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Consideration of a draft text on a simplified insolvency regime

Revisions to the draft commentary contained in working papers A/CN.9/WG.V/WP.172 and Add.1 in the light of deliberations of Working Group V (Insolvency Law) at its fifty-eighth session

Note by the Secretariat

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I. Introduction

1. At its fifty-fourth session, the Commission will have before it for its consideration and approval the draft commentary on a simplified insolvency regime as contained in documents A/CN.9/WG.V/WP.172 and Add.1 (the "draft commentary"). At its fifty-eighth session, the Working Group requested the secretariat to revise the draft commentary in the light of the deliberations at that session, including revisions agreed to be made in the draft recommendations (A/CN.9/1052, para. 94). For the draft recommendations approved at the session and transmitted to the Commission for consideration and adoption, please see A/CN.9/1052, annex.

2. This note was prepared by the secretariat to facilitate the consideration of the draft commentary by the Commission. It compiles revisions expected to be made in the draft commentary, noting that the Working Group had time to consider the draft commentary only up to and including paragraph 285.

II. List of revisions to the draft commentary

A. General

3. Cross-references would be updated throughout the draft commentary to reflect: (a) the final titles and lettering of headings; (b) the final numbering of the recommendations; (c) changes in the location of some paragraphs of the commentary; and (d) addition of new paragraphs in the commentary. Footnotes in bold in the commentary would be deleted while the remaining footnotes would be kept in the commentary.

4. Provisions would be added throughout the commentary in the appropriate places reflecting employees' rights and protections, including in the context of draft recommendations 22 (c) and 105, in the light of the agreement reached in the Working Group (A/CN.9/1052, paras. 33–34, 42, 56, 57, 59 and 61).

5. As regards the location of the commentary vis-à-vis the recommendations, the style adopted in the UNCITRAL Legislative Guide on Insolvency Law, which was used as the starting point in the work of UNCITRAL on MSE insolvency, may be followed. However, the secretariat notes concerns brought to its attention that that style is not user-friendly. Alternatives could be explored. In particular, mirroring the style adopted for UNCITRAL model laws, the consolidated set of recommendations may appear first, followed by the commentary where the text of each recommendation would be repeated in the beginning of each section followed by the relevant commentary.

B. Revisions to the draft commentary contained in working paper A/CN.9/WG.V/WP.172

6. Further to the suggestion made at the Working Group's fifty-eighth session (A/CN.9/1052, para. 94 (a)), the following sentence may be added after the second sentence in paragraph 1 of the draft commentary: "Where MSEs operate as limited liability entities, limited liability protection is usually illusory for MSE owners because they are often expected to guarantee MSE business debts with their personal assets."

7. Further to the agreement reached at the Working Group's fifty-eighth session to retain draft recommendations addressing pre-commencement aspects (A/CN.9/1052, paras. 30–39) and to entitle the draft text "Legislative Guide on Insolvency Law for Micro and Small Enterprises" (A/CN.9/1052, para. 96), paragraph 4 of the draft commentary could be redrafted as follows: "This Legislative Guide on Insolvency Law for Micro and Small Enterprises (hereinafter referred to as "the MSE Insolvency

Guide") was prepared to assist policymakers with those efforts. It discusses features of a simplified insolvency regime that could encourage MSEs to address financial distress at an early stage. The focus is on faster, simpler, accessible and affordable insolvency proceedings, with appropriate safeguards. The MSE Insolvency Guide also addresses some measures that should assist MSEs during the period preceding the commencement of simplified insolvency proceedings, acknowledging however that they would usually fall outside the insolvency law."

8. Further to the agreement reached at the Working Group's fifty-eighth session (A/CN.9/1052, para. 94 (b)), paragraphs 5 and 6 of the draft commentary would be retained without square brackets and with replacement of references to "[text]" with references to "MSE Insolvency Guide". The latter change would be made throughout the draft commentary.

9. With reference to footnote 65 in the draft commentary, further to the agreement reached in the Working Group's fifty-eighth session (A/CN.9/1052, para. 95), the final text of the MSE Insolvency Guide would be accompanied by tables of concordance between recommendations of the MSE Insolvency Guide and recommendations of the UNCITRAL Legislative Guide on Insolvency Law. The draft tables of concordance are annexed to this note for reference.

10. Further to the agreement reached at the Working Group's fifty-eighth session (A/CN.9/1052, para. 94 (c)): (a) paragraph 25 of the draft commentary would be expanded with the terms "party in interest", "avoidance provisions", "stay of proceedings", "related persons", "discharge" and other relevant terms if necessary; and (b) the terms in (d) (i), (ii) and (iii) would be retained without square brackets.

11. Paragraphs 28 and 29 would be retained without square brackets (A/CN.9/1052, para. 94 (d)).

12. Square brackets in paragraphs 35 and 57 would be removed.

13. References to applicable law in paragraph 42 and elsewhere in the same context would be replaced with "insolvency law and other laws applicable within insolvency proceedings" (A/CN.9/1052, para. 94 (i)). Square brackets in (i) would be removed. With reference to points listed under (a) and (b) in the same paragraph, the commentary could note that verification of accuracy of information provided to the competent authority by the debtor, creditors and other parties in interest may take place for example on the basis of the information included in publicly available records and registries, including business registries, registries of rights to immovable and movable property and registries of secured transactions or security interests (A/CN.9/1052, para. 94 (e), and paras. 69–70 of the draft commentary).

14. In paragraph 83, the phrase "poor management that caused its financial distress" would be replaced with the phrase "management so inadequate or incompetent as to be incapable of improvement or correction" (A/CN.9/1052, para. 94 (f)).

15. At the Working Group's fifty-eighth session, it was suggested that in paragraphs 85–91 of the draft commentary, the differences between the deemed approval approach taken in the draft MSE Insolvency Guide and the approach taken as regards the approval of a reorganization plan in MSE insolvency proceedings in the revised World Bank Principles should be explained (A/CN.9/1052, para. 94 (g)). The secretariat, in coordination with the World Bank Group, suggests adding the following explanation, which may appear after paragraph 91 supplementing paragraph 279 of the draft commentary addressing the same matter or, alternatively, as preferred by the World Bank Group, in the commentary to recommendations 75 and 76:

> "91 bis. As an alternative to the deemed approval mechanism envisaged in this text, which under recommendations 75 and 76 will be applicable also to the approval of a reorganization plan by creditors in simplified reorganization proceedings (see paras. [274–284] below), States that wish to keep the general principle of a creditor vote with majority approval of the reorganization plan intact, may decide to retain a requirement of a creditor vote on a MSE

reorganization plan. That option is envisaged, for example, in the MSE insolvency context in the World Bank text,[1] as more appropriate for countries, particularly emerging markets and developing economies, that may not have the institutional capacity to implement the deemed approval mechanism for instance, where the competent authority may find it difficult to assess the respective creditor objection or opposition or confirm the plan in the absence of a creditor's right to vote. A requirement of a vote on a MSE reorganization plan is retained in that text also because it is considered that removing the ability of creditors to vote on the plan might be detrimental to the protection of creditors' rights, which ultimately could result in abuses or have negative effects such as constraining availability of credit to MSEs.

91 ter. While retaining a requirement of a vote on a MSE reorganization plan with majority approval, the World Bank's ICR Principle C19.7 provides that the law should simplify voting requirements, including by using electronic means where appropriate, and that creditors silence or lack of a negative vote on a duly notified reorganization plan should be considered as acceptance of the plan and counted as an affirmative vote. Creditors that vote against a plan would not be expected to additionally raise objection or sufficient opposition to the plan. Those measures are considered in that text as sufficiently addressing 'creditor passivity'."

16. In paragraph 92, square brackets in the part referring to employees would be removed.

17. In paragraph 93, the part in square brackets at the end of that paragraph would be deleted. Because of the new location of the draft recommendation on protection of employees' rights and interests in simplified insolvency proceedings (see draft recommendation 20 bis in A/CN.9/1052, annex, and para. 42), section E after paragraph 97 would be expanded by paragraphs 219–222.

18. In paragraphs 101 and 102 and elsewhere in the text in the same context, changes would be made to reflect changes in draft recommendation 22, in particular replacement of the phrase "improper use" with the word "abuse" (A/CN.9/1052, para. 61).

19. In paragraph 106, the words "and means to prove it" would be added at the end of the third sentence, with an additional explanation included in the commentary that some information showing financial distress of the debtor would be expected to be provided in the debtor's application to the competent authority for commencement of a simplified insolvency proceeding since otherwise the debtor could abuse the simplified insolvency regime to evade its obligations and responsibilities (A/CN.9/1052, para. 94 (h)). Risks of such an abuse in a simplified insolvency regime might be higher than in standard insolvency proceedings because in the simplified insolvency regime, the debtor is not required to prove insolvency and can apply for commencement of simplified insolvency proceedings at an early stage of financial distress, as provided for in draft recommendation 23.

20. After paragraph 144, a commentary to revised draft recommendation 34 would be added on consequences for claims of creditors not notified of the commencement of the simplified insolvency proceeding. The relevant commentary may recall that the competent authority is responsible for giving notice of the commencement of the simplified insolvency proceeding to all creditors (see draft recommendations 31 and 39). In the unlikely scenario when neither individual nor general notice of the commenced proceeding reaches creditors, different remedies may be made available to unnotified creditors. For example, the law may specify that the claims of those creditors are unaffected by the simplified insolvency proceeding and excluded from any discharge that may result from that proceeding. It may also specify that the claims of those creditors are affected by the simplified insolvency proceeding but the

[1] World Bank Principles for Effective Insolvency and Creditor/Debtor Regimes (2021), Principle C19.7 and footnote 25.

treatment received by those creditors should not be worse off than what they would have received if they have been notified. In line with the suggestion made in the Working Group (A/CN.9/1052, para. 41), the commentary may note that States should consider building in appropriate safeguards (e.g., in the form of presumptions and appropriate allocation of burden of proof) in order to balance creditors' rights to due process and protection with appropriate incentives to avoid abuses by the debtor, such as deliberate omissions of claims, and by the creditors who may deliberately avoid receipt of individual notices or claim being unaware of general notices.

21. After paragraph 157, a commentary to new draft recommendation 42 bis (A/CN.9/1052, para. 46) would be added, stating in particular that any undisclosed or concealed assets would form part of the insolvency estate of the MSE debtor. The commentary would emphasize that those assets would remain part of the insolvency estate even if they were not listed among the debtor's assets at the time the liquidation schedule has been approved or the reorganization plan has been confirmed by the competent authority or upon conversion of one proceeding to another. The commentary would cross-refer in that respect to recommendation 20 that sets out obligations of the debtor, including the obligation to cooperate with and assist the competent authority to take effective control of the estate, wherever located, and to facilitate or cooperate in the recovery of the assets. The commentary would discuss implications of non-disclosure or concealment of assets by the debtor on the debtor and creditors, for example that such action, when discovered by creditors early, could trigger the creditor objection to the commencement of a simplified insolvency proceeding (draft recommendation 33) and dismissal of the proceeding (draft recommendations 35–38). When discovered at subsequent stages of the proceedings, it may trigger avoidance (draft recommendation 44), objections to the application of the procedures under draft recommendations 64–66, denial of discharge or revoking a discharge granted (draft recommendations 90–91), conversion of one proceeding to another and imposition of costs and sanctions, including under criminal law and on persons exercising control over the MSE business. Cross-references to the commentary where relevant issues are already discussed would be inserted.

22. Paragraphs 219 to 222 would be placed after paragraph 97 (see para. 17 above) and would be expanded as suggested in square brackets in paragraph 222 of the draft commentary. The reference to "applicable law" would change as indicated in paragraph 13 above.

23. In paragraph 227, the words in square brackets "[or a creditor]" would be replaced with the words "or another person", to align the commentary with the agreed wording of draft recommendation 56 (A/CN.9/1052, para. 43) that envisages that the preparation of the liquidation schedule under certain circumstances could be entrusted to an independent professional or another person.

24. The first three sentences of paragraph 228 would be redrafted to align them with the agreed wording of draft recommendation 56 (A/CN.9/1052, para. 43) that envisages that the preparation of the liquidation schedule under certain circumstances could be entrusted to the debtor.

25. Paragraph 231 would be expanded by reference to the list of assets, specifying assets that are subject to security interests (A/CN.9/1052, para. 71).

26. After paragraph 231, inclusion of the following new paragraphs along the following lines was suggested at the fifty-eighth session of the Working Group (A/CN.9/1052, para. 94 (j)):

> "231 bis. While it may appear that the specific recommendation to include a list of claims and priority and assets in the liquidation schedule is inconsistent with the general recommendation to keep the content of that schedule to a minimum, in insolvency proceedings where such information is readily available and undisputed, such information may be helpful to creditors in their participation in the insolvency process. Inclusion of claims information, while helpful, however, should not suggest that resolution of claims disputes is appropriate in

approving the procedures of the liquidation process, which is the focus of this recommendation (see section [I] on treatment of creditor claims). Including such information on claims in a public liquidation schedule also should not be read to confer standing on creditors to object to other creditors' claims.

231 ter. In insolvency proceedings where acquisition and compilation of such information on claims or assets could unduly delay the dissemination of the liquidation schedule, the schedule's contents should restrict itself to information about the liquidation procedures sufficient to allow creditors to make an informed decision on their acceptability, and the claims or assets information may follow by separate circulation."

27. In paragraph 255, the first sentence, the phrase "on its own motion or at the request of the debtor" would be inserted to indicate that the competent authority can appoint the independent professional to assist the debtor to prepare the reorganization plan on its motion or at the request of the debtor (A/CN.9/1052, para. 94 (k)). In the same paragraph, the words in both pairs of square brackets would be deleted.

28. In paragraph 261, it would be clarified that an alternative plan would be subject to the same treatment as the originally submitted plan, including as regards its content under draft recommendation 72, review and notification by the competent authority under draft recommendation 73, approval by creditors under draft recommendations 75 and 76, confirmation by the competent authority under draft recommendation 77 and possible challenges and amendments under draft recommendations 78 and 79 (A/CN.9/1052, para. 94 (l)).

29. Paragraph 265 would be expanded by including reference to the list of assets, that list specifying which assets are subject to security interests. In line with what was noted in the Working Group (A/CN.9/1052, paras. 74 and 78), the commentary would explain that providing such information in the reorganization plan would be helpful for creditors to assess feasibility of implementing the plan and also for the debtor itself and the competent authority, for example when the simplified reorganization is converted to simplified liquidation. In addition, such information would be useful to the competent authority, for example, for comparison between the treatment of creditors in reorganization as opposed to liquidation. Since the Working Group agreed, at its fifty-eighth session, to include reference to that comparison in draft recommendation 72 in the context of the content of the reorganization plan (A/CN.9/1052, paras. 76 and 78), paragraph 265 of the draft commentary would be expanded in that respect as well, including by cross-referring to paragraph 143 (d) of the UNCITRAL Legislative Guide on Insolvency Law.

30. Paragraphs 266 and 267 would be retained without square brackets but with changes to reflect that possible modifications by the competent authority or an independent professional to the originally proposed plan would be limited to those dictated by procedural requirements as provided in the law. Such modifications would thus not extend to business, financial or other substantive aspects of the plan.

31. Paragraph 269 would be expanded on the time period for expressing any objection or opposition to the plan, in particular that it should be short but sufficient for creditors (A/CN.9/1052, para. 51). The consequential change would be made in the same context in paragraph 271 where the words "short" and "sufficient" appear in square brackets. The commentary may note in that respect that: (a) creditors would need time to examine the reorganization plan; (b) to ascertain whether any grounds for raising an objection or opposition exists; (c) if such grounds do exist, to formulate an objection or opposition; and (d) to communicate such an objection or opposition to the competent authority. The time period given for communicating objection or opposition to the competent authority would thus depend on circumstances, in particular the complexity of the plan.

32. In paragraph 270, the phrase "which is supplemented by recommendation [34]" in square brackets would be deleted (A/CN.9/1052, para. 94 (m)). That paragraph would be supplemented by explanation of the term "opportunity" under draft

recommendation 74, in particular that the domestic insolvency law would address that matter and may require organizing a meeting of creditors where opportunity to express objection or opposition would be provided (A/CN.9/1052, para. 94 (m)). The commentary should however emphasize that, under the text, such an opportunity would be provided by default through correspondence in writing between the competent authority and creditors.

33. In paragraphs 271 and 272, references to "objections" would be deleted since they were considered at the Working Group's fifty-eighth session irrelevant in the context of draft recommendation 74 that refers only to the opportunity to express opposition (A/CN.9/1052, para. 94 (m)). Provisions cross-referred in that paragraph would however all remain relevant since they address both opposition and objection.

34. In paragraph 275, the third sentence, a cross-reference to recommendation [18] may need to be reconsidered in the light of amendments made in draft recommendation 75 (A/CN.9/1052, paras. 79 and 94 (n)).

35. In paragraph 285, the last sentence, the phrase "The plan approved by creditors will take effect automatically" would be replaced with the phrase "In some jurisdictions, the plan approved by creditors may take effect automatically". (A/CN.9/1052, para. 94 (o)).

36. After paragraph 287, court-imposed reorganization plans would be discussed in line with what was suggested at the Working Group's fifty-eighth session (A/CN.9/1052, para. 83). In particular, the commentary would explain reasons for not including in the text a draft recommendation explicitly envisaging the possibility for the competent authority to impose a reorganization plan on dissenting creditors. Such reasons include complexities and litigation risks associated with such a solution. The commentary may nevertheless note that many jurisdictions enacted insolvency law provisions allowing courts to impose reorganization plans on dissenting creditors in standard insolvency proceedings. It may suggest that States should assess appropriateness of applying those provisions in simplified insolvency proceedings in the light of the objectives of a simplified insolvency regime to put in place expeditious and simple insolvency proceedings for MSEs.

37. Paragraphs 292–296 and other parts of the draft commentary in the same context may need to be amended to reflect a change agreed to be made in draft recommendation 79. The result of that change is that throughout the text the terms "modification" and "modify" are to be used in references to changes made to the reorganization plan before its confirmation and implementation and the terms "amendment" and "amend" are to be used in references to changes in the plan at the stage of its implementation (A/CN.9/1052, paras. 50 and 81).

38. Paragraphs 297 to 299 would be deleted to reflect the agreement in the Working Group to delete draft recommendation 80 (A/CN.9/1052, para. 88). Some content of the deleted paragraphs of the draft commentary may need to appear in the commentary to section N (Closure of the proceedings, draft recommendation 92 (see paragraphs 322 to 327 in document A/CN.9/WG.V/WP.172/Add.1)). In particular, the commentary would reflect that a simplified reorganization proceeding could be closed before confirmation of the full implementation of the plan, for example upon confirmation of the plan. Given that in some cases the full implementation of the plan may take years, an earlier closure of the simplified reorganization proceeding would help to avoid stigma, enable a fresh start and reduce costs for administering proceedings (A/CN.9/1052, para. 85).

39. Paragraphs 301–305 would be expanded by explanation of the content of subparagraphs (c) to (e), and the phrase "on its own motion or at the request of any party in interest" in the chapeau, added by the Working Group in draft recommendation 82 (A/CN.9/1052, paras. 90–92). In particular, the commentary would explain that in those jurisdictions where the simplified reorganization proceeding would have been closed upon confirmation of the plan and subsequently substantial breach by the debtor of the terms of the plan or inability to implement the

plan occurred, subparagraph (d) would apply if the competent authority decides to open a simplified liquidation proceeding. In those jurisdictions where the proceeding would remain open until the full implementation of the plan and substantial breach by the debtor of the terms of the plan or inability to implement the plan occurred, subparagraph (a) would apply if the competent authority decides to convert the simplified reorganization proceeding to a simplified liquidation proceeding or a different type of insolvency proceeding. Consequential changes would be made in the same context elsewhere in the draft commentary (e.g., para. 295).

40. A paragraph would be added after paragraph 309 to replace the words in square brackets to explain the expected involvement of an independent professional in the decision on conversion, reflecting amendments made in draft recommendation 83 (A/CN.9/1052, paras. 52–55).

C. Revisions to the draft commentary contained in working paper A/CN.9/WG.V/WP.172/Add.1

41. The order of paragraphs in section M of the draft commentary (paras. 312–321) would change to reflect the new order of draft recommendations 84–91 (A/CN.9/1052, para. 25). To align the commentary with the decision made by the Working Group as regards draft recommendation 86, which was split and the resulting two recommendations were approved by the Working Group as draft recommendations 90 and 91 (A/CN.9/1052, annex), paragraph 316 would be expanded and split to provide for two separate commentary: the commentary to the draft recommendation addressing denial of discharge and the commentary to the draft recommendation on revoking a discharge granted.

42. The words in square brackets after paragraph 316 would be deleted since the Working Group decided not to include draft recommendation 87 on partial discharge in the text (A/CN.9/1052, para. 16). Nevertheless, issues raised in options 1 and 2 of that draft recommendation as contained in working paper A/CN.9/WG.V/WP.172/Add.1 may be reflected in section M of the commentary, as suggested in the Working Group (A/CN.9/1052, para. 16). The commentary may in particular explain that in simplified liquidation proceedings disputes may arise over some claims, for example claims excluded from the insolvency estate. Some jurisdictions may require resolution of all such disputes before a discharge of any claim may be granted. Other jurisdictions may take a more flexible approach, allowing a phased discharge, for example a prompt discharge of undisputed claims and subsequently a discharge of each resolved disputed claim. The commentary may note that such a phased discharge may facilitate a fresh start for MSEs.

43. Paragraphs 317–320 would be amended to reflect a change in draft recommendation 88 that discharge in liquidation proceedings should be granted expeditiously (A/CN.9/1052, para. 17). It was agreed that the term “expeditiously” would be explained in the commentary, in particular that discharge may take place before realization of assets and distribution of proceeds. In the light of comments made in the Working Group (A/CN.9/1052, para. 22), the commentary would also need to explain interaction of draft recommendation 88 with draft recommendation 90 on discharge conditional upon the implementation of a debt repayment plan.

44. Paragraph 321 would be amended to reflect that discharge in simplified reorganization proceedings may take place before the full implementation of the plan (A/CN.9/1052, para. 23).

45. Paragraphs 361 to 367 would be redrafted to reflect changes agreed to be made in the heading and the content of draft recommendation 102, in particular replacement of references to the persons exercising control over management and oversight of the MSE operations with references to persons exercising control over the MSE business (A/CN.9/1052, para. 30). Such replacement would be made in other parts of the draft commentary in the same context (e.g., para. 93).

46. Paragraph 372 would be amended in the light of amendments agreed to be made in draft recommendation 103 (A/CN.9/1052, para. 32), in particular by replacing the phrase “easily ascertainable” with the phrase “available and easily accessible”. The commentary can explain means of achieving that mechanisms mentioned in that draft recommendation become available and easily accessible to MSEs drawing on the explanation of the term “available and easily accessible” in other parts of the text.

47. Paragraph 383 would be redrafted to reflect amendments agreed to be made in subparagraph (c) of draft recommendation 106 (A/CN.9/1052, para. 38). In particular, the commentary would explain mechanisms for not only covering but also reducing the costs of the services of a competent public or private body that would need to be involved to facilitate informal debt restructuring negotiations between creditors and debtors and between creditors. Such mechanisms would be applicable also to covering or reducing the costs of the services of a neutral forum that would need to be involved to facilitate negotiation and resolution of debtor-creditor and inter-creditor issues.

48. Paragraph 388, the last sentence, would be amended to reflect amendments made in subparagraphs (b) and (c) of draft recommendation 107 where the word “ensure” was replaced with the word “provide” (A/CN.9/1052, para. 39).

Annex

Table 1
Table of concordance between recommendations in the text on a simplified insolvency regime and recommendations in the UNCITRAL Legislative Guide on Insolvency Law

Recommendations in the text on a simplified insolvency regime	*Recommendation(s) of the Legislative Guide on Insolvency Law used as the starting point*
Key objectives of a simplified insolvency regime (recommendation 1): in addition to listing key objectives of a simplified insolvency regime, recommendation 1 cross-refers to the objectives of an effective insolvency law	Recommendations 1 to 5
Application to all MSEs (recommendation 2)	Recommendations 8 and 9
Comprehensive treatment of all debts of individual entrepreneurs (recommendation 3)	-
Types of simplified insolvency proceedings (recommendation 4)	Recommendation 2
Competent authority (recommendations 5–7)	Recommendation 13
Independent professional (recommendations 5 and 7–9)	No equivalent but recommendations 115–125 of the Guide are relevant where an independent professional performs functions of the insolvency representative
Support with the use of a simplified insolvency regime (recommendation 9)	-
Mechanisms for covering costs of administering simplified insolvency proceedings (recommendation 10)	Recommendations 26 and 125
Default procedures and treatment (recommendation 11)	-
Short time periods (recommendation 12)	No equivalent but see a footnote to recommendation 43
Reduced formalities (recommendation 13)	-
Debtor-in-possession in simplified reorganization proceedings (recommendations 14–16)	Recommendations 112 and 113
Possible involvement of the debtor in the liquidation of the insolvency estate (recommendation 17)	Id.
Deemed approval (recommendation 18)	No equivalent but recommendation 127 is relevant

Recommendations in the text on a simplified insolvency regime	*Recommendation(s) of the Legislative Guide on Insolvency Law used as the starting point*
Rights and obligations of parties in interest:	
• Recommendation 19 (a)	Recommendations 137 and 138
• Recommendation 19 (b)	Recommendations 108, 111 and 126
• Recommendation 19 (c)	Recommendation 109
Obligations of the debtor (recommendation 20)	Recommendations 110 and 111
Protection of employees' rights and interests in simplified insolvency proceedings (recommendation 20 bis [54])	-
Eligibility (recommendation 21)	Recommendations 8, 9 and 14–16
Commencement criteria and procedures (recommendation 22)	The text preceding recommendation 14 describing purpose of legislative provisions
Application by the debtor (recommendation 23)	Recommendation 15
Information to be included in the application (recommendation 24)	-
Effective date of commencement (recommendation 25)	Recommendation 18
Commencement on creditor application (recommendation 26)	Recommendation 19
Denial of application (recommendations 27–30)	Recommendations 20 and 21
Notice of commencement of proceedings (recommendation 31)	Recommendations 23 and 24
Content of the notice of commencement of a simplified insolvency proceeding (recommendation 32)	Recommendation 25
Creditor objection to the commencement of a simplified insolvency proceeding (recommendation 33)	-
Possible consequences on claims of creditors not notified of the commencement of the simplified insolvency proceeding (recommendation 34)	-
Dismissal of the proceeding (recommendations 35–38)	Recommendations 27–29
Procedures for giving notices (recommendation 39)	Recommendations 22 and 23
Individual notification (recommendation 40)	Recommendation 24
Appropriate means of giving notice (recommendation 41)	Recommendation 23

Recommendations in the text on a simplified insolvency regime	*Recommendation(s) of the Legislative Guide on Insolvency Law used as the starting point*
Constitution of the insolvency estate: • Recommendation 42 (a) • Recommendation 42 (b)	 • Recommendation 35 • Recommendations 38 and 109
Undisclosed or concealed assets (recommendation 42 bis)	-
Date from which the insolvency estate is to be constituted (recommendation 43)	Recommendation 37
Avoidance in simplified insolvency proceedings (recommendation 44)	No equivalent but recommendations 87–99 of the Guide are relevant
Scope and duration of the stay (recommendation 45)	Recommendations 46, 47, 49 and 51
Rights not affected by the stay (recommendation 46)	Recommendations 47, 50, 51 and 54
Claims affected by simplified insolvency proceedings (recommendation 47)	Recommendations 171 and 172
Admission of claims on the basis of the list of creditors and claims prepared by the debtor (recommendation 48)	Recommendations 110 (b) (v) and 170
Submissions of claims by creditors (recommendation 49)	Recommendations 169, 170, 174 and 175
Admission or denial of claims (recommendation 50)	Recommendations 177, 179 and 184
Prompt notice of denial of claims or subjecting claims to a special scrutiny or treatment (recommendation 51)	Recommendations 177 and 181
Treatment of disputed claims (recommendation 52)	Recommendation 180
Effects of admission (recommendation 53)	Recommendation 183
54 [unused; see draft recommendation 20 bis above]	-
Decision on a procedure to be used (recommendation 55)	-
Preparation of the liquidation schedule (recommendation 56)	-
Time period for preparing a liquidation schedule (recommendation 57)	-
Minimum contents of the liquidation schedule (recommendation 58)	-
Notification of the liquidation schedule to all known parties in interest (recommendation 59)	-

Recommendations in the text on a simplified insolvency regime	*Recommendation(s) of the Legislative Guide on Insolvency Law used as the starting point*
Prior review of the liquidation schedule by the competent authority (recommendation 60)	-
Approval of the liquidation schedule (recommendation 61)	-
Treatment of objections (recommendation 62)	-
Prompt distribution of proceeds in accordance with the insolvency law (recommendation 63)	Recommendations 193
Notice of a decision to proceed with the closure of the proceeding (recommendation 64)	-
Decision to close the proceeding in the absence of objection (recommendation 65)	-
Treatment of objections (recommendation 66)	-
Preparation of a reorganization plan (recommendation 67)	-
Time period for the proposal of a reorganization plan (recommendation 68)	Recommendation 139
Notice of the time period established for the proposal of a reorganization plan (recommendation 69)	-
Consequences of not submitting the reorganization plan within the established time period (recommendation 70)	Recommendation 158 (a)
Alternative plan (recommendation 71)	-
Content of the reorganization plan (recommendation 72)	Recommendations 143 (d) and 144
Notification of the reorganization plan to all known parties in interest (recommendation 73)	-
Effect of the plan on unnotified creditors (recommendation 74)	Recommendation 146
Undisputed reorganization plan (recommendation 75)	-
Disputed plan (recommendation 76)	Recommendations 155, 156 and 158
Confirmation of the plan by the competent authority (recommendation 77)	Recommendation 152
Challenges to the confirmed plan (recommendation 78)	Recommendations 154 and 158 (d)

Recommendations in the text on a simplified insolvency regime	*Recommendation(s) of the Legislative Guide on Insolvency Law used as the starting point*
Amendment of a plan (recommendation 79)	Recommendations 155 and 156
80 [unused]	-
Supervision of the implementation of the plan (recommendation 81)	Recommendation 157
Consequences of the failure to implement the plan (recommendation 82)	Recommendations 158 (e) and 159
Conversion of a simplified reorganization to a liquidation (recommendation 83)	-
Decision on discharge in simplified liquidation proceedings (recommendation 84 [88])	-
Discharge conditional upon expiration of a monitoring period (recommendation 85 [89])	Recommendation 194
Discharge conditional upon the implementation of a debt repayment plan (recommendation 86 [90])	-
Discharge in simplified reorganization proceedings (recommendation 87 [91])	-
Conditions for discharge (recommendation 88 [84])	Recommendation 196
Exclusion from discharge (recommendation 89 [85])	Recommendation 195
Criteria for denying discharge (recommendation 90 [86])	-
Criteria for revoking discharge granted (recommendation 91 [86])	Recommendation 194
Closure of proceedings (recommendation 92)	Recommendations 197 and 198
Treatment of personal guarantees (recommendation 93)	-
Orders of procedural consolidation and coordination (recommendation 94)	-
Modification or termination of an order for procedural consolidation or coordination (recommendation 95)	-
Notice of procedural consolidation and coordination (recommendation 96)	-
Conditions for conversion (recommendation 97)	-
Procedures for conversion (recommendation 98)	-

Recommendations in the text on a simplified insolvency regime	*Recommendation(s) of the Legislative Guide on Insolvency Law used as the starting point*
Effect of conversion on post-commencement finance (recommendation 99)	Recommendation 68
Other effects of conversion (recommendation 100)	Recommendation 140
Appropriate safeguards and sanctions (recommendation 101)	Recommendations 20, 28 and 114
Obligations of persons exercising control over MSEs in the period approaching insolvency (recommendation 102)	Recommendations 255, 256 and 257
Early rescue mechanisms (recommendation 103)	-
Removing disincentives for the use of informal debt restructuring negotiations (recommendation 104)	-
Providing incentives for participation in informal debt restructuring negotiations (recommendation 105)	-
Institutional support with the use of informal debt restructuring negotiations (recommendation 106)	-
Pre-commencement business rescue finance (recommendation107)	-

Table 2

Table of concordance between recommendations of the Legislative Guide on Insolvency Law and recommendations in the text on a simplified insolvency regime

Recommendations of the Legislative Guide on Insolvency Law	*Recommendation(s) in the text on a simplified insolvency regime where the same or similar subject is addressed, if at all*
Key objectives of an effective and efficient insolvency law: • Recommendations 1–5 • Recommendations 6 and 7	Key objectives of a simplified insolvency regime: • Recommendation 1 • No equivalent but the gist of recommendations 6 and 7 is reflected throughout the text
Eligibility (recommendations 8–9)	No equivalent but the gist of recommendations 8–9 is reflected in recommendation 2 (application to all MSEs). See also recommendation 21 on eligibility
Jurisdiction (recommendations 10–12)	No equivalent but recommendations 10–12 of the Guide are applicable *mutatis mutandis* in a simplified insolvency context

Recommendations of the Legislative Guide on Insolvency Law	*Recommendation(s) in the text on a simplified insolvency regime where the same or similar subject is addressed, if at all*
Competent courts (recommendation 13)	Recommendation 5
Persons permitted to apply (recommendation 14)	Recommendation 21
Debtor application (recommendation 15)	Recommendation 23
Creditor application (recommendation 16)	Recommendation 26
Presumption that the debtor is unable to pay (recommendation 17)	-
Commencement on debtor application (recommendation 18)	Recommendation 25
Commencement on creditor application (recommendation 19)	Recommendation 26
Denial of an application to commence proceedings (recommendations 20–21)	Recommendations 27–30
Notices of commencement of proceedings (recommendations 22–24)	Recommendations 31 and 39
Content of the notice (recommendation 25)	Recommendation 32
Debtors with insufficient assets (recommendation 26)	Recommendation 10
Dismissal of insolvency proceedings after commencement (recommendations 27–29)	Recommendations 35–38
Applicable law in insolvency proceedings (recommendations 30–34)	No equivalent but recommendations 30–34 of the Guide are applicable mutatis mutandis in a simplified insolvency context
Assets constituting the insolvency estate (recommendations 35–38)	Recommendations 42–43
Protection and preservation of the insolvency estate (recommendations 39–51)	Recommendations 45–46
Use and disposal of assets (recommendations 52–62)	No equivalent but recommendations 52–62 of the Guide are applicable *mutatis mutandis* in a simplified insolvency context. See the relevant footnote to recommendation 15
Post-commencement finance (recommendations 63–68)	Id.
Treatment of contracts (recommendations 69–86)	Id.
Avoidance proceedings (recommendations 87–99)	Recommendation 44

Recommendations of the Legislative Guide on Insolvency Law	*Recommendation(s) in the text on a simplified insolvency regime where the same or similar subject is addressed, if at all*
Rights of set-off (recommendation 100)	No equivalent but recommendation 100 of the Guide is applicable *mutatis mutandis* in a simplified insolvency context.
Financial contracts and netting (recommendations 101–107)	Id.
Participants:	
• The debtor (recommendations 108–114)	Recommendations 14–17, 19–20 and 101
• The insolvency representative (recommendations 115–124)	No equivalent but recommendations 115–124 of the Guide are applicable *mutatis mutandis* in a simplified insolvency context where an independent professional performs functions of the insolvency representative in simplified insolvency proceedings
• Estates with insufficient assets to meet the costs of administration (recommendation 125)	Recommendation 10
• Participation by creditors (recommendation 126)	Recommendations 18, 19 and 53
• Voting by creditors (recommendation 127)	No equivalent but the gist of recommendation 127 of the Guide is reflected in recommendation 18 of the text
• Convening meetings of creditors (recommendation 128)	No equivalent but recommendation 128 of the Guide is applicable *mutatis mutandis* in a simplified insolvency context
• Creditor committee-related provisions (recommendations 129–136)	-
• Party in interest's right to be heard and to appeal (recommendation 137)	Recommendation 19
The reorganization plan (recommendations 139–159)	Recommendations 67–83
Expedited reorganization proceedings (recommendations 160–168)	-
Treatment of creditor claims (recommendations 169–184)	Recommendations 47–53
Priorities and distribution of proceeds (recommendations 185–193)	No equivalent but recommendations 185–193 of the Guide are applicable *mutatis mutandis* in a simplified insolvency context (see recommendation 63)
Discharge (recommendations 194–196)	Recommendations 84–91
Closure of proceedings (recommendations 197–198)	Recommendation 92
Treatment of enterprise groups (recommendations 199–254)	-

Recommendations of the Legislative Guide on Insolvency Law	*Recommendation(s) in the text on a simplified insolvency regime where the same or similar subject is addressed, if at all*
Directors' obligations in the period approaching insolvency: • Recommendations 255–258 • Recommendations 259–266 • Recommendations 267–270	• Recommendation 102 • No equivalent but recommendations 259–266 of the Guide are applicable *mutatis mutandis* in a simplified insolvency context • -