Conference Report[1]

Introduction

The 3rd SMU-Cambridge Roundtable on Corporate Insolvency Law focused on the adoption of simplified insolvency frameworks for micro and small enterprises ("MSEs"). It was held on 9 November 2021 and it brought together experts from all over the world, including policymakers, scholars, judges and leading practitioners. The event was divided into three panels. The first panel covered international initiatives for the adoption of a simplified insolvency framework for MSEs. The second panel focused on national experiences adopting simplified insolvency frameworks for MSEs. The third panel analysed various academic and policy proposals for the design of an insolvency framework for MSEs.

In their opening statements, **Dr Felix Steffek** (Associate Professor and Co-Director of the Centre for Corporate and Commercial Law, University of Cambridge, Faculty of Law) and **Dr Aurelio Gurrea-Martinez** (Assistant Professor of Law and Head of the Singapore Global Restructuring Initiative, Singapore Management University, Yong Pung How School of Law) explained the main reasons for the exploration of this topic. First, although MSEs account for a significant majority of businesses in most (if not all) jurisdictions, the standard insolvency regime does not appear to be an appropriate mechanism for them. Second, with a few exceptions, most jurisdictions do not have a suitable insolvency regime for MSEs. Third, given the economic fallout following the COVID-19 pandemic, it is necessary and timely for the academic community and policymakers to prioritise this issue.

International Initiatives for the Adoption of a Simplified Insolvency Framework for MSEs

Chaired by Steffek, the first theme of the conference explored various international initiatives for the adoption of a simplified insolvency framework for MSEs with perspectives from the World Bank, the United Nations Commission on International Trade Law ("UNCITRAL"), the

[1] The event was organised by the Singapore Management University's Centre for Commercial Law in Asia, the Singapore Global Restructuring Initiative, and the University of Cambridge's Centre for Corporate and Commercial Law (3CL). INSOL International acted as an academic collaborator. The views expressed by the speakers reflect those of the speakers in a personal capacity, and do not necessarily reflect those of their institutions. This report has been prepared by Sean Lee.

Organization for the Harmonization of Business Law in Africa ("OHADA"), and the Organisation for Economic Co-operation and Development ("OECD").

Mr Andres Martinez (Senior Financial Sector Specialist, World Bank Group's Finance, Competitiveness and Innovation Global Practice) was the first speaker of this panel. Presenting on the World Bank Principles on MSEs and Insolvency, Martinez started his presentation by explaining the importance of this topic. He mentioned that MSEs account for approximately 90% of businesses and the majority of employment worldwide. Furthermore, given the fragile nature of MSEs, they are more likely to face financial ruin as a consequence of the COVID-19 pandemic as compared to larger enterprises.

Martinez then highlighted the main challenges for MSEs in insolvency, which are (i) the lack of incentives and information to utilise traditional insolvency procedures; (ii) creditor passivity; (iii) the lack of access to finance during insolvency; (iv) the significant overlap between personal bankruptcy and insolvency proceedings for business enterprises (especially for sole proprietors); (v) the inability to fund traditional insolvency processes due to insufficient assets; and (vi) the heterogeneous definition of MSE across the various jurisdictions.

In light of these challenges, Martinez explained that the World Bank has been working on a set of principles for MSE insolvency. In 2017, the World Bank released the Report on the Treatment of MSE Insolvency, which considered the challenges faced by insolvent MSEs and analysed the ability of existing legislation to address such challenges.[2] In 2021, the World Bank released the Principles for Effective Insolvency and Creditor/Debtor Regimes, which contained a set of key objectives and policies for the insolvency of Micro and Small Enterprises (MSEs).[3] The World Bank recommended several key principles such as developing convenient, inexpensive and easily accessible procedures minimising procedural formalities. Such procedures should also be flexible enough to rehabilitate or reorganise viable MSEs while also liquidate non-viable ones. In addition, creditors must be encouraged to participate in the approval of reorganisation plans. Individual debtors acting in good faith should also be awarded a fresh start after the conclusion of the insolvency proceeding. Finally, Martinez mentioned that institutional considerations should be taken into account when drafting an appropriate MSE insolvency regime.

Mr Harold Foo (Assistant Director at the Policy Advisory Division, Ministry of Law, Singapore; Chair, UNCITRAL Working Group V Insolvency) followed with his presentation titled "International Perspectives on Insolvency of Micro & Small Enterprises". His presentation was divided into two main sections. First, Foo discussed the importance and the specific characteristics of MSEs. He also mentioned that the share of MSEs with negative equity rose by approximately 6% post the COVID-19 pandemic. He then emphasised some features of MSEs which distinguishes them from larger enterprises. For example, there is a greater overlap between personal indebtedness and business debts for MSEs, which might affect the livelihood of the business owner. Additionally, as compared to larger enterprises, MSEs have a simpler financial structure, and are more likely to encounter creditor apathy as creditors are

[2] World Bank Group, Report on the Treatment of MSME Insolvency, World Bank, Washington, DC (2017).
[3] World Bank Group, Principles for Effective Insolvency and Creditor/Debtor Regimes, 2021 Edition, World Bank, Washington, DC (2021).

less willing to invest time and resources in MSEs reorganizations due to limited financial returns. Therefore, Foo recommended that jurisdictions should tailor their MSEs insolvency regimes with these specific characteristics in mind.

Second, Foo provided the panel with a general overview of UNCITRAL's MSEs insolvency recommendations. He explained that UNCITRAL has published guidelines on insolvency principles, with their latest initiative being the UNCITRAL Legislative Recommendations on Insolvency of Micro and Small Enterprises, which provided guidance on the design and implementation of a simplified insolvency regime. UNCITRAL recommended the adoption of simplified insolvency regimes comprising both simplified reorganisation procedures and simplified liquidation procedures.[4]

Foo provided an overview of the UNCITRAL legislative recommendations and explained its key principles and aims. The simplified insolvency procedure should be expeditious, simple, flexible and cheap, while also providing adequate protection for affected parties. Additionally, the stigmatization associated with insolvency should be addressed.

Finally, Foo highlighted several key recommendations, such as reducing formalities, harnessing electronic tools, and using default proceedings to expedite restructuring and liquidation. To address creditor disengagement, he mentioned various solutions, including the use of deemed approval processes and the understanding of creditors' silence as acceptance of a potential restructuring plan. He also expressed a preference for a debtor-in-possession governance model in simplified reorganisation proceedings, coupled with the introduction of necessary safeguards to protect creditors' interests. He recognised the commingling of the debtor's business and personal debts was a live issue, and recommended measures such as coordinated proceedings to address this thorny issue.

Professor Juanitta Calitz (Associate Professor of Law and Head of the Department of Mercantile Law, University of Johannesburg; Chair, INSOL International Academic Group) followed with her presentation titled "Insolvency Principles for MSEs: Lessons from the OHADA Unified Insolvency Act and Other Developments in Africa". Calitz explained that the economic crisis brought by the pandemic had hit Sub-Sahara Africa harder than the rest of the world, and recovery was projected to be more modest compared to the global average. As a result, many MSEs may not survive in the post-pandemic world.

Calitz shared the key features of the Council of Ministers of the Organization for the Harmonization of Business Law in Africa (OHADA)'s Uniform Act Organising Collective Proceedings for the Clearing of Debts of 10 September 2015 ("Uniform Act"). She mentioned that the Uniform Act includes (i) a conciliation procedure to encourage saving viable companies; (ii) simplified regulations for small enterprises; (iii) a clarified order for the priority of creditors; (iv) incentives for creditors to provide fresh money to troubled companies to facilitate their restructuring and recovery; and (v) a common legal framework to oversee the activities of insolvency practitioners and trustees. The main purpose of the Uniform Act is to promote the rescue of viable MSEs wherever possible. Under the Uniform Act, the conciliation and preventive restructuring processes are designed to avoid a situation where a company

[4] UNCITRAL Legislative Recommendations on Insolvency of Micro and Small Enterprises (2021).

becomes unable to pay its debts when they fall due. Should a company be unable to pay its debts, it will become eligible for business rescue or liquidation proceedings. Small businesses facing financial difficulties have access to the simplified preventive settlement process, judicial recovery, and the simplified winding-up process.

In Namibia, Calitz explained that the Business Rescue Task Force was tasked to review the business and insolvency legislation with the objective of adopting a regulatory framework favouring the rescue of viable businesses in financial distress. The task force also recommended various amendments to strengthen entrepreneurship. However, such efforts were not replicated in South Africa.

In conclusion, Calitz summarised the key lessons of her presentation. When designing an insolvency framework, she emphasised the importance of reducing the costs of the procedure. Possible measures to manage procedural costs include implementing out-of-court or hybrid procedures and utilising alternative dispute resolution. She also mentioned that, since institutions and legal professionals are critical to the success of any proposed MSE insolvency regime, it is important to ensure that they have sufficient capacity to manage the insolvency caseload. Finally, Calitz highlighted that, given the cross-border nature of many corporate activities, there is an increasing need for a uniform insolvency law approach to the financial distress of a corporation in the Southern African Development Community, especially in the context of MSEs.

Mr Christophe André (Senior Economist, OECD) and **Ms Miriam Koreen** (Senior Counsellor on SMEs and Head of the SME and Entrepreneurship Finance Unit at the Centre for Entrepreneurship, SMEs, Regions and Cities, OECD) were the final presenters of the first panel. They provided the OECD’s perspectives on MSEs and insolvency.

Koreen shared several observations on MSE lending and the measures introduced by several countries as a response to the financial difficulties exacerbated by the COVID-19 pandemic. Prior to the pandemic, she explained that traditional bank lending stagnated while other means of financing flourished. However, in 2020, the trend reversed – lending to MSEs increased, likely due to the introduction of government intervention to keep MSEs afloat. This trend of increased MSEs lending was observed in a diverse range of countries. On a related note, she also mentioned that the outstanding stock of lending also grew significantly across the globe. Koreen noted that this trend could have been due to several reasons, such as the provision of new debt to MSEs, the inability of MSEs to repay existing loans, and the extension of loan maturity for such loans.

With regard to the fiscal measures introduced by the governments, Koreen explained that there were two main categories. During the rescue phase, the fiscal measures introduced were designed to provide MSEs with the time and flexibility to recover. Such measures included a moratorium on enforcement actions, safe harbour provisions, and increasing debt thresholds for the initiation of the procedure. During the recovery phase, measures introduced were aimed at simplifying existing insolvency procedures so as to make debt restructuring more accessible to MSEs. She mentioned that measures introduced in this phase have included the digitalisation of bankruptcy applications, the provision of simplified insolvency regimes, and the reduction of administrative burdens. Koreen observed that, while the measures introduced in the rescue phase were premised on avoiding or delaying insolvency, there has been a transition to the recovery phase, leading to the introduction of measures aimed at simplifying procedures and increasing administrative capacity. As a result, there is data suggesting that bankruptcy rates in 2020 have declined.

Following Koreen's presentation, André spoke on policy issues emerging in the wake of the pandemic. First, he highlighted the risks of viable firms becoming insolvent while unproductive firms remain afloat. From a structural perspective, he commented that it was also important to ensure that an insolvency system is able to handle an increased caseload by strengthening early-warning mechanisms and pre-insolvency frameworks. In addition, there ought to be special insolvency procedures for MSEs. Finally, he recommended that creditors that provide new finance to distressed businesses should enjoy a priority in the event of liquidation.

André then provided some background on the OECD Insolvency Indicator. He observed that there was a fall in productivity since the mid-2000s due to a fall in "creative destruction". As insolvency frameworks play a key role in resource reallocation, it is necessary to design a questionnaire to obtain vital information which may not be captured in other available indicators. André broke down the structure of the OECD Insolvency Indicator into four main parts: (i) the treatment of failed entrepreneurs; (ii) the prevention and streamlining of insolvency; (iii) the restructuring tools available; and (iv) other factors (such as the degree of court involvement, the distinction between honest and fraudulent bankrupts, and existing employee rights). Due to the evolution of insolvency regimes across the globe, André explained that an update to the OECD Insolvency Indicator was forthcoming.

Insolvency Reforms for MSEs: National Experiences

Professor Wan Wai Yee (Associate Dean for Research and Internationalisation and Professor at the School of Law, City University of Hong Kong) chaired the discussion of the second theme "Insolvency Reforms for MSEs: National Experiences", where the panel provided in-depth discussion and observations of the MSE insolvency regimes in the United States of America, Myanmar, Colombia, Australia, and Singapore.

Professor Jason Kilborn (Professor of Law, University of Illinois Chicago School of Law) started the panel by providing an overview of the insolvency regime for MSEs under the Small Business Reorganisation Act ("SBRA") in the United States. Kilborn explained that the SBRA is radical in its simplicity and its ability to allow the US Courts to impose a restructuring plan against the wishes of the creditors so long as certain statutory guidelines are met. Consequently, the success of the MSEs insolvency regime relies on sophisticated bankruptcy judges who are adept at analysing such restructuring plans and thus are given a large discretion in passing judgment on the viability of the company post-reorganisation.

With regard to the characteristics of a debtor entitled to recourse under the SBRA, Kilborn explained the importance of a well-crafted definition as the maximum debt value determines the scope of the law. The current maximum debt value is USD7.5M, which is significantly greater than the USD2.7M proposed when the SBRA was first passed. This temporary increase in value is set to expire in March 2022, although there are efforts to render it permanent.

Furthermore, to qualify for restructuring under the SBRA, at least 50% of the debtor's debt must have arisen from commercial or business activities.

Kilborn then pivoted to comparing and contrasting the SBRA insolvency approach to the usual approach under Chapter 11. He raised two aspects for analysis: the application process and the imposition of the reorganisation plan. Under the SBRA, only the debtor is entitled to propose a reorganisation plan. The SBRA also avoids excessive spending by dispensing the creditor committee and the debtor's obligation to provide a disclosure statement. Instead, the debtor is only required to provide general information on its future turnaround plans. Furthermore, a novel trustee is appointed to support and advise the debtor with the purpose of reaching a consensual plan through candid conversation. This results in an affordable and expedited restructuring process, benefiting both debtors and creditors.

Also unique to the SBRA approach, judges have a large discretion to approve and impose a reorganisation plan, even against the wishes of the opposing creditors, in situations where certain statutory requirements are met. Kilborn opined that this rule could explain the relatively high success of the SBRA regime – creditors could have succumbed to the pressures associated with the possibility of a court plan and actively sought to strike a more conciliatory tone in reorganisation. However, he emphasised the challenges faced by judges who have the difficult task of predicting the future success of an already distressed MSE. As such, Kilborn highlighted that sophisticated judges are instrumental to the success of the SBRA.

Mr Scott Atkins (President, INSOL International; Partner, Head of Risk Advisory and Chair, Norton Rose Fulbright Australia) followed with a presentation analysing Myanmar's simplified insolvency framework for MSEs. Along with a team at Norton Rose Fulbright, Atkins worked with the Union Supreme Court of Myanmar in 2016 to redesign the Myanmar's insolvency and restructuring framework, which included reforms to the MSEs insolvency regime. At that time, he admitted that it was not particularly fashionable to focus on MSE insolvency, although he acknowledged its importance.

Atkins explained that, prior to the reform, the Myanmar insolvency law remained unchanged for a century and thus failed to meet the needs of modern times. He explained that the key driver for a reform of Myanmar's insolvency law was the desire to improve the economic situation in Myanmar and attract foreign investment. After all, investors are not generally interested in investments opportunities unless they understand how value could be extracted following financial distress. Additionally, the team faced some resistance in justifying the importance of insolvency law, given the absence of substantial Myanmar insolvency case law.

Atkins then provided an overview of the features of Myanmar's MSEs insolvency regime. Under the new legislation, the primary focus is to promote business restructuring, generally with the assistance of a lawyer or an accountant. A simple moratorium was introduced to prevent the filing of creditor actions or winding up applications, which may distract from the debtor's attempt to restructure. He also explained that the simplified regime was designed primarily for micro companies, as larger entities could effectively utilise the formal insolvency process. In addition, by reducing the expenses incurred during the liquidation process, more capital could be recycled. Finally, he also mentioned that mediators may also be appointed during the insolvency procedure, allowing parties to avoid resorting to the traditional court mechanism and therefore keeping costs low. Despite these comprehensive reforms, Atkins mentioned the institutional limitations existing in Myanmar. Therefore, he concluded by stating that it remains to be seen whether the amended insolvency framework would ultimately prove successful.

Judge Susana Hidvegi (Former Chief Bankruptcy Judge, Colombian Superintendence of Companies) then provided an overview of the insolvency framework for MSEs in Colombia. Hidvegi explained that the Superintendence of Companies presented several insolvency reforms to the Colombian government as part of the emergency legislation addressing the economic fallout following the COVID-19 pandemic. As a result, abbreviated bankruptcy proceedings for small enterprises were adopted in Colombia. Namely, Decree 772 of 2020 introduced an abbreviated reorganisation proceeding and a simplified liquidation proceeding for small companies.

Under the newly abbreviated reorganisation proceedings, mandatory mediation was introduced as a key feature. In the first stage of reorganisation proceedings, the judge acts as a mediator to assist the parties to reach an agreement on various contentious issues. Judge Hidvegi remarked that the introduction of mandatory mediation has been very successful, since 90% of claims were settled in this phase. Its success could be attributed to the training judicial clerks received, allowing them to serve as effective mediators and address the objections commonly raised during reorganisation. Since contentious issues can be quickly resolved, the court only needs to approve the reorganisation plan, resulting in a fast and cost-effective procedure. To keep the costs of the reorganisation process low, the debtor remains in control of the company and an automatic stay of proceedings allows the debtor to focus on reorganisation efforts in order to avoid unnecessary hurdles. To show evidence of its success, Judge Hidvegi remarked that the average length of a simplified reorganisation was approximately 5.5 months, as opposed to two years for a standard reorganisation. Under the simplified liquidation proceeding for small companies, Judge Hidvegi explained that such proceedings are available to debtors with an asset value of less than 5,000 times the minimum wage in Colombia (1.2 USD approx.). The simplified liquidation proceeding consists of an accelerated process with fewer stages. She mentioned that the average duration for a simplified liquidation lasts approximately six months compared to the usual two-year timeline for a standard liquidation.

Hidvegi highlighted the use of artificial intelligence tools as an essential aspect contributing to the success of these proceedings. A system called "MI" (*Módulo de Insolvencia*) was introduced to assist users in the insolvency petition, reducing the procedural complexities associated with insolvency filings. This system also has the added benefit of allowing judges to analyse information quickly as it offers formats to organise information in a digestible manner.

However, given that the legislation was not issued by congress, these new proceedings have only been adopted temporarily. However, Hidvegi informed the panel that there have been efforts to make these changes permanent.

Professor Jason Harris (Professor of Corporate Law, The University of Sydney, Sydney Law School) then analysed the simplified insolvency proceedings for small companies adopted in

Australia. He mentioned that, although the reform looked good on paper, the amendments introduced were largely ineffective.

Harris explained that the reforms were introduced at the start of 2021. Although the government did solicit comments on the draft laws, Harris remarked that the period to provide comments was very short. Harris explained that the first major shortcoming of the reforms was that the personal bankruptcy regime and the corporate insolvency regime remained as separate processes. As such, the issue of multiple proceedings for MSE insolvency persisted. Consequently, the costs of MSE insolvency remained high. Given that all reforms were focused solely on corporate insolvency and that two-third of Australian MSEs were sole proprietors, the reforms were largely ineffective in addressing the specific issues of MSEs in insolvency. While there has been some efforts to propose amendments to the personal bankruptcy regime, he noted that such reforms have yet to be enacted.

Despite some positive developments under the simplified liquidation regime – such as the reduction in reporting requirements and the abolition of creditor committees and creditor meetings – Harris said that the simplified liquidation process was not significantly cheaper than the standard voluntary liquidation process. As for the simplified reorganisation procedure, Harris explained that, under the existing law, directors are offered limited protection. Furthermore, the limitations on restructuring outcomes, such as the unavailability of debt-for-equity swaps, rendered the simplified reorganisation procedure less flexible as compared to voluntary administration. As such, these expensive yet inefficient insolvency procedures resulted in a large number of deregistered and abandoned companies in Australia. Given the threat of personal liability for insolvent trading, and the overlap between personal and corporate debt, Harris opined that the existing regime for MSE insolvency would remain ineffective until these substantive issues were adequately addressed.

Ms Smitha Menon (Partner and Deputy Head, Restructuring & Insolvency Practice, WongPartnership LLP) explained the hallmarks of Singapore's approach to MSE insolvency, characterised for being cheap, fast and effective under the new Simplified Insolvency Programme ("SIP"). The SIP comprises of a simplified debt restructuring programme and a simplified winding up procedure.[5] The SIP was introduced on 29 January 2021 as an amendment to the Insolvency, Restructuring and Dissolution Act of 2018. Although initially available for 6 months, the SIP has been extended until 28 July 2022. However, as recently announced by the Second Minister of Law, Mr Edwin Tong SC, some aspects of the SIP may remain permanent after this period.

To begin the application process for either the simplified debt restructuring or the simplified winding up, a debtor must apply to the Official Receiver. To qualify, a debtor must meet the eligibility criteria as stated in the statute. Additionally, there must be no circumstances that make the debtor unsuitable for acceptance into these simplified procedures. For example, the affairs of the debtor must be such that the administration of debt restructuring or winding up of the debtor is unlikely to require significant resources or specialised knowledge. After an application is made, creditors may file a notice of objection to the Official Receiver, who must decide whether to accept or reject the debtor's application for simplified proceedings.

[5] Insolvency, Restructuring and Dissolution Act 2018 (No. 40 of 2018), Parts 5A and 10A.

The simplified debt restructuring programme modifies the existing pre-package scheme of arrangement regime by compressing the procedural timelines and dispensing with most of the contentious issues typically faced during the scheme of arrangement process. First, the debtor is discharged from simplified debt restructuring programme within 90 days after the Official Receiver's acceptance of the debtor's application. Second, the simplified debt restructuring process dispenses with the headcount test, and requires only the agreement of two-thirds in value of its creditors (as opposed to the usual three-fourths under the ordinary scheme of arrangement procedure) for the approval of a proposal. Third, the simplified debt restructuring programme features several rules – such as a rigid creditor classification regime, the imposition of an automatic moratorium, and the ability for the debtor to represent itself in court proceedings – expressly designed to avoid the usual contentious issues encountered during debt restructuring, resulting in an aerodynamic and efficient process.

As for the simplified winding up programme, Menon explains that the legislation eliminates several procedural requirements to reduce the complexity of winding up. First, the Official Receiver serves as the liquidator and determines whether the debtor's assets are sufficient to cover the cost of winding up. Where the assets are insufficient to cover such costs, the company is promptly dissolved. Second, both the creditor meeting and committee of inspection are dispensed with. Third, although the Official Receiver serves as the liquidator, the Official Receiver does not have the full ambit of powers available to a traditional liquidator, as the Official Receiver is solely focused on quickly distributing the remaining assets to the creditors and dissolving the company promptly thereafter. As such, the simplified winding up programme takes approximately one month to complete and incurs less administrative cost.

<u>Academic and Policy Proposals for the Design of Insolvency Frameworks for MSEs</u>

The final panel of the roundtable focused on academic and policy proposals for the design of insolvency frameworks for MSEs. The panel was chaired by **Professor Louise Gullifer** (Rouse Ball Professor of English Law and Co-Director of the Centre for Corporate and Commercial Law, University of Cambridge).

Professor Ignacio Tirado (Secretary-General, UNIDROIT) started the panel with a presentation entitled "A Modular Approach to MSEs in Insolvency". Tirado explained that the key failure of the traditional insolvency system was that, although many MSEs were in fact individuals and occupied a large part of the labour force, the available procedures failed to meet their needs. This was a recurring issue even in developed countries. This analysis was based on his previous work on this topic, including his book "Micro, Small, and Medium Enterprise Insolvency: A Modular Approach" (Oxford University Press, 2018), co-authored with Riz Mokal, Ronald Davis, Alberto Mazzoni, Irit Mevorach, Madam Justice Barbara Romaine, Janis Sarra, and Stephan Madaus.

The ordinary insolvency procedure, Tirado argued, featured overhead costs which were far too high. Tirado suggested that the insolvency procedure available to a large conglomerate should not be the same for a small entity with few employees. Therefore, Tirado proposed the introduction of modular approach whereby modules based on the complexities of a particular debtor are employed in the proceedings relating to that debtor. In most cases, a fast track proceeding is not only satisfactory in meeting the needs of most MSEs, but also avoids judicial congestion. In rarer cases where insolvency proceedings are contested or complex, more modules can be added. In the process, Tirado compared the modular approach to an accordion, an instrument to be lengthened as and when it was necessary to do so.

To further simplify proceedings, Tirado recommended the appointment of insolvency practitioners to be limited to situations where additional expertise was necessary. In addition, special rules should be introduced to address creditor passivity, such as allowing for deemed consent on the part of creditors. Tirado also advocated the use of technology, such as the creation of online platforms, to reduce the costs and burdens associated with insolvency proceedings.

Ms Anjum Rosha (Senior Counsel, International Monetary Fund) focused her presentation on "The Design of Insolvency Frameworks for MSEs", and discussed why a suitable insolvency framework for MSEs is also needed to preserve financial stability. To begin, Rosha explained that the topic of MSE insolvency was important as a widespread failure across MSEs can create a domino effect, ultimately impacting larger corporate entities. Creating a timely exit for MSEs can therefore improve financial stability and the efficient allocation of resources in the economy.

Rosha then explored some policy considerations in designing laws for MSE insolvency. She cautioned against transplanting easy solutions or models across jurisdictions, given the complexity and challenging nature of MSE insolvency, highlighting in particular the heterogeneity in the definitions of MSEs. Due to the divergence in definition, what counts as a medium size firm in some countries might be more akin to a large corporation in others, and therefore the term "MSEs" has the potential to be an overly inclusive one. Rosha recommended that countries analyse the exact problem to be addressed, and determine whether the issue concerned only micro companies, warranting a targeted approach, or if the issue affected the wider category of MSE and required a more general solution. Policy makers, Rosha advised, needed to consider the perimeters of the problem before proposing any solutions.

While discussing the various popular solutions to MSE insolvency, Rosha first brought up the options beyond traditional court-based insolvency proceedings. For example, jurisdictions concerned about case volume should consider out-of-court insolvency proceedings to provide some relief to the overburdened courts. Alternatively, hybrid or pre-packaged regimes can be implemented, which would take away some pressure by reducing judicial involvement. While some measures would be effective in almost all jurisdictions, such as the reliance on technology, introduction of mediation and availability of subsidised legal advice, other measures, such as imposing limits on appeals, imposing limits on liquidator powers and a contracted insolvency timeline might be more controversial. In any event, Rosha explained that a calibrated balance between the need for streamlined processes and the need for due process must be struck. Rosha also addressed the issue of creditor passivity, especially in dealing with the insolvency of sole proprietors, and recommended the removal of structural impediments.

In her conclusion, Rosha considered that while specific principles for MSE insolvency would be effective during periods of relative stability, in times of heightened risk some governmental intervention might be necessary. In addition, as the globe recovers from the economic fallout arising from the pandemic, Rosha considered that the focus on supporting companies through moratoria and stimulus should give way to a more targeted strategy in addressing MSE insolvency.

In the final presentation of the event, **Dr Gurrea-Martinez** discussed various policy considerations for the design of an insolvency framework for MSEs. Based on his recent article "Implementing an Insolvency Framework for Micro and Small Firms", he highlighted four main areas for consideration. First, Gurrea-Martinez set out the benefits of using out-of-court proceedings, rather than relying on traditional court mechanisms. Not only are out-of-court proceedings more cost effective for debtors and creditors, and reduce the burden on state actors, they can also be more easily achieved in the context of companies with simple debt structures such as MSEs. Though there is a creditor passivity problem in general, Gurrea-Martinez explained that this issue can be addressed through governmental intervention. Some possible actions which governments can consider include regulating out-of-court restructuring, granting tax benefits for haircuts, and enacting rules deeming creditor silence on a proposed restructuring to be consent.

Second, Gurrea-Martinez explained that should a proposed workout be rejected, this would serve as a useful indicator that either the business might not be viable, or that the business is viable but the creditors do not trust the shareholders/managers. In the former case, the business ought to be liquidated. In the latter, the business should be sold to a third party as a going concern. As such, he recommended the adoption of a single-entry insolvency process – the insolvency process may be initiated with liquidation as a default, or as an auction process, but remain flexible enough to allow debtors to submit options for the possibility of reorganisation.

Third, Gurrea-Martinez addressed the issue of the commingling of personal and corporate debts for MSEs, many of which are sole traders. He advocated for the adoption of a discharge of debts for honest but unfortunate entrepreneurs.

Finally, he also emphasised the need to address the stigma associated with insolvency and bankruptcy. Gurrea-Martinez pointed to the importance of introducing active policies, including "nudges", to reduce such stigma. Examples can be found in Chile, where the institution in charge of overseeing insolvency proceedings has been named "Superintendence of Insolvency and *Re-entrepreneurship*", or in the United States where the term "bankrupt" has been replaced by "debtor".

<u>Concluding remarks</u>

Steffek and Gurrea-Martinez concluded the event reiterating the importance of MSEs for job creation, value creation and macroeconomic stability. They highlighted the key features of a successful MSE insolvency regime and summarised various solutions and policy recommendations suggested during the event. They also acknowledged that good progress has been made in this area but further discussions and developments will be needed in the coming years.