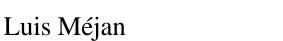


An Insolvency regime for MSMEs

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.



MSME's INSOLVENCY

General issues to deal with in designing an ad hoc Regime

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.