



# 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.**