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Insolvency law

Possible future work in the area of insolvency law

Post-commencement financing in international reorganizations

1. The following extracts from the UNCITRAL Legislative Guide on Insolvency Law are provided, for ease of reference, in support of the proposal contained in document A/CN.9/582/Add.4.

UNCITRAL Legislative Guide on Insolvency law

Part two, chapter II, section D

D. Post-commencement finance

1. Need for post-commencement finance

94. (P*aragraph 94 is set forth in paragraph 5 of A/CN.9/583/Add.4)*

95. To ensure the continuity of the business where this is the object of the proceedings, it is highly desirable that a determination on the need for new finance be made at an early stage, in some cases even in the period between the time the application is made and commencement of proceedings. The availability of new finance will also be important in reorganization proceedings between commencement of the proceedings and approval of the plan; obtaining finance in the period after approval of the plan should generally be addressed in the plan, especially in those jurisdictions which prohibit new borrowing unless the need for it is identified in the plan.

96. Notwithstanding that it might be beneficial to the outcome of the proceedings for the debtor to be able to obtain new money, a number of jurisdictions restrict the

provision of new money in insolvency or do not specifically address the issue of new finance or the priority for its repayment in insolvency, which creates uncertainty. Under some laws, for example, new money can only be provided on the basis of a security interest, as provision of a preference for new lending is prohibited. In those cases where there are no unencumbered assets, or no excess value in already encumbered assets, that the debtor can offer as security or with which the debtor can satisfy an administrative expense priority claim, the debtor has limited options. No new money will be available unless the lender is prepared to take the risk of lending without security or unless it can be obtained from sources such as the debtor's family or group companies. In the absence of enabling or clarifying treatment in the insolvency law, the provision of finance in the period before commencement of the insolvency proceedings may also raise difficult questions relating to the application of avoidance powers and the liability of both the lender and the debtor. Some insolvency laws provide, for example, that where a lender advances funds to an insolvent debtor in that period, it may be responsible for any increase in the liabilities of other creditors or the advance will be subject to avoidance in any ensuing insolvency proceedings. In other examples, the insolvency representative is required to borrow the money, potentially involving questions of personal liability for repayment.

97. Where an insolvency law promotes the use of insolvency proceedings that permit the insolvent business to continue trading, whether reorganization or sale of the business in liquidation as a going concern, it is essential that the issue of new funding is addressed and limitations such as those discussed above are considered. An insolvency law can recognize the need for such post-commencement finance, provide authorization for it and create priority or security for repayment of the lender. The central issue is the scope of the power and, in particular, the inducements that can be offered to a potential creditor to encourage it to lend. To the extent that the solution adopted has an impact on the rights of existing secured creditors or those holding an interest in assets that was established prior in time, it is desirable that provisions addressing post-commencement finance be balanced against a number of factors. These include the general need to uphold commercial bargains; protect the pre-existing rights and priorities of creditors; and minimize any negative impact on the availability of credit, in particular secured finance, that may result from interfering with those pre-existing security rights and priorities. It is also important to consider the impact on unsecured creditors who may see the remaining unencumbered assets disappear to secure new lending, leaving nothing available for distribution, especially if the reorganization were to fail. This risk must be balanced against the prospect that preservation of going concern value by continued operation of the business will benefit those creditors.

98. In addition to issues of availability and priority or security for new lending, an insolvency law will need to consider the authorization required to obtain that new money (see below, paras. 105 and 106) and, where a reorganization fails and the proceedings are converted to liquidation, the treatment of funds that may have been advanced before the conversion (see below, para. 107).

2. Sources of post-commencement finance

99. Post-commencement lending is likely to come from a limited number of sources. The first is pre-insolvency lenders or vendors of goods who have an ongoing relationship with the debtor and its business and may advance new funds or

provide trade credit in order to enhance the likelihood of recovering their existing claims and perhaps gaining additional value through the higher rates charged for the new lending. A second type of lender has no pre-insolvency connection with the business of the debtor and is likely to be motivated only by the possibility of high returns. The inducement for both types of lender is the certainty that special treatment will be accorded to the post-commencement finance. For existing lenders there are the additional inducements of the ongoing relationship with the debtor and its business, the assurance that the terms of their pre-commencement lending will not be altered and, under some laws, the possibility that, if they do not provide post-commencement finance, their priority may be displaced by the lender who does provide that finance.

3. Attracting post-commencement finance: providing priority or security

100. A number of different approaches can be taken to attracting post-commencement finance and providing for repayment. Trade credit or indebtedness incurred in the ordinary course of business by an insolvency representative (or a debtor in possession) may be treated automatically as an administrative expense. When obtaining credit or incurring indebtedness is essential to maximizing the value of assets, and the credit or finance is not otherwise available as an administrative expense or is to be incurred outside the ordinary course of business, the court may authorize that credit or debt to be incurred as an administrative expense, to be afforded super-priority ahead of other administrative expenses or to be supported by the provision of security on unencumbered or partially encumbered assets.

(a) Establishing priority

101. Where the business of the debtor continues to operate after commencement of insolvency proceedings, either incidental to an attempted reorganization or to preserve value by sale as a going concern, the expenses incurred in the operation of the business are typically entitled, under a number of insolvency laws, to be paid as administrative expenses. Administrative priority creditors do not rank ahead of a secured creditor with respect to its security interest, but generally are afforded a first priority (see chap. V, paras. 45-47 and 66) that ranks ahead of ordinary unsecured creditors and any statutory priorities, for example, taxes or social security claims. Suppliers of goods and services would only continue to supply those goods and services to the insolvency representative on credit if they had a reasonable expectation of payment ahead of pre-commencement unsecured creditors. In some cases, such a priority is afforded on the basis that the new credit or lending is extended to the insolvency representative, rather than to the debtor, and thus becomes an expense of the insolvency estate. Some insolvency laws require such borrowing or credit to be approved by the court or by creditors, while other laws provide that the insolvency representative may obtain the necessary credit or finance without approval. This may involve an element of personal liability for the insolvency representative and, where it does, is likely to result in reluctance to seek new finance.

102. Other insolvency laws provide for a “super” administrative priority if credit or finance is not available where it is ranked as an administrative claim that is pari passu with other administrative claims such as fees of the insolvency representative

or professional employed in the case. The "super" priority ranks ahead of administrative creditors.

(b) Granting security

103. Where the lender requires security, it can be provided on unencumbered assets or as a junior or lower security interest on already encumbered assets where the value of the encumbered asset is sufficiently in excess of the amount of the pre-existing secured obligation. In that case, no special protections will generally be required for the pre-existing secured creditors, as their rights will not be adversely affected unless circumstances change at a later time (such as that the value of the encumbered assets begins to diminish) and they will retain their pre-commencement priority in the encumbered asset, unless they agree otherwise. Frequently, the only unencumbered assets that may be available for securing post-commencement finance will be assets recovered through avoidance proceedings. However, providing security on such assets is controversial under some insolvency laws and is not permitted.

104. Some insolvency laws provide that new lending may be afforded some level of priority over existing secured creditors, (sometimes referred to as a "priming lien"). In States where this latter type of priority is permitted, insolvency courts recognize the risk to the existing secured creditors and authorize these types of priority reluctantly and as a last resort. The granting of such a priority may be subject to certain conditions, such as the provision of notice to affected secured creditors and the opportunity for them to be heard by the court; proof by the debtor that it is unable to obtain the necessary finance without the priority; and the provision of protection for any diminution of the economic value of encumbered assets, including by a sufficient excess in the value of the encumbered asset. In some legal systems, all of the priority, super-priority, security and priming lien options for attracting post-commencement finance are available to cover the new lending. As a general rule, the economic value of the rights of pre-existing secured creditors should be protected so that they will not be harmed. If necessary, this can be achieved, as noted above (see paras. 63-69), by making periodic payments or providing security rights in additional assets in substitution for any assets that may be used by the debtor or encumbered in favour of new lending.

4. Authorization for post-commencement finance

105. It may be desirable to link the issue of authorization for new lending to the damage that may occur or the benefit that is likely to be provided as a result of the provision of new finance. A number of insolvency laws permit the insolvency representative (or a debtor-in-possession where that approach is followed) to determine that new money is required for the continued operation or survival of the business or the preservation or enhancement of the value of the estate and obtain unsecured credit without approval by the court or by creditors. Other laws require approval by the court or creditors in certain circumstances. Given that new finance may be required on a fairly urgent basis to ensure the continuity of the business, it is desirable that the number of authorizations required be kept to a minimum. An insolvency law may take a hierarchical approach to the authorization required, depending upon the security or priority to be provided and the level of credit or finance to be obtained. Although requiring court involvement may generally assist in promoting transparency and provide additional assurance to lenders, in many

instances the insolvency representative may be in a better position to assess the need for new finance. Similarly, where secured creditors consent to revised treatment of their security interests, approval of the court may not be required. In any event, the court will generally not have access to expertise or information additional to that provided by the insolvency representative on which to base its decision.

106. The question of providing security over unencumbered assets or assets that are not fully encumbered is not one that generally should require approval of the court. Where the insolvency law establishes the level of priority that generally can be given, for example, an administrative priority, court approval may not be required. Should court approval be considered desirable, an intermediate approach may be to establish a monetary threshold above which approval of the court is required. However, where the security or priority to be given affects the interests, for example, of existing secured creditors and those secured creditors do not support what is proposed, approval of the court should be required.

5. Effects of conversion

107. Some insolvency laws provide that any security or priority provided in respect of new lending can be set aside in a subsequent liquidation, and may give rise to liability for delaying the commencement of liquidation and potentially damaging the interests of creditors. Such an approach has the potential to act as a disincentive to commencing reorganization. A more desirable approach may be to provide that creditors obtaining priority for new funding will retain that priority in any subsequent liquidation. A further approach provides that the priority will be recognized in a subsequent liquidation, but will not necessarily be accorded the same level of and may rank, for example, after administrative claims relating to the costs of the liquidation or pari passu with administrative expenses.

Recommendations 63-68

Attracting and authorizing post-commencement finance (paras. 94-100, 105 and 106)

63. The insolvency law should facilitate and provide incentives for post-commencement finance to be obtained by the insolvency representative where the insolvency representative determines it to be necessary for the continued operation or survival of the business of the debtor or the preservation or enhancement of the value of the estate. The insolvency law may require the court to authorize or creditors to consent to the provision of post-commencement finance.

Priority for post-commencement finance (paras. 101 and 102)

64. The insolvency law should establish the priority that may be accorded to post-commencement finance, ensuring at least the payment of the post-commencement finance provider ahead of ordinary unsecured creditors, including those unsecured creditors with administrative priority.

Security for post-commencement finance (paras. 103 and 104)

65. The insolvency law should enable a security interest to be granted for repayment of post-commencement finance, including a security interest on an

unencumbered asset, including an after-acquired asset, or a junior or lower-priority security interest on an already encumbered asset of the estate.

66. The law should specify that a security interest over the assets of the estate to secure post-commencement finance does not have priority ahead of any existing security interest over the same assets unless the insolvency representative obtains the agreement of the existing secured creditor(s) or follows the procedure in recommendation 67.

67. The insolvency law should specify that, where the existing secured creditor does not agree, the court may authorize the creation of a security interest having priority over pre-existing security interests provided specified conditions are satisfied, including:

(a) The existing secured creditor was given the opportunity to be heard by the court;

(b) The debtor can prove that it cannot obtain the finance in any other way; and

(c) The interests of the existing secured creditor will be protected.

Effect of conversion on post-commencement finance (para. 107)

68. The insolvency law should specify that where reorganization proceedings are converted to liquidation, any priority accorded to post-commencement finance in the reorganization should continue to be recognized in the liquidation.

Part two, chapter II, section B

Protection and preservation of the insolvency estate

5. Time of application of the stay

(i) Provisional measures

47. In some insolvency laws that do not provide for the proceedings to commence automatically when an application is made, the application of the stay on commencement is complemented by provisional measures that may be ordered between application and commencement to protect both the assets of the debtor that potentially will constitute the insolvency estate and the collective interests of creditors. Even where the commencement decision is made quickly, there is the potential in that period for the debtor's business situation to change and for dissipation of the debtor's assets—the debtor may be tempted to transfer assets out of the business and creditors, on learning of the application, may take remedial action against the debtor to pre-empt the effect of any stay that may be imposed upon commencement of the proceedings. The unavailability of provisional measures in such circumstances could frustrate the objectives of the insolvency proceedings. As with most provisional measures, the need for relief generally must be urgent and must outweigh any potential harm resulting from such measures.

48. Where an insolvency law permits provisional measures to be granted, it is important that it also include provision for periodic review and, if necessary, renewal of those measures by the court and that it address what happens to those measures on commencement of the insolvency proceedings. In many instances there

will be no need for provisional measures to continue to apply after the commencement of proceedings, as they will be superseded by the measures applicable on commencement. If, however, provisional relief of a particular kind is not provided by the measures applicable on commencement and that type of relief is still required after commencement, the court may extend the application of that provisional measure in appropriate circumstances. Provisional measures would also terminate when an application for commencement is denied or the order for provisional measures is successfully challenged.

(ii) Types of provisional measure

49. Provisional measures may be available on the application of the debtor, creditors or third parties or be ordered by the court on its own motion. They may include appointing an interim insolvency representative or other person (not including the debtor) to administer or supervise the debtor's business and to protect assets and the interests of creditors; prohibiting the debtor from disposing of assets; taking control of some or all of the debtor's assets; suspending enforcement by creditors of security rights against the debtor; staying any action by creditors against the debtor's assets, such as by a secured creditor or retention of title holder; and preventing the commencement or continuation of individual actions by creditors to enforce their claims.

50. Where an insolvency representative is appointed as a provisional measure, it may not have powers as broad as those of an insolvency representative appointed on commencement of proceedings and its functions may be limited to protecting assets and the interests of creditors. It may be given, for example, the power to use and dispose of the debtor's assets in the ordinary course of business and to realize assets in whole or in part in order to protect and preserve the value of those assets which, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy. In any event, it may be necessary to determine the balance of responsibilities between the interim insolvency representative and the debtor with respect to the operation of the debtor's business, bearing in mind that no determination as to commencement of insolvency proceedings has been made. Since significant harm to the debtor's business or to the rights of creditors may result in situations where the court ultimately decides to deny the application for commencement, it is desirable that the court only exercise the power to grant provisional measures if it is satisfied that the assets of the debtor are at risk. In general, the debtor would continue to operate its business and to use and dispose of assets in the ordinary course of business, except to the extent restricted by the court.

(iii) Evidentiary requirements

51. Since these measures are provisional in nature and are granted before the court's determination that the commencement criteria have been met, the law may require the court to be satisfied that there is some likelihood that the debtor will satisfy the commencement requirements. Where a party other than the debtor applies for the measure, the applicant may be required by the court to provide evidence that the measure is necessary to preserve the value or avoid dissipation of the debtor's assets. In that case, some form of security for costs, fees or damages, such as the posting of a bond, may also be required in case insolvency proceedings are not subsequently commenced or the measure sought results in some harm to the debtor's business. Where provisional measures are improperly obtained, it may be

appropriate to permit the court to assess costs, fees and damages against the applicant for the measure.

(iv) Notice of application and orders for provisional measures

52. The insolvency law may also need to consider the question of provision of notice, both in respect of an application for provisional measures and of an order for provisional measures (including the time at which those measures become effective) and the parties to be notified. As a general principle, the debtor should be given notice of an application for provisional measures and an opportunity to challenge the application. Only in exceptional circumstances is it desirable that notice to the debtor be dispensed with and the application proceeds on an ex parte basis. While many laws allow ex parte applications for provisional measures, they generally do so on the basis that the applicant provides security for costs and damages and can demonstrate requisite urgency, that is, that irreparable harm will result if the applicant is required to seek the requested measure under customary procedures requiring many days' notice. Nevertheless, once an order for provisional measures has been made on an ex parte basis, the debtor would generally be entitled to notice of the order and an opportunity to be heard. Bearing in mind the need to avoid unnecessary damage to a debtor against whom insolvency proceedings are not subsequently commenced, notice of an order for provisional measures may need to be restricted to parties directly affected by the order. Notice should also be provided to other parties where their interests will be affected by the provisional measures being sought.

(v) Relief from provisional measures

53. Relief from the application of provisional measures, such as modification or termination, may be appropriate in cases where the interests of the persons to whom the measures are directed are being harmed by their application. Examples might include cases involving perishable goods; actions relating to preservation or quantification of a claim against the debtor; and, in some situations, secured creditors. The granting of such relief may need to be balanced against potential detriment to the interests of creditors generally or to the debtor's assets. Such relief might be available on the application of the affected party, the insolvency representative or on the motion of the court itself and would generally require that notice and an opportunity to be heard be given to the person or persons to be affected by the modification or termination. Where an order for provisional measures is successfully challenged, the measures would generally terminate or be modified by the court.

8. Protection of secured creditors

(b) Protection of value

63. Some insolvency laws adopt provisions specifically designed to address the negative impact of the stay on secured creditors by maintaining the economic value of secured claims during the period of the stay (in some jurisdictions referred to as "adequate protection"). Where the estate is able to maintain the value of encumbered assets, it can be approached in several ways.

(i) Protecting the value of the encumbered asset

64. One approach is to protect the value of the encumbered asset itself on the understanding that, upon liquidation, the proceeds of sale of the asset will be distributed directly to the creditor to the extent of the secured portion of their claim. This approach may require a number of steps to be taken.

65. During the period of the stay it is possible that the value of the encumbered asset will diminish. Since, at the time of eventual distribution, the extent to which the secured creditor will receive priority will be limited by the value of the encumbered asset, that depreciation can prejudice the secured creditor. Some insolvency laws provide that the insolvency representative should protect secured creditors against any diminution either by providing additional or substitute assets or making periodic cash payments corresponding to the amount of the diminution in value. This approach is only necessary where the value of the encumbered asset is less than the amount of the secured claim. If the value exceeds the claim, the secured creditor will not be harmed by the diminution of value until that value becomes insufficient to pay the secured claim. Some States that preserve the value of the encumbered asset as outlined also allow for payment of interest during the period of the stay to compensate for delay imposed by the proceedings. Payment of interest may be limited, however, to the extent that the value of the encumbered asset exceeds the value of the secured claim. Otherwise, compensation for delay may deplete the assets available to unsecured creditors. Such an approach may encourage lenders to seek a security interest that will adequately protect the value of their claims.

Valuation of encumbered assets

66. Central to the notion of protecting the value of encumbered assets is the mechanism for determining the value of those assets to enable the court to consider whether and how much to provide to secured creditors as relief against the diminution of the value of encumbered assets during the proceedings. This is a potentially complex issue and involves questions of the basis on which the valuation should be made (e.g. going concern value or liquidation value); the party to undertake the valuation; and the relevant date for determining value, having regard to the purpose for which the valuation is required. In some cases, the parties may have valued assets before commencement of the proceedings and that valuation may still be valid at commencement. There may be a need for an overall valuation shortly after commencement for the purpose of registering all assets and liabilities and preparing a net balance of the debtor's position, so that the insolvency representative will have some idea of the value of the estate. Assets, in particular encumbered assets, may need to be valued in the course of proceedings to determine the value of the secured claim (and any related unsecured claim) and issues of protection related to any diminution in that value. Assets may also need to be valued in support of the disposal of segments of the business or of specific assets other than in the ordinary course of business and at confirmation of an approved reorganization plan to satisfy applicable requirements. A related issue is the cost of valuation and the party that should bear that cost.

67. One approach is for the valuation, at least in the first instance, to be determined through agreement by the parties (being the debtor, or insolvency representative, and the secured creditor). Other laws provide different court-based

approaches. For example, rather than undertaking the valuation itself, the court may specify a mode of determining the value, which might be carried out by appropriate experts. This could be supported by stating clear principles in the insolvency law as a basis for the valuation. An alternative approach is for the court, possibly following an initial estimate or appraisal of value by the insolvency representative, to determine the value on the basis of evidence, which might include a consideration of markets, market conditions and expert testimony. Some laws require a market valuation of an asset through sale, whereby the highest price available in the market for the asset is obtained via tender or auction. This valuation technique is less applicable to protection of either the value of the encumbered asset or the secured claim than it is to disposal of assets of the estate by the insolvency representative.

68. In some liquidation cases, the insolvency representative may find it necessary to use or sell encumbered assets (see below, paras. 83-86) in order to maximize the value of the estate. For example, to the extent that the insolvency representative is of the view that the value of the estate can be maximized if the business continues to operate for a temporary period in liquidation, it may wish to sell inventory that is partially encumbered. In reorganization proceedings also, it may be in the best interests of the estate to sell encumbered assets of a similar nature to provide needed working capital. Thus, in cases where secured creditors are protected by preserving the value of the encumbered asset, it may be desirable for an insolvency law to allow the insolvency representative the choice of providing the creditor with substitute equivalent security interest, such as a replacement lien over another asset or the proceeds of the sale of the encumbered asset or paying out the full amount of the value of the assets that secure the secured claim either immediately or through an agreed payment plan. Other approaches focus on the use of the proceeds of the sale of the encumbered assets (see below, paras. 92 and 93). One method is for the court to prevent current or future use of those proceeds by the insolvency representative. Other laws grant secured creditors relief from the stay to pursue individual remedies regarding such proceeds or, where use of the proceeds is not authorized by either the secured creditor or the court, hold the debtor, its management or the insolvency representative personally liable for the amount of the proceeds or make such debt non-dischargeable.

(ii) Protecting the value of the secured portion of the claim

69. A second approach to protecting the interests of secured creditors is to protect the value of the secured portion of the claim. Immediately upon commencement, the encumbered asset is valued and, based on that valuation, the amount of the secured portion of the creditor's claim is determined. This amount remains fixed throughout the proceedings and, upon distribution following liquidation, the secured creditor receives a first-priority claim to the extent of that amount. During the proceedings, the secured creditor could also receive the contractual rate of interest on the secured portion of the claim to compensate for delay imposed by the proceedings. This approach avoids some of the complexities associated with ongoing valuation of the encumbered assets that may be required under the first approach noted above.

Recommendations 39-45 and 50

Provisional measures (paras. 47-53)

39. The insolvency law should specify that the court may grant relief of a provisional nature, at the request of the debtor, creditors or third parties, where relief is needed to protect and preserve the value of the assets of the debtor or the interests of creditors, between the time an application to commence insolvency proceedings is made and commencement of the proceedings, including:

(a) Staying execution against the assets of the debtor, including actions to make security interests effective against third parties and enforcement of security interests;

(b) Entrusting the administration or supervision of the debtor's business, which may include the power to use and dispose of assets in the ordinary course of business, to an insolvency representative or other person designated by the court;

(c) Entrusting the realization of all or part of the assets of the debtor to an insolvency representative or other person designated by the court, in order to protect and preserve the value of assets of the debtor that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

(d) Any other relief of the type applicable or available on commencement of proceedings under recommendations 46 and 48.

Indemnification in connection with provisional measures (para. 51)

40. The insolvency law may provide the court with the power to:

(a) Require the applicant for provisional measures to provide indemnification and, where appropriate, to pay costs or fees; or

(b) Impose sanctions in connection with an application for provisional measures.

Balance of rights between the debtor and insolvency representative (paras. 50 and 70-73)

41. The insolvency law should clearly specify the balance of the rights and obligations between the debtor and any insolvency representative appointed as a provisional measure. Between the time an application for commencement of insolvency proceedings is made and commencement of those proceedings, the debtor is entitled to continue to operate its business and to use and dispose of assets in the ordinary course of business, except to the extent restricted by the court.

Notice (para. 52)

42. The insolvency law should specify that, unless the court limits or dispenses with the need to provide notice, appropriate notice is to be given to those parties in interest affected by:

(a) An application or court order for provisional measures (including an application for review and modification or termination); and

(b) A court order for additional measures applicable on commencement, unless the court limits or dispenses with the need to provide notice.

Ex parte provisional measures (para. 52)

43. The insolvency law should specify that, where the debtor or other party in interest affected by a provisional measure is not given notice of the application for that provisional measure, the debtor or other party in interest affected by the provisional measures has the right, upon urgent application, to be heard promptly on whether the relief should be continued.

Modification or termination of provisional measures (para. 53)

44. The insolvency law should specify that the court, at its own motion or at the request of the insolvency representative, the debtor, a creditor or any other person affected by the provisional measures, may review and modify or terminate those measures.

Termination of provisional measures (para. 53 and chap. I, para. 63)

45. The insolvency law should specify that provisional measures terminate when:

(a) An application for commencement is denied;

(b) An order for provisional measures is successfully challenged under recommendation 43; and

(c) The measures applicable on commencement take effect, unless the court continues the effect of the provisional measures.

Protection from diminution of the value of encumbered assets (paras. 63-69)

50. The insolvency law should specify that, upon application to the court, a secured creditor should be entitled to protection of the value of the asset in which it has a security interest. The court may grant appropriate measures of protection that may include:

(a) Cash payments by the estate;

(b) Provision of additional security interests; or

(c) Such other means as the court determines.