

UNCITRAL Legislative Recommendations on Insolvency of Micro- and Small Enterprises

A. Key objectives of a simplified insolvency regime

1. States should provide for a simplified insolvency regime and for that purpose consider the following key objectives:

(a) Putting in place expeditious, simple, flexible and low-cost insolvency proceedings (henceforth referred to as “simplified insolvency proceedings”);

(b) Making simplified insolvency proceedings available and easily accessible to micro- and small-sized enterprises (MSEs);

(c) Promoting the MSE debtor’s fresh start by enabling expedient liquidation of non-viable MSEs and reorganization of viable MSEs through simplified insolvency proceedings;

(d) Ensuring protection of persons affected by simplified insolvency proceedings, including creditors, employees and other stakeholders (henceforth referred to as “parties in interest”) throughout simplified insolvency proceedings;

(e) Providing effective measures to facilitate participation by creditors and other parties in interest in simplified insolvency proceedings, and to address creditor disengagement;

(f) Implementing an effective sanctions regime to prevent abuse or improper use of the simplified insolvency regime and to impose appropriate penalties for misconduct;

(g) Addressing concerns over stigmatization because of insolvency; and

(h) Where reorganization is feasible, preserving employment and investment.

Those objectives are in addition to the objectives of an effective insolvency law as set out in recommendations 1–5 of the UNCITRAL Legislative Guide on Insolvency Law (the “Guide”), such as the provision of certainty in the market to promote economic stability and growth, maximization of value of assets, preservation of the insolvency estate to allow equitable distribution to creditors, equitable treatment of similarly situated creditors, ensuring transparency and predictability, recognition of existing creditor rights and establishment of clear rules for ranking of priority.

B. Scope of a simplified insolvency regime

Application to all micro- and small-sized enterprises

2. States should ensure that a simplified insolvency regime applies to all MSEs. Aspects of the regime may differ depending on the type of MSE. (*See recommendations 8 and 9 of the Guide.*)

Comprehensive treatment of all debts of individual entrepreneurs

3. States should ensure that all debts of an individual entrepreneur are addressed in a single simplified insolvency proceeding unless the State decides to subject some debts of individual entrepreneurs to other insolvency regimes, in which case procedural consolidation or coordination of linked insolvency proceedings should be ensured.

Types of simplified insolvency proceedings

4. States should ensure that a simplified insolvency regime provides for simplified liquidation and simplified reorganization. (*See recommendation 2 of the Guide.*)

C. Institutional framework

Competent authority and an independent professional

5. The insolvency law providing for a simplified insolvency regime should:

(a) Clearly indicate the competent authority; (*See recommendation 13 of the Guide.*)

(b) Specify the functions of the competent authority and any independent professional used in the administration of simplified insolvency; and

(c) Specify mechanisms for review and appeal of the decisions of the competent authority and any independent professional used in the administration of simplified insolvency proceedings.

Possible functions of the competent authority

6. The insolvency law providing for a simplified insolvency regime may specify, for example, the following functions of the competent authority:

(a) Verification of eligibility requirements for commencement of a simplified insolvency proceeding;

(b) Verification of accuracy of information provided to the competent authority by the debtor, creditors and other parties in interest, including as regards the debtor's assets, liabilities and recent transactions;

(c) Resolution of disputes concerning the type of proceeding to commence;

(d) Conversion of one proceeding to another;

(e) Exercise of control over the insolvency estate;

(f) Verification and review of the reorganization plan and the liquidation schedule for compliance with law;

(g) Supervision of the implementation of a debt repayment or reorganization plan and verification of the implementation of the plan;

(h) Decisions related to the stay of proceedings, relief from the stay, creditors' objections or opposition, disputes, approval of a liquidation schedule and confirmation of a reorganization plan; and

(i) Oversight of compliance by the parties with their obligations under the simplified insolvency regime, including any obligations owed to employees under the insolvency law and other laws applicable within insolvency proceedings.

Appointment of persons to assist the competent authority in the performance of its functions

7. The insolvency law providing for a simplified insolvency regime should allow the competent authority to appoint one or more persons, including independent professionals, to assist it in the performance of its functions.

Possible functions of an independent professional

8. If the insolvency law providing for a simplified insolvency regime envisages the use of an independent professional in the administration of simplified insolvency proceedings, it should allocate the functions of the competent authority, such as those illustrated in recommendation 6, between the competent authority and an independent professional. That law may provide for such allocation to be determined by the competent authority itself.

Support with the use of a simplified insolvency regime

9. The insolvency law providing for a simplified insolvency regime should specify measures to make assistance and support with the use of a simplified insolvency regime readily available and easily accessible. Such measures may include services of an independent professional; templates, schedules and standard forms; and an enabling framework for the use of electronic means where information and communications technology in the State so permits and in accordance with other applicable law of that State.

Mechanisms for covering costs of administering simplified insolvency proceedings

10. The insolvency law providing for a simplified insolvency regime should specify mechanisms for covering the costs of administering simplified insolvency proceedings where assets and sources of revenue of the debtor are insufficient to meet those costs. (*See recommendations 26 and 125 of the Guide.*)

D. Main features of a simplified insolvency regime**Default procedures and treatment**

11. The insolvency law providing for a simplified insolvency regime should specify the default procedures and treatment that apply unless any party in interest objects or intervenes with a request for a different procedure or treatment or other circumstances exist that justify a different procedure or treatment.

Short time periods

12. The insolvency law providing for a simplified insolvency regime should specify short time periods for all procedural steps in simplified insolvency proceedings, narrow grounds for their extension and the maximum number, if any, of permitted extensions.

Reduced formalities

13. Consistent with the objective of establishing a cost-effective simplified insolvency regime, the insolvency law providing for a simplified insolvency regime should reduce formalities for all procedural steps in simplified insolvency proceedings, including for submission of claims, for obtaining approvals and for giving notices and notifications.

Debtor-in-possession in simplified reorganization proceedings*Debtor-in-possession as the default approach*

14. The insolvency law providing for a simplified insolvency regime should specify that, in simplified reorganization proceedings, the debtor remains in control of its assets and the day-to-day operation of its business with appropriate supervision and assistance of the competent authority.

Rights and obligations of the debtor-in-possession

15. The insolvency law providing for a simplified insolvency regime should specify the rights and obligations of the debtor-in-possession, in particular as regards the use

and disposal of assets,¹ post-commencement finance² and treatment of contracts,³ and allow the competent authority to specify them on a case-by-case basis.

Limited or total displacement of the debtor-in-possession

16. The insolvency law providing for a simplified insolvency regime should specify:

(a) Circumstances justifying limited or total displacement of the debtor-in-possession in simplified reorganization proceedings;

(b) Persons who may displace the debtor-in-possession in simplified reorganization proceedings; and

(c) That the competent authority should be authorized to decide on displacement and terms of displacement on a case-by-case basis. (*See recommendations 112 and 113 of the Guide.*)

Possible involvement of the debtor in the liquidation of the insolvency estate

17. The insolvency law providing for a simplified insolvency regime may specify circumstances under which the competent authority may allow the debtor's involvement in the liquidation of the insolvency estate and the extent of such involvement.

Deemed approval

18. The insolvency law providing for a simplified insolvency regime should specify the matters which require approval of creditors and establish the relevant approval requirements. (*See recommendation 127 of the Guide.*) It should also specify that approvals on those matters are deemed to be obtained where:

(a) Those matters have been notified by the competent authority to relevant creditors in accordance with procedures and time periods established for such purpose in the insolvency law providing for a simplified insolvency regime or by the competent authority; and

(b) Neither objection nor sufficient opposition as regards those matters is communicated to the competent authority in accordance with procedures and time periods established for such purpose in the insolvency law providing for a simplified insolvency regime or by the competent authority.

E. Participants

Rights and obligations of parties in interest

19. The insolvency law providing for a simplified insolvency regime should specify rights and obligations of the MSE debtor, of the creditors and of other parties in interest, including employees where applicable under national law, such as:

(a) The right to be heard and request review on any issue in the simplified insolvency proceedings that affects their rights, obligations or interests; (*See recommendations 137 and 138 of the Guide.*)

(b) The right to participate in the simplified insolvency proceedings and to obtain information relating to the proceeding from the competent authority subject to appropriate protection of information that is commercially sensitive, confidential or private; (*See recommendations 108, 111 and 126 of the Guide.*)

¹ See recommendations 52–62 of the Guide that will be applicable, mutatis mutandis, in a simplified insolvency regime. References to the insolvency representative in those recommendations should be read as references to the debtor-in-possession unless limited or total displacement of the debtor from the operation of the business takes place.

² *Idem.*, but with reference to recommendations 63–68 of the Guide.

³ *Idem.*, but with reference to recommendations 69–86 and 100–107 of the Guide.

(c) Where the debtor is an individual entrepreneur, the right of the debtor to retain the assets excluded from the insolvency estate by law. (*See recommendation 109 of the Guide.*)

Obligations of the debtor

20. The insolvency law providing for a simplified insolvency regime should specify the obligations of the MSE debtor that should arise on the commencement of, and continue throughout, the proceedings. The obligations should include the following:

(a) To cooperate with and assist the competent authority to perform its functions, including, where applicable, to take effective control of the estate, wherever located, and of business records, and to facilitate or cooperate in the recovery of the assets;

(b) To provide accurate, reliable and complete information relating to its financial position and business affairs, subject to allowing the debtor the time necessary to collect the relevant information, with the assistance of the competent authority where required, including an independent professional where appointed, and subject to appropriate protection of commercially sensitive, confidential and private information;

(c) To provide notice of the change of a habitual place of residence or place of business;

(d) To adhere to the terms of the liquidation schedule or reorganization plan; and

(e) In the day-to-day operation of the business, to have otherwise due regard to the interests of creditors and other parties in interest.

(*See recommendations 110 and 111 of the Guide.*)

Protection of employees' rights and interests in simplified insolvency proceedings

21. The insolvency law providing for a simplified insolvency regime should require the competent authority to ensure that all requirements of insolvency law and other laws applicable within insolvency proceedings relating to the protection of employees' rights and interests in insolvency are complied with in simplified insolvency proceedings. Those requirements may include, in particular, the requirement to keep the MSE debtor's employees properly informed, either directly or through their representatives, about the commencement of a simplified insolvency proceeding and all matters arising from that proceeding affecting their employment status and entitlements.

F. Eligibility, application and commencement

Eligibility

22. The insolvency law providing for a simplified insolvency regime should establish the criteria that debtors must meet in order to be eligible for simplified insolvency proceedings, minimizing the number of such criteria, and specify under what conditions creditors of the eligible debtors may also apply for commencement of simplified insolvency proceedings with respect to those debtors.

(*See recommendations 8, 9 and 14-16 of the Guide.*)

Commencement criteria and procedures

23. The insolvency law providing for a simplified insolvency regime should:

(a) Establish transparent, certain and simple criteria and procedures for commencement of simplified insolvency proceedings;

(b) Enable applications for simplified insolvency proceedings to be made and dealt with in a speedy, efficient and cost-effective manner; and

(c) Establish safeguards to protect debtors, creditors and other parties in interest, including employees, from abuse of the application procedure.

(See the text preceding recommendation 14 of the Guide.)

Commencement on debtor application

Application

24. The insolvency law providing for a simplified insolvency regime should allow eligible debtors to apply for commencement of a simplified insolvency proceeding at an early stage of financial distress without the need to prove insolvency. *(See recommendation 15 of the Guide.)*

Information to be included in the application

25. The insolvency law providing for a simplified insolvency regime should specify information that the debtor must include in its application for commencement of a simplified insolvency proceeding, keeping the disclosure obligation at the stage of application to the minimum. It should require that information to be accurate, reliable and complete.

Effective date of commencement

26. The insolvency law providing for a simplified insolvency regime should specify that where the application for commencement is made by the debtor:

(a) The application for commencement will automatically commence a simplified insolvency proceeding; or

(b) The competent authority will promptly determine its jurisdiction and whether the debtor is eligible and, if so, commence a simplified insolvency proceeding.

(See recommendation 18 of the Guide.)

Commencement on creditor application

27. The insolvency law providing for a simplified insolvency regime should specify that a simplified insolvency proceeding may be commenced on the application of a creditor of a debtor which is eligible for simplified insolvency proceedings, provided that:

(a) Notice of application is promptly given to the debtor;

(b) The debtor is given the opportunity to respond to the application, by contesting the application, consenting to the application or requesting the commencement of a proceeding different from the one applied for by the creditor; and

(c) A simplified insolvency proceeding of the type to be determined by the competent authority commences without agreement of the debtor only after it is established that the debtor is insolvent.

(See recommendation 19 of the Guide.)

Denial of application

Possible grounds for denial of application

28. The insolvency law providing for a simplified insolvency regime should specify that, where the decision to commence a simplified insolvency proceeding is to be made by the competent authority, the competent authority should deny the application if it finds that:

(a) It does not have jurisdiction;

- (b) The applicant is ineligible; or
- (c) The application is an improper use of the simplified insolvency regime.

(See recommendation 20 of the Guide.)

Prompt notice of denial of application

29. The insolvency law providing for a simplified insolvency regime should require the competent authority to promptly give notice of its decision to deny the application to the applicant, and where the application was made by a creditor, also to the debtor. *(See recommendation 21 of the Guide.)*

Possible consequences of denial of application

30. The insolvency law providing for a simplified insolvency regime should set out possible consequences of denial of application, including that a different type of insolvency proceeding may commence if criteria set out in the insolvency law for the commencement of that other type of insolvency proceeding are met.

Possible imposition of costs and sanctions against the applicant

31. The insolvency law providing for a simplified insolvency regime should allow the competent authority, where it has denied an application to commence a simplified insolvency proceeding under recommendation 28, to impose costs or sanctions, where appropriate, against the applicant for submitting the application. *(See recommendation 20 of the Guide.)*

Notice of commencement of proceedings

32. The insolvency law providing for a simplified insolvency regime should require that:

- (a) The competent authority should give the notice of the commencement of the simplified insolvency proceeding using the means appropriate to ensure that the information is likely to come to the attention of parties in interest; and
- (b) The debtor and all known creditors should be individually notified by the competent authority of the commencement of the simplified insolvency proceeding unless the competent authority considers that, under the circumstances, some other form of notice would be more appropriate.

(See recommendations 23 and 24 of the Guide.)

Content of the notice of commencement of a simplified insolvency proceeding

33. The insolvency law providing for a simplified insolvency regime should specify that the notice of commencement of a simplified insolvency proceeding is to include:

- (a) The effective date of the commencement of the simplified insolvency proceeding;
- (b) Information concerning the application of the stay and its effects;
- (c) Information concerning submission of claims or that the list of claims prepared by the debtor will be used for verification;
- (d) Where submission of claims by creditors is required, the procedures and time period for submission and proof of claims and the consequences of failure to do so (see recommendation 51 below); and
- (e) Time period for expressing objection to the commencement of a simplified insolvency proceeding (see recommendation 34 below).

(See recommendation 25 of the Guide.)

Creditor objection to the commencement of a simplified insolvency proceeding

34. The insolvency law providing for a simplified insolvency regime should specify that creditors may object to the commencement of a simplified insolvency proceeding or a particular type thereof or to the commencement of any insolvency proceeding with respect to the debtor, provided they do so within the time period established in the insolvency law as notified to them by the competent authority in the notice of the commencement of the simplified insolvency proceeding (see recommendations 32 and 33 above).

Possible consequences on claims of creditors not notified of the commencement of the simplified insolvency proceeding

35. The insolvency law providing for a simplified insolvency regime should specify consequences on claims of creditors not notified of the commencement of the simplified insolvency proceeding.

Dismissal of a simplified insolvency proceeding after its commencement

Possible grounds for dismissal of the proceeding

36. The insolvency law providing for a simplified insolvency regime should permit the competent authority to dismiss the proceeding if, after its commencement, the competent authority determines, for example, that:

- (a) The proceeding constitutes an improper use of the simplified insolvency regime; or
- (b) The applicant is ineligible.

(See recommendation 27 of the Guide.)

Prompt notice of the dismissal of the proceeding

37. The insolvency law providing for a simplified insolvency regime should require the competent authority to promptly give notice of its decision to dismiss the proceeding using the procedure that was used for giving notice of the commencement of the simplified insolvency proceeding. *(See recommendation 29 of the Guide.)*

Possible consequences of dismissal of the proceeding

38. The insolvency law providing for a simplified insolvency regime should set out possible consequences of the dismissal of the proceeding, including that a different type of insolvency proceeding may commence if criteria set out in the insolvency law for the commencement of that other type of insolvency proceeding are met.

Possible imposition of costs and sanctions against the applicant

39. Where the proceeding is dismissed, the insolvency law providing for a simplified insolvency regime should allow the competent authority to impose costs or sanctions, where appropriate, against the applicant for commencement of the proceeding. *(See recommendation 28 of the Guide.)*

G. Notices and notifications

Procedures for giving notices

40. The insolvency law providing for a simplified insolvency regime should require the competent authority to give notices related to simplified insolvency proceedings and use simplified and cost-effective procedures for such purpose. *(See recommendations 22 and 23 of the Guide.)*

Individual notification

41. The insolvency law providing for a simplified insolvency regime should require that the debtor and any known creditor should be individually notified by the competent authority of all matters on which their approval is required, unless the competent authority considers that, under the circumstances, some other form of notification would be more appropriate. (*See recommendation 24 of the Guide.*)

Appropriate means of giving notice

42. The insolvency law providing for a simplified insolvency regime should specify that the means of giving notice must be appropriate to ensure that the information is likely to come to the attention of the intended party in interest. (*See recommendation 23 of the Guide.*)

H. Constitution, protection and preservation of the insolvency estate**Constitution of the insolvency estate**

43. The insolvency law providing for a simplified insolvency regime should identify:

(a) Assets that will constitute the insolvency estate, including assets of the debtor, assets acquired after commencement of the simplified insolvency proceeding and assets recovered through avoidance or other actions; (*See recommendation 35 of the Guide.*)

(b) Where the MSE debtor is an individual entrepreneur, assets excluded from the estate that the MSE debtor is entitled to retain (see recommendation 19 (c) above). (*See recommendations 38 and 109 of the Guide.*)

Undisclosed or concealed assets

44. The insolvency law providing for a simplified insolvency regime should specify that any undisclosed or concealed assets form part of the insolvency estate.

Date from which the insolvency estate is to be constituted

45. The insolvency law providing for a simplified insolvency regime should specify the effective date of commencement of a simplified insolvency proceeding as the date from which the estate is to be constituted. (*See recommendation 37 of the Guide.*)

Avoidance in simplified insolvency proceedings

46. The insolvency law providing for a simplified insolvency regime should ensure that avoidance mechanisms available under the insolvency law⁴ can be used in a timely and effective manner to maximize returns in simplified insolvency proceedings. The competent authority should be allowed to convert a simplified insolvency proceeding to a different type of insolvency proceeding where the conduct of avoidance proceedings necessitates doing so.

Stay of proceedings*Scope and duration of the stay*

47. The insolvency law providing for a simplified insolvency regime should specify that the stay of proceedings applies on commencement and throughout simplified insolvency proceedings unless: (a) it is lifted or suspended by the competent authority on its own motion or upon request of any party in interest; or (b) the relief from the stay is granted by the competent authority upon request of any party in interest. Any

⁴ See recommendations 87–99 of the Guide.

exceptions to the application of the stay should be clearly stated in the law. (*See recommendations 46, 47, 49 and 51 of the Guide.*)

Rights not affected by the stay

48. The insolvency law providing for a simplified insolvency regime should specify that the stay does not affect:

(a) The right to commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor;

(b) The right of a secured creditor, upon application to the competent authority, to protection of the value of the asset(s) in which it has a security interest;

(c) The right of a third party, upon application to the competent authority, to protection of the value of its asset(s) in the possession of the debtor; and

(d) The right of any party in interest to request the competent authority to grant relief from the stay. (*See recommendations 47, 50, 51 and 54 of the Guide.*)

I. Treatment of creditor claims

Claims affected by simplified insolvency proceedings

49. The insolvency law providing for a simplified insolvency regime should specify claims that will be affected by simplified insolvency proceedings, which should include claims of secured creditors, and claims that will not be affected by simplified insolvency proceedings. (*See recommendations 171 and 172 of the Guide.*)

Admission of claims on the basis of the list of creditors and claims prepared by the debtor

50. The insolvency law providing for a simplified insolvency regime may require the debtor to prepare the list of creditors and claims, with the assistance of the competent authority or an independent professional where necessary, unless the circumstances justify that the competent authority prepares the list itself with the assistance of the debtor or entrusts an independent professional with that task. It should specify that:

(a) The list so prepared should be circulated by the competent authority to all listed creditors for verification, indicating the time period for communicating any objection or concern as regards the list to the competent authority;

(b) In the absence of any objection or concern communicated to the competent authority or the independent professional as applicable within the established time period, the claims are deemed to be undisputed and admitted as listed;

(c) In case of objection or concern, the competent authority takes action with respect to disputed claim(s) (see recommendation 54 below).

(*See recommendations 110 (b)(v) and 170 of the Guide.*)

Submission of claims by creditors

51. The insolvency law providing for a simplified insolvency regime should allow the competent authority, when circumstances of the case so justify, to require creditors to submit their claims to the competent authority, specifying the basis and amount of the claim. It should require in such case that:

(a) The procedures and the time period for submission of the claims and consequences of failure to submit a claim in accordance with those procedures and time period should be specified by the competent authority in the notice of commencement of the simplified insolvency proceeding (see recommendations 32 and 33 above) or in a separate notice;

(b) A reasonable period of time should be given to creditors to submit their claims expeditiously;

(c) Formalities associated with submission of claims should be minimized and the use of electronic means for such purpose should be enabled where information and communication technology in the State so permits and in accordance with other applicable law of that State.

(See recommendations 169, 170, 174 and 175 of the Guide.)

Admission or denial of claims

52. The insolvency law providing for a simplified insolvency regime should allow the competent authority to:

(a) Admit or deny any claim, in full or in part;

(b) Subject claims by related persons to a special scrutiny and treatment, in full or in part; and

(c) Determine the portion of a secured creditor's claim that is secured and the portion that is unsecured by valuing the encumbered asset.

(See recommendations 177, 179 and 184 of the Guide.)

Prompt notice of denial of claims or subjecting them to a special scrutiny or treatment

53. Where the claim is to be denied or subjected to a special scrutiny or treatment, the insolvency law providing for a simplified insolvency regime should require the competent authority to give prompt notice of the decision and the reasons for the decision to the creditor concerned, indicating the time period within which the creditor can request review of that decision. *(See recommendations 177 and 181 of the Guide.)*

Treatment of disputed claims

54. The insolvency law providing for a simplified insolvency regime should permit a party in interest to dispute any claim, either before or after admission, and request review of that claim. It should authorize the competent authority or another competent State body to review a disputed claim and decide on its treatment, including by allowing the proceeding to continue with respect to undisputed claims. *(See recommendation 180 of the Guide.)*

Effects of admission

55. The insolvency law providing for a simplified insolvency regime should specify the effects of admission of a claim, including entitling the creditor whose claim has been admitted to participate in the simplified insolvency proceeding, to be heard, to participate in a distribution and to be counted according to the amount and class of the claim for determining sufficient opposition and establishing the priority to which the creditor's claim is entitled. *(See recommendation 183 of the Guide.)*

J. Features of simplified liquidation proceedings

Decision on a procedure to be used

56. The insolvency law providing for a simplified insolvency regime should require that the competent authority, after commencement of a simplified liquidation proceeding, should promptly determine whether the sale and disposal of the assets of the insolvency estate and distribution of proceeds to creditors will take place in the proceeding:

(a) Where it is determined that the sale and disposal of the assets of the insolvency estate and distribution of proceeds to creditors will take place, the insolvency law providing for a simplified insolvency regime should require the preparation, notification and approval of the liquidation schedule (see recommendations 57–64 below);

(b) Where it is determined that the sale and disposal of the assets of the insolvency estate and distribution of proceeds to creditors will not take place, the insolvency law providing for a simplified insolvency regime should require the competent authority to close the simplified liquidation proceeding (see recommendations 65–67 below).

Procedure involving the sale and disposal of assets and distribution of proceeds

Preparation of the liquidation schedule

57. The insolvency law providing for a simplified insolvency regime may require the competent authority to prepare the liquidation schedule unless circumstances of the case justify entrusting the preparation of the liquidation schedule to the debtor, an independent professional or another person.

Time period for preparing a liquidation schedule

58. The insolvency law providing for a simplified insolvency regime should specify the maximum time period for preparing a liquidation schedule after commencement of a simplified liquidation proceeding, keeping it short, and authorize the competent authority to establish a shorter time period where the circumstances of the case so justify. It should also specify that any time period established by the competent authority must be notified to the person responsible for preparing the liquidation schedule and to (other) known parties in interest.

Minimum contents of the liquidation schedule

59. The insolvency law providing for a simplified insolvency regime should specify the contents of a liquidation schedule, keeping it to the minimum, including that the liquidation schedule should:

- (a) Identify the party responsible for the realization of the assets of the insolvency estate;
- (b) List assets of the debtor, specifying those that are subject to security interests;
- (c) Specify the means of realization of the assets (public auction or private sale or other means);
- (d) List amounts and priorities of the admitted claims; and
- (e) Indicate the timing and method of distribution of proceeds from the realization of the assets.

Notification of the liquidation schedule to all known parties in interest

60. The insolvency law providing for a simplified insolvency regime should require the competent authority to give notice of the liquidation schedule to all known parties in interest, specifying a short period for expressing any objection to the liquidation schedule.

Prior review of the liquidation schedule by the competent authority

61. Where the liquidation schedule is prepared by a person other than the competent authority, the insolvency law providing for a simplified insolvency regime should require the competent authority, before giving notice of the liquidation schedule, to review the liquidation schedule to ascertain its compliance with the law and when it

is not so compliant, to make any required modifications to the liquidation schedule to ensure that it is compliant.

Approval of the liquidation schedule

62. The insolvency law providing for a simplified insolvency regime should require the competent authority to approve the liquidation schedule if it receives no objection within the established time period and there are no other grounds for the competent authority to reject the liquidation schedule.

Treatment of objections

63. Where there is objection, the insolvency law providing for a simplified insolvency regime should allow the competent authority either to modify the liquidation schedule, approve it unmodified or convert the proceeding to a different type of insolvency proceeding.

Prompt distribution of proceeds in accordance with the insolvency law

64. The insolvency law providing for a simplified insolvency regime should require distributions to be made promptly and in accordance with the insolvency law. (See recommendation 193 of the Guide.)

Procedure not involving the sale and disposal of assets and distribution of proceeds

Notice of a decision to proceed with the closure of the proceeding

65. The insolvency law providing for a simplified insolvency regime should require the competent authority to promptly notify the debtor, all known creditors and other known parties in interest about its determination that no sale and disposal of the assets of the insolvency estate and no distribution of proceeds to creditors will take place in the proceeding and its decision therefore to proceed with the closure of the proceeding. It should require the notice: (a) to include reasons for that determination and the list of creditors, assets and liabilities of the debtor; and (b) to specify a short time period for expressing any objection to that decision.

Decision to close the proceeding in the absence of objection

66. The insolvency law providing for a simplified insolvency regime should require the competent authority, in the absence of any objection to its decision to proceed with the closure of the proceeding, to close the proceeding.⁵

Treatment of objections

67. Where the competent authority receives an objection to its decision to proceed with the closure of the proceeding, the insolvency law providing for a simplified insolvency regime should permit the competent authority to commence verification of reasons for the objection, following which the competent authority may decide:

- (a) To revoke its decision and commence a simplified liquidation proceeding involving the sale and disposal of assets and distribution of proceeds;
- (b) To convert a simplified liquidation proceeding to a different type of insolvency proceeding; or
- (c) To close the proceeding.⁶

⁵ The competent authority would be expected to take a decision on discharge not later than at the time of the closure of the proceeding even if discharge itself may take effect later, for example, after expiration of the monitoring period or implementation of a debt repayment plan. See section L for related recommendations on discharge.

⁶ Idem.

K. Features of simplified reorganization proceedings

Preparation of a reorganization plan

68. The insolvency law providing for a simplified insolvency regime should allow the competent authority to appoint, where necessary, an independent professional to assist the debtor with the preparation of the reorganization plan or decide that circumstances of the case justify entrusting the preparation of the plan to an independent professional.

Time period for the proposal of a reorganization plan

69. The insolvency law providing for a simplified insolvency regime should fix the maximum time period for the proposal of a reorganization plan after commencement of a simplified reorganization proceeding and authorize the competent authority, where the circumstances of the case so justify, to establish a shorter time period subject to its possible extension up to the maximum period specified in the law. (*See recommendation 139 of the Guide.*)

Notice of the time period established for the proposal of a reorganization plan

70. The insolvency law providing for a simplified insolvency regime should require the competent authority to give notice of the time period that it established for the proposal of a reorganization plan to the person responsible for preparing the reorganization plan and to (other) parties in interest.

Consequences of not submitting the reorganization plan within the established time period

71. The insolvency law providing for a simplified insolvency regime should specify that, if the reorganization plan is not submitted within the established time period, an insolvent debtor is deemed to enter the liquidation proceeding while, for a solvent debtor, the reorganization proceeding will terminate. (*See recommendation 158 (a) of the Guide.*)

Alternative plan

72. The insolvency law providing for a simplified insolvency regime may envisage the possibility for creditors to file an alternative plan. Where it does so, it should specify the conditions and the time period for exercising such an option.

Content of the reorganization plan

73. The insolvency law providing for a simplified insolvency regime should specify the minimum contents of a plan, including:

- (a) The list of assets of the debtor, specifying those that are subject to security interests;
- (b) The terms and conditions of the plan;
- (c) The list of creditors and the treatment provided for each creditor by the plan (e.g., how much they will receive and the timing of payment, if any);
- (d) A comparison of the treatment afforded to creditors by the plan and what they would otherwise receive in liquidation; and
- (e) Proposed ways of implementing the plan.

(*See recommendations 143 (d) and 144 of the Guide.*)

Notification of the reorganization plan to all known parties in interest

74. The insolvency law providing for a simplified insolvency regime could require the competent authority or an independent professional to ascertain compliance of the

reorganization plan with the procedural requirements as provided in the law, and upon making any required modification to ensure that it is so compliant, to notify the plan to all known parties in interest to enable them to object or express opposition to the proposed plan. The notice should explain the consequences of any abstention and specify the time period for expressing any objection or opposition to the plan.

Effect of the plan on unnotified creditors

75. The insolvency law providing for a simplified insolvency regime should specify that a creditor whose rights are modified or affected by the plan should not be bound by the terms of the plan unless that creditor has been given the opportunity to express opposition on the approval of the plan. (*See recommendation 146 of the Guide.*)

Approval of the reorganization plan by creditors

Undisputed reorganization plan

76. The insolvency law providing for a simplified insolvency regime should specify that the plan is deemed to be approved by creditors if the requirements under recommendation 18 are fulfilled.

Disputed plan

77. The insolvency law providing for a simplified insolvency regime should:

(a) Allow the modification of the plan to address objection or sufficient opposition to the plan;

(b) Establish a short time period for introducing modifications and transmitting a modified plan to all known parties in interest;

(c) Require the competent authority to transmit any modified plan to all known parties in interest indicating a short time period for expressing any objection or opposition to the modified plan;

(d) Require the competent authority to terminate the simplified reorganization proceedings for a solvent debtor or convert the simplified reorganization proceeding to a simplified liquidation proceeding for an insolvent debtor (i) if modification of the original plan to address objection or sufficient opposition is not possible or (ii) if objection or sufficient opposition to the modified plan is communicated to the competent authority within the established time period; and

(e) Specify that the modified plan is approved by creditors if the competent authority receives no objection and no sufficient opposition to the modified plan within the established time period.

(*See recommendations 155, 156 and 158 of the Guide.*)

Confirmation of the plan by the competent authority

78. The insolvency law providing for a simplified insolvency regime should require the competent authority to confirm the plan approved by creditors. It should require the competent authority, before confirming the plan, to ascertain that the creditor approval process was properly conducted, creditors will receive at least as much under the plan as they would have received in liquidation, unless they have specifically agreed to receive lesser treatment, and the plan does not contain provisions contrary to law. (*See recommendation 152 of the Guide.*)

Challenges to the confirmed plan

79. The insolvency law providing for a simplified insolvency regime should permit the confirmed plan to be challenged on the basis of fraud. It should specify:

(a) A time period for bringing such a challenge calculated by reference to the time the fraud is discovered;

- (b) The party that may bring such a challenge;
- (c) That the challenge should be heard by the relevant review body; and
- (d) That a simplified reorganization proceeding may be converted to a simplified liquidation proceeding or a different type of insolvency proceeding where the confirmed plan is successfully challenged.

(See recommendations 154 and 158 (d) of the Guide.)

Amendment of a plan

80. The insolvency law providing for a simplified insolvency regime should permit the amendment of a plan and specify:

- (a) The parties that may propose amendments;
- (b) The time at which the plan may be amended, including between submission and approval and during implementation, and a mechanism for communicating amendments to the competent authority; and
- (c) The mechanism for approval of amendments of the confirmed plan, which should include a notice by the competent authority of proposed amendments to all parties in interest affected by the amendments, the approval of the amendments by those parties, the confirmation of the amended plan by the competent authority, and the consequences of failure to secure approval of proposed amendments. *(See recommendations 155 and 156 of the Guide.)*

Supervision of the implementation of the plan

81. The insolvency law providing for a simplified insolvency regime may entrust supervision of the implementation of the plan to the competent authority or an independent professional as applicable. *(See recommendation 157 of the Guide.)*

Consequences of the failure to implement the plan

82. The insolvency law providing for a simplified insolvency regime should specify that, where there is substantial breach by the debtor of the terms of the plan or inability to implement the plan, the competent authority may on its own motion or at the request of any party in interest:

- (a) Convert the simplified reorganization proceeding to a simplified liquidation proceeding or a different type of insolvency proceeding;
- (b) Close the simplified reorganization proceeding and parties in interest may exercise their rights at law;
- (c) If closed, reopen the simplified reorganization proceeding;
- (d) If closed, open a simplified liquidation proceeding; or
- (e) Grant any other appropriate type of relief.

(See recommendations 158 (e) and 159 of the Guide)

Conversion of a simplified reorganization to a liquidation

83. The insolvency law providing for a simplified insolvency regime should provide that at any point during a simplified reorganization proceeding, the competent authority may, on its own motion or at the request of a party in interest or an independent professional, where appointed, decide that the proceeding be discontinued and converted to a liquidation, if the competent authority determines that the debtor is insolvent and there is no prospect for viable reorganization. Where the competent authority considers conversion to liquidation before submission of a reorganization plan, the competent authority should be mindful of the time needed to prepare and submit a reorganization plan (see recommendations 69 and 70 above) and

may consult the independent professional in making the decision, if one has been appointed.

L. Discharge

Discharge in simplified liquidation proceedings

Decision on discharge

84. The insolvency law providing for a simplified insolvency regime should specify that, in a simplified liquidation proceeding, discharge should be granted expeditiously.

Discharge conditional upon expiration of a monitoring period

85. Where the insolvency law provides that discharge may not apply until after the expiration of a specified period of time following commencement of insolvency proceedings during which period the debtor is expected to cooperate with the competent authority (“monitoring period”), the insolvency law providing for a simplified insolvency regime should:

(a) Fix the maximum duration of the monitoring period, which should be short;

(b) Allow the competent authority to establish a shorter duration of the monitoring period on a case-by-case basis;

(c) Specify that, after expiration of the monitoring period, the debtor should be discharged upon decision of the competent authority where the debtor has not acted fraudulently and has cooperated with the competent authority in performing its obligations under the insolvency law. (*See recommendation 194 of the Guide.*)

Discharge conditional upon the implementation of a debt repayment plan

86. The insolvency law providing for a simplified insolvency regime may specify that full discharge may be conditional upon the implementation of a debt repayment plan. In such case, it should allow the competent authority to specify the duration of the debt repayment plan (“discharge period”) and require the discharge procedures to include verification by the competent authority:

(a) Before the debt repayment plan becomes effective, that the debt repayment obligations reflect the situation of the individual entrepreneur and are proportionate to his or her disposable income and assets during the discharge period, taking into account the equitable interest of creditors; and

(b) On expiry of the discharge period, that the individual entrepreneur has fulfilled his or her repayment obligations under the debt repayment plan, in which case the individual entrepreneur is discharged upon confirmation by the competent authority of the fulfilment of the debt repayment plan by the debtor.

Discharge in simplified reorganization proceedings

87. The insolvency law providing for a simplified insolvency regime may specify that full discharge in simplified reorganization is conditional upon successful implementation of the reorganization plan and it shall take immediate effect upon confirmation by the competent authority of such implementation.

General provisions

Conditions for discharge

88. Where the insolvency law providing for a simplified insolvency regime specifies that conditions may be attached to the MSE debtor’s discharge, those conditions

should be kept to a minimum and clearly set forth in the insolvency law. (*See recommendation 196 of the Guide.*)

Exclusions from discharge

89. Where the insolvency law providing for a simplified insolvency regime specifies that certain debts are excluded from a discharge, those debts should be kept to a minimum and clearly set forth in the insolvency law. (*See recommendation 195 of the Guide.*)

Criteria for denying discharge

90. The insolvency law providing for a simplified insolvency regime should specify criteria for denying a discharge, keeping them to a minimum.

Criteria for revoking a discharge granted

91. The insolvency law providing for a simplified insolvency regime should specify criteria for revoking a discharge granted. In particular, it may specify that the discharge is to be revoked where it was obtained fraudulently. (*See recommendation 194 of the Guide.*)

M. Closure of proceedings

92. The insolvency law providing for a simplified insolvency regime should specify minimal and simple procedures by which simplified insolvency proceedings should be closed. (*See recommendations 197 and 198 of the Guide.*)

N. Treatment of personal guarantees; procedural consolidation and coordination

Treatment of personal guarantees

93. A simplified insolvency regime should address, including through procedural consolidation or coordination of linked proceedings, the treatment of personal guarantees provided for business needs of the MSE debtor by individual entrepreneurs, owners of limited liability MSEs or their family members.

Procedural consolidation or coordination of linked business, consumer and personal insolvency proceedings

Orders of procedural consolidation and coordination

94. The insolvency law may require procedural consolidation or coordination of linked business, consumer and personal insolvency proceedings in order to address comprehensively intertwined business, consumer and personal debts of individual entrepreneurs, owners of limited liability MSEs and their family members. The law may specify that, in such cases, the competent authority or another competent State body, as the case may be, may order procedural consolidation or coordination of linked proceedings on its own motion or upon request of any party in interest, which may be made at the time of application for commencement of insolvency proceedings or at any subsequent time.

Modification or termination of an order for procedural consolidation or coordination

95. The insolvency law should specify that an order for procedural consolidation or coordination may be modified or terminated, provided that any actions or decisions already taken pursuant to the order are not affected by the modification or termination. Where more than one State body is involved in ordering procedural consolidation or coordination, those State bodies may take appropriate steps to coordinate modification or termination of procedural consolidation or coordination.

Notice of procedural consolidation and coordination

96. The insolvency law should establish requirements for giving notice with respect to applications and orders for procedural consolidation or coordination and modification or termination of procedural consolidation or coordination, including the scope and extent of the order, the parties to whom notice should be given, the party responsible for giving notice and the content of the notice.

O. Conversion**Conditions for conversion**

97. The insolvency law should provide for conversion between different types of proceedings in appropriate circumstances and subject to applicable eligibility and other requirements.

Procedures for conversion

98. The insolvency law should address procedures for conversion, including notification to all known parties in interest about the conversion, and mechanisms for addressing objections to that course of action.

Effect of conversion on post-commencement finance

99. The insolvency law should specify that where a simplified reorganization proceeding is converted to a liquidation proceeding, any priority accorded to post-commencement finance in the simplified reorganization proceeding should continue to be recognized in the liquidation proceeding. (*See recommendation 68 of the Guide.*)

Other effects of conversion

100. The insolvency law should address other effects of conversion, including on deadlines for actions, the stay of proceedings and other steps taken in the proceeding being converted. (*See recommendation 140 of the Guide.*)

P. Appropriate safeguards and sanctions

101. The insolvency law providing for a simplified insolvency regime should build in appropriate safeguards to prevent abuses and improper use of a simplified insolvency regime and permit the imposition of sanctions for abuse or improper use of the simplified insolvency regime, for failure to comply with the obligations under the insolvency law and for non-compliance with other provisions of the insolvency law. (*See recommendations 20, 28 and 114 of the Guide.*)

Q. Pre-commencement aspects**Obligations of persons exercising control over MSEs in the period approaching insolvency**

102. The law relating to insolvency should specify that, at the point in time when the persons exercising control over the business knew or should have known that insolvency was imminent or unavoidable, they should have due regard for the interests of creditors and other stakeholders and take reasonable steps at an early stage of financial distress to avoid insolvency and, where it is unavoidable, to minimize the extent of insolvency. Reasonable steps might include:

- (a) Evaluating the current financial situation of the business;
- (b) Seeking professional advice where appropriate;

- (c) Not committing the business to the types of transaction that might be subject to avoidance unless there is an appropriate business justification;
- (d) Protecting the assets so as to maximize value and avoid loss of key assets;
- (e) Ensuring that management practices take into account the interests of creditors and other stakeholders;
- (f) Considering holding informal debt restructuring negotiations with creditors; and
- (g) Applying for commencement of insolvency proceedings if it is required or appropriate to do so.

(See recommendations 255, 256 and 257 of the Guide.)

Early rescue mechanisms

103. As a means of encouraging the early rescue of MSEs, a State should consider establishing mechanisms for providing early signals of financial distress to MSEs, increasing financial and business management literacy among MSE managers and owners and promoting their access to professional advice. These mechanisms should be available and easily accessible to MSEs.

Informal debt restructuring negotiations

Removing disincentives for the use of informal debt restructuring negotiations

104. For the purpose of avoiding MSE insolvency, the State may consider identifying and removing disincentives for the use of informal debt restructuring negotiations.

Providing incentives for participation in informal debt restructuring negotiations

105. The State may consider providing appropriate incentives for the participation of creditors, including public bodies, and other relevant stakeholders, in particular employees, in informal debt restructuring negotiations.

Institutional support with the use of informal debt restructuring negotiations

106. The State may consider providing for:

- (a) Involvement of a competent public or private body, where necessary, to facilitate informal debt restructuring negotiations between creditors and debtors and between creditors;
- (b) A neutral forum to facilitate negotiation and resolution of debtor-creditor and inter-creditor issues; and
- (c) Mechanisms for covering or reducing the costs of the services mentioned in subparagraphs (a) and (b) above.

Pre-commencement business rescue finance

107. The law should:

- (a) Facilitate and provide incentives for finance to be obtained by MSEs in financial distress before commencement of insolvency proceedings for the purpose of rescuing business and avoiding insolvency;
- (b) Subject to proper verification of appropriateness of that finance and protection of parties whose rights may be affected by the provision of such finance, provide appropriate protection for the providers of such finance, including the payment of such finance provider at least ahead of ordinary unsecured creditors;
- (c) Provide appropriate protection for those parties whose rights may be affected by the provision of such finance.