

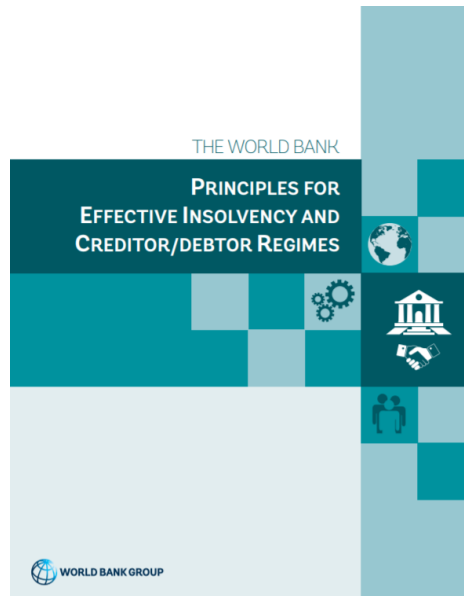
World Bank Principles for Effective Insolvency and Creditor/Debtor Regimes



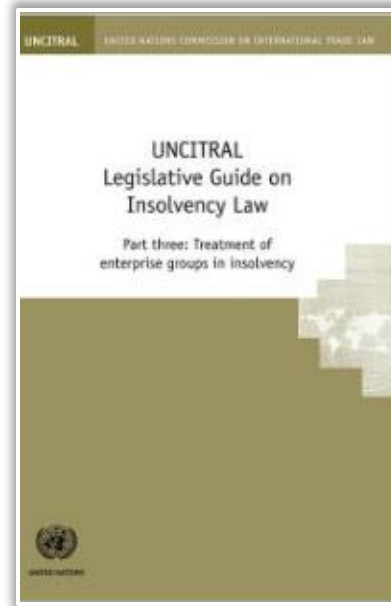
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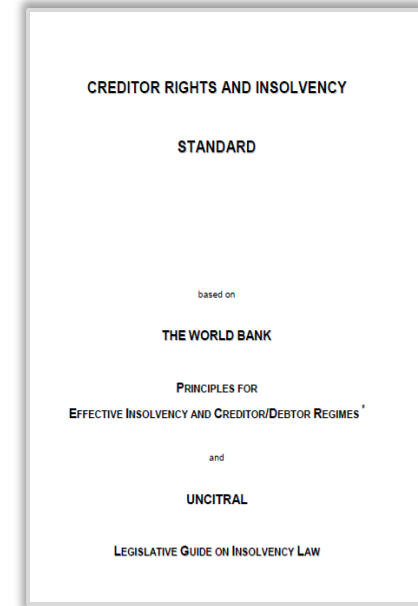
- ✓ Key International Instruments that Guide Effective Insolvency Regimes and Creditor/Debtor Regimes



WB ICR Principles



UNCITRAL Legislative Guide



Unified Standard for ICR

World Bank ICR Principles

- ✓ We assist governments in improving their credit environments through the development of more effective insolvency systems and creditor/debtor regimes.
- ✓ This is achieved through international standard-setting, detailed diagnostics, and technical assistance for implementation.
- ✓ Principles are a distillation of international best practice **and do not offer detailed prescriptions for national systems**



Improper Commencement of Insolvency Proceedings



Applicability and Accessibility

- C4.2 Commencement criteria and presumptions about insolvency should be clearly defined in the law. The preferred test to commence an insolvency proceeding should be the debtor's inability to pay debts as they mature, although insolvency may also exist where the debtor's liabilities exceed the value of its assets, provided that the values of assets and liabilities are measured on the basis of fair-market values⁷.
- C4.4 Where the application for commencement of a proceeding is made by a creditor, the debtor should be entitled to prompt notice of the application, an opportunity to defend against the application, and a prompt decision by the court on the commencement of the case or the dismissal of the creditor's application.

⁷ A single or dual approach may be adopted, although where only a single test is adopted it should be based on the liquidity approach for determining insolvency, that is, the debtor's inability to pay due debts.

Strategies: Tests to identify the ideonity of a commencement



Possible ways in which the insolvency process can be abused, both by the debtor and the creditors.



Possible safeguards against abuse in the hands of the judiciary.



Striking the right balance in preventing abuse while ensuring timely, efficient and cost-effective processing of applications for commencement.

Strategies to Manage Improper Commencement



- **D6.1 - Integrity of the court.** The system should guarantee security of tenure and adequate remuneration of judges, personal security for judicial officers, and the security of court buildings. Court operations and decisions should be based on firm rules and regulations to avoid corruption and undue influence.
- **D6.2 - Conflict of interest and bias.** The court must be free of conflicts of interest, bias, and lapses in judicial ethics, objectivity, and impartiality.
- **D6.3 - Integrity of participants.** Persons involved in a proceeding must be subject to rules and court orders designed to prevent fraud, other illegal activity, and abuse of the insolvency and creditor rights system. **In addition, the court must be vested with appropriate powers to enforce its orders and address matters of improper or illegal activity by parties or persons appearing before the court with respect to court proceedings.**



C19.2 - Commencement Criteria

- *Debtors should have easy access to simplified reorganization proceedings in case of insolvency and also at an early stage of financial difficulty.*
- *The law should establish a debtor's filing showing proof of basic criteria as a rebuttable presumption of insolvency or financial difficulty.*
- *MSEs liquidation proceedings may be commenced on the application of a creditor provided that it is established that the debtor is insolvent.*



C18 - Objectives and Policies in the context of MSE insolvencies

- *Though country approaches may vary, effective insolvency systems for MSEs should aim to:*

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- *Implement an effective regime to prevent and sanction fraud, improper use and abuse of MSEs insolvency proceedings.*

THANK YOU

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