



# International Perspectives on Insolvency of Micro & Small Enterprises

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# Agenda

1. Context: Importance of micro and small enterprises
2. Overview of UNCITRAL Insolvency Texts
3. UNCITRAL Legislative Recommendations on Insolvency of Micro and Small Enterprises



# Context: Importance of micro & small enterprises (“MSEs”)



# Specific Characteristics of MSEs

Existing insolvency systems generally designed with larger enterprises in mind;  
not tailored to specific characteristics of MSEs



## Centralised Governance Model

Ownership, control & management overlap; together with closely intermingled business & personal debts



## Commencement of proceedings

Management may be unwilling to request commencement of insolvency proceedings



## Business Records

Few or no business records may exist



## Financial sophistication

MSEs typically do not share the same level of financial sophistication as larger enterprises



## Credit & Security

Physical assets encumbered to secured creditors; unencumbered assets having little to no value for distribution



## Creditor Apathy/Passivity

Creditors may not be willing to invest time & resources, as the cost of participation may outweigh any returns

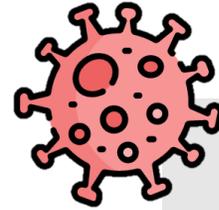


# Importance of MSEs

Small businesses form a large proportion of economies

Represents  
**90%** of  
enterprises

More than  
**50%** of  
employment  
worldwide



Share of SMEs  
with negative  
equity may rise by  
**6 percentage  
points**



# UNCITRAL Legislative Recommendations on Insolvency of Micro and Small Enterprises



# Overview of UNCITRAL Insolvency Texts

1997	Model Law on Cross-Border Insolvency
2004	Legislative Guide on Insolvency Law
2018	Model Law on Recognition & Enforcement of Insolvency-related Judgments
2019	Model Law on Enterprise Group Insolvency
2019	Part 4 of the Legislative Guide on Insolvency Law: Directors' obligations in the period approaching insolvency
<b>2021</b>	<b>Legislative Recommendations on Micro and Small Enterprise Insolvency</b>



# UNCITRAL Legislative Recommendations on Insolvency of Micro and Small Enterprises

## OVERVIEW

The Recommendations provide guidance on designing and implementing a simplified insolvency regime.

Encompassing both simplified reorganization & simplified liquidation.



# UNCITRAL Legislative Recommendations

## Key Principles & Aims

(1)	<b>Expeditious, simplified, flexible &amp; low-cost</b> procedures
(2)	Making simplified proceedings <b>available &amp; easily accessible</b>
(3)	Promoting <b>fresh start</b>
(4)	<b>Protection</b> of all <b>affected parties</b> , including creditors, employees & other stakeholders
(5)	Effective measures to <b>facilitate participation by creditors</b>
(6)	<b>Sanctions</b> regime to prevent <b>improper use</b>
(7)	Addressing concerns over <b>stigma</b> because of insolvency
(8)	Where <b>reorganization</b> is feasible, <b>preserving employment &amp; investment</b>



# UNCITRAL Legislative Recommendations

## Key Features & Innovations

1. Measures to reduce the cost and length of simplified insolvency proceedings
2. Mechanisms to address creditor disengagement and passivity that arises as a result of the few incentives for creditors to deal with debtors in simplified insolvency proceedings
3. Preference for debtor-in-possession governance model in simplified re-organisation proceedings (subject to various safeguards to protect creditors' interests)
4. Recognition of the comingling of business and personal debts of the debtor



# Thank you

