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**UNIDROIT Working Group on Bank
Insolvency**

Seventh session (hybrid)
Rome, 18-20 November 2024

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Study 84 – W.G. 7 – Doc. 2_rev
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SECRETARIAT'S REPORT

1. This document provides an update on the developments and activities concerning the Bank Insolvency project following the sixth Working Group session (4-6 March 2024). It provides information on the consultation on the [draft Legislative Guide on Bank Liquidation](#) (Section I) and on a survey conducted in parallel with the consultation process (Section II). It also proposes next steps (Section III).

I. CONSULTATION

2. At the close of its sixth session, the Working Group decided that the draft Legislative Guide on Bank Liquidation – after revisions in line with the sixth session – would be sufficiently developed to undertake a consultation. The Drafting Committee and the UNIDROIT Secretariat/FSI were provided with a mandate to update the draft Legislative Guide in line with the outcome of the discussions and to submit it to the UNIDROIT Governing Council with the proposal to start a targeted consultation.

3. Accordingly, the draft Legislative Guide was updated and submitted to the Working Group for fatal flaw review on 15 April 2024. The deadline for the submission of comments was 22 April 2024. By then, the Secretariat had received comments from six Working Group Observers. Two additional submissions were received after the deadline.¹ On 23 May 2024, the UNIDROIT Secretariat informed the respondents of the outcome of the fatal flaw review process, explaining for each comment whether it had led to changes in the text.

4. In the meantime, the draft Legislative Guide as sent to the Working Group for fatal flaw review had been submitted to the UNIDROIT Governing Council for consideration during its 103rd session (8-10 May 2024), together with the comments received from Working Group participants (both on a confidential basis). The Governing Council noted the significant progress made by the Working Group on Bank Insolvency and authorised the Secretariat to commence a consultation on the draft Legislative Guide following the fatal flaw review process.

¹ The Secretariat thus received feedback from eight Working Group Observers in total: *Autorité de Contrôle Prudentiel et de Résolution* (ACPR), *Banca d'Italia* (BoI), *Banco de España* (BdE), Deposit Insurance Corporation of Japan (DICJ), *Fondo de Garantía de Depósitos en Entidades de Crédito* (FGD), European Central Bank (ECB), *Bundesanstalt für Finanzdienstleistungsaufsicht* (BaFin), Financial Services Agency of Japan (JFSA).

5. The UNIDROIT Secretariat launched the online consultation on 5 June 2024, through a dedicated [consultation webpage](#).² The consultation was open for a period of 18 weeks, until 11 October 2024.³

6. In order to encourage participation to the consultation, the Secretariat:

- (i) Invited all the Members and Observers of the Working Group to promote the consultation to interested parties amongst their networks.
- (ii) Invited all [UNIDROIT Correspondents](#) to consider submitting comments or encourage relevant stakeholders to submit comments, and to circulate the consultation information amongst their professional networks.
- (iii) Invited targeted stakeholders – relevant national and supranational authorities, banking associations, insolvency practitioners and think tanks – to contribute to the consultation.
- (iv) Organised a conference together with the European Banking Institute (EBI) to discuss the content of the draft Legislative Guide with the EBI academic community and industry stakeholders (Paris, 19 September 2024).⁴
- (v) Promoted the draft Legislative Guide and the consultation at several other events, including the Single Resolution Board’s Legal Conference 2024 (Brussels, 6 June 2024), the International Insolvency Institute’s 24th Annual Conference (Singapore, 11 June 2024), and INSOL Europe’s Annual Congress (Sorrento, 4 October 2024).

7. In total, the consultation received 22 submissions, consisting of 414 comments. For further information, reference is made to document [Study 84 – W.G. 7 - Doc. 3](#).

II. SURVEY

8. Following the sixth Working Group session, the UNIDROIT Secretariat/FSI in cooperation with the International Monetary Fund (IMF) developed a survey consisting of 16 questions concerning technical legal aspects that are relevant for the draft Legislative Guide (especially for Chapters 3, 6, and 10). On 6 August 2024, the survey was circulated to (i) Working Group participants, specifying that feedback was especially welcome from the national authorities represented in the Working Group, (ii) relevant national authorities that are not participating in the Working Group, and (iii) insolvency practitioners and lawyers from outside the Working Group. The deadline for the submission of survey responses was 16 October 2024.

9. In total, the Secretariat received 17 survey submissions. For further information, reference is made to document [Study 84 – W.G. 7 - Doc. 5 \(confidential\)](#).

III. SEVENTH SESSION AND PROPOSED NEXT STEPS

Finalisation of the draft Legislative Guide

10. During its seventh session, the Working Group is invited consider the Draft Legislative Guide Chapter-by-Chapter, taking into account the:

² During the consultation period, the dedicated webpage was visited 3143 times. The Secretariat also promoted the consultation through UNIDROIT’s social media channels (LinkedIn, Facebook, X).

³ Initially, the consultation period ran until 25 September 2024 (16 weeks) but it was decided to extend the consultation period with two weeks until 11 October 2024.

⁴ Please see document [Study 84 – W.G. 7 – Doc.3 add.](#)

- (i) feedback received during the consultation process (Study 84 – W.G. 7 - Doc. 3),
- (ii) feedback from Working Group participants (Study 84 – W.G. 7 - Doc. 4 (confidential)),
- (iii) responses to the survey (Study 84 – W.G. 7 - Doc. 5 (confidential)).

11. At the end of the session, it is proposed that the Working Group provides the Drafting Committee and the UNIDROIT Secretariat/FSI with a mandate to update the draft Legislative Guide in line with the outcome of the discussions during the seventh session.

12. The updated draft Legislative Guide could then be circulated to the Working Group for fatal flaw review in early 2025. Possible other steps for the Working Group will be determined depending on the progress made at the session.

Translations

13. While the Working Group's only working language is English, consistent with UNIDROIT's practice the final instrument will be approved in two language versions: English and French. Bearing this in mind, the Secretariat has started the preparation of the French version of the draft Legislative Guide.

14. The Secretariat envisages to work with partner stakeholders to facilitate informal translations of the instrument into languages other than English and French. The Secretariat welcomes the involvement of Working Group participants in these processes.