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.