

An Insolvency regime for SMEs

UNCITRAL International Colloquium on Microfinance

Insolvency Situation

- **Possibility always present**
- **A proper system to deal with Insolvency provides predictability thus fostering the possibility to granting credit to SME**

Designing an Insolvency System for SME

- The “ordinary” Insolvency regime
 - Commercial and non commercial
 - Reorganization or Liquidation
- In general there are two different systems: those dedicated to commercial activity, and those dedicated to natural persons.
- Neither of those fits completely with the reality of microbusiness

Designing an Insolvency System for SME

- Combine the best out from those regimes:
- From the commercial regimes:
 - Maximization of enterprise value
 - Preserving the enterprise
- From the natural persons regimes:
 - Discharge
 - Fresh Start.
- Possible activity for Group V of UNCITRAL

ISSUES TO DEAL WITH IN DESIGNING THE INSOLVENCY REGIME FOR SMES

Eligible Subjects

- Definition of SME
- Natural persons
- Natural persons using a legal vehicle that creates an estate with the assets dedicated to the business.
- A moral person

Commencement

- Usually when debtor has generally ceased making payments.
- Liquidity test or minimum amount
- Voluntary or involuntary

Changes in the legal status of the insolvent person

- Automatic stay
- Stop accruing interests
- Contracts with third parties
- Debtor in possession

Estate

- **Assets dedicated to business**
- **Exemptions regime**
- **Avoidance of fraudulent acts**
- **No income no assets**

Creditors

- Small in number
- File for insolvency?
- Proof of claims?
- Creditors Committee?
- Priority system

Reorganization

- Reorganization plan
- Agreement with creditors or plan designed and decided by:
 - A mediator
 - A Court
 - An administrative office

Liquidation

- **As an ongoing concern or asset by asset**
- **Discharge**
- **Fresh Start**

Administration of the regime

- **Simplicity and agility**
- **Mediation vs. Litigation**
- **Courts vs. Administrative entity**
- **Costs**

Conclusion

- We can recommend the creation of an specific insolvency regime for SMEs
- This regime should be: simple, agile and not expensive, aimed to keep the entrepreneur on business.