An Insolvency regime for MSMEs

Fourth UNCITRAL International Insolvency Law Colloquium
The III Proposal

• The III considers that an insolvency regime made ad hoc for MSMEs is important.

• WG V has already within its mandate to look at the Legislative Guide in detail at the next meeting.

• I want to provide here only an introduction that sets the scene for WG V and not a matter of discussion.

• Eventually these ideas can also address issues of relevance to WG I.
Insolvency Situation

• Possibility always present
• A proper system to deal with Insolvency provides predictability thus fostering the possibility to grant credit to MSME’s
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
  - Preservation of the enterprise
- From the natural persons regimes:
  - Discharge
  - Fresh Start.
Eligible Subjects

• Definition of MSME
• 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 body
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
• 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 in business.
Conclusion

• The regime should be: simple, agile and not expensive, aimed to keep the entrepreneur in business.