 2021 – C.D. \(100\) B Misc. 2](#)).

II. CONSIDERATION OF ITEMS ALREADY INCLUDED IN THE WORK PROGRAMME

A. Legal structure of agricultural enterprises

2. At its 78th session in December 2019, the General Assembly included the project on Legal Structure of Agricultural Enterprises (LSAE project) in the 2020-2022 Work Programme, with a medium priority status.¹ The project had been proposed to be jointly developed with the United Nations Food and Agriculture Organization (FAO) and the International Fund for Agricultural Development (IFAD) and would be the third legal guide developed within the tripartite partnership established between Rome-based international organisations. During the course of 2020, the Secretariat conducted a stocktaking exercise and feasibility analysis with respect to the legal structure for investment in agriculture activities, in order to ascertain whether a new instrument, would be of additional benefit and provided preliminary observations on legal issues to be considered.² At its 99th session, the Governing Council authorised the Secretariat to conduct further research and consultations with a view to convene a colloquium and subsequently establish a core expert group to define the potential scope, content, and form of such an instrument.³ Subject to the advances made the Governing Council would reconsider the priority status initially given to the LSAE project.

3. As requested by the Governing Council, the Secretariat conducted further research and on 15 and 16 April 2021, UNIDROIT, FAO and IFAD co-organised a Consultation Webinar to discuss the LSAE project. The complete report of the Webinar can be found at UNIDROIT's dedicated [website](#) and a [video](#) recording of both days is available on UNIDROIT's YouTube channel.

4. In September 2021, at the second meeting of the 100th session of the Governing Council, the Secretariat presented a document ([C.D. \(100\) B.5](#)) which summarised the main topics identified during the consultations and specified the type of legal guidance that could be provided regarding the establishment, operation and termination of agricultural enterprises (e.g., analysis of both multi-party contractual and corporate arrangements in agricultural supply chains, liabilities within agricultural enterprises, remedies and dispute resolution mechanisms). While progress in the definition of the scope had been obtained, the Secretariat informed the Council that the scope still had to be further narrowed and proposed to set up a Working Group to allow external experts, not only from FAO and IFAD, to contribute towards the definition of the object of analysis of the LSAE project.

5. A number of Governing Council members agreed that it would be reasonable to raise the project's priority, from medium to high priority, to permit the allocation of resources for experts to narrow the scope in a Working Group([C.D. \(100\) B Misc 2](#)).

¹ [UNIDROIT 2019 – A.G. \(78\) 12](#), para. 51.

² [UNIDROIT 2020 – C.D. \(99\) B.5](#).

³ [UNIDROIT 2020 – C.D. \(99\) B Misc 2](#), para. 9.

6. *Accordingly, the Governing Council, at its 100th session, agreed to recommend to the General Assembly to allocate high priority to the project jointly developed with FAO and IFAD on Legal Structure of Agricultural Enterprises.*

B. BANK INSOLVENCY

7. Upon recommendation of the Governing Council, at its 78th session in December 2019, the General Assembly included the project with medium priority in the current Work Programme. The assigned level of priority was merely formal. The Council asked the Secretariat to conduct further research and provide a more defined scope for the project, as well as further justification of its adequacy as work to be conducted by a global institution.

8. Pursuant to the mandate given to the Secretariat by the Governing Council at its 98th session, the Secretariat worked on refining the scope of the project and providing further justification of its adequacy. At the Council's 100th session in September 2021, the Secretariat presented a document providing a detailed account of the feasibility analysis and exploratory work conducted in the timeframe elapsed between the Governing Council sessions on the bank insolvency project, with the proposal to upgrade the status of the project from medium to high priority ([UNIDROIT 2021 – C.D. \(100\) B.4](#)). The Secretariat indicated that dialogues had been established with the key international institutions in the field of bank crisis management and that thorough research had been conducted by the Secretariat. In addition, an exploratory workshop on bank liquidation had been organised jointly with the Bank for International Settlements (BIS)' Financial Stability Institute in June 2021, which had demonstrated broad and strong support for the project from international and national experts and organisations. The Secretariat explained that the aim would be to develop a guidance document on the key aspects of bank liquidation proceedings (e.g., tools, triggers, hierarchy of claims, cross-border aspects), in order to fill a lacune in the existing international legal framework.

9. The Governing Council took note of the exploratory work conducted and the feasibility report prepared by the Secretariat. Many Council members recognised the importance of the project and the need for international guidance – even more so in light of the global pandemic. Broad support was therefore expressed for the Secretariat's proposal to upgrade the priority of the bank insolvency project and establish a Working Group. The Council confirmed that the project should be limited in scope to banks only, with a focus on smaller banks. It was further discussed and agreed that the project should take a global perspective and be fully respectful of existing regulatory standards.

10. *The Governing Council, at its 100th session, agreed to recommend to the General Assembly to allocate high priority to the project on bank insolvency.*