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# DECODING THE UNCITRAL LEGISLATIVE GUIDE ON CROSS-BORDER INSOLVENCY LAWS

*By Shivansh Bhatt and Dhruv Dev Gupta*
*From Symbiosis Law School, Hyderabad*

## INTRODUCTION

UNCITRAL's definitive Insolvency Law Guide covers some primary topics that impact debtors in specific. Majority of business operators in the global business environment today are small business operators, but the bulk of the direction discussions focus on the settlement of corporate insolvency. The Legislative Guide contains an exhaustive explanation of core goals and values to be adopted in the insolvency legislation of any Jurisdiction. About a decade has even passed after the 2004 implementation of this Guide on Insolvency Law by the UNCITRAL and by the United Nations General Assembly. Over this era, the framework of insolvency legislation and practice shifted dramatically. The most drastic transition may be the surge of legislative action concerning natural persons' insolvency.

In 1999, when the proposal was first advanced for UNCITRAL's insolvency project, only a handful of states offered meaningful debt relief to natural persons, including small business entrepreneurs. One notable commentary aptly observes that "the classical reaction to insolvency ('bankruptcy') was punishment of the debtor and comprehensive liquidation and distribution of the debtor's property among the creditors." This philosophy applied equally to juridical and natural persons, but it began to give way to a new vision of rescue and rehabilitation by the turn of the 21st century, as reflected in UNCITRAL's Legislative Guide.[1] For small entrepreneurs and consumers, however, notions of rescue and rehabilitation remained generally out of reach in light of the paucity of assets in these small cases and the cost and complexity of modern rehabilitation procedures.[2]

The plight of ordinary, individual debtors received growing attention in the 21st century, however. In the 1980s and 1990s, several bellwether European states had begun a long process of adopting, reviewing, and repeatedly revising new insolvency proceedings designed for the specific needs and characteristics of large numbers of overindebted individuals, especially those with limited assets and income. As UNCITRAL's Legislative Guide was being formulated, these first-mover European states were busy revising and expanding their laws in response to the trials and errors of the first tumultuous years of this process. After the mid-2000s, when the Legislative Guide was finalized, a movement rapidly expanded across Europe to consolidate the lessons of these early years and offer more effective debt relief to natural persons.[3] By 2016, this movement encompassed almost all of the EU Member States, and the remaining holdouts

[1] Jeffrey D.Dunn,UNCITRAL Adopts Legislative Guide on Secured Transactions,2 Insolvency & Restructuring INT'l 40 (2008).

[2] Jason J.Kilborn,Elaborating UNCITRAL's Legislative Guide on Insolvency Law:Principles for Natural Persons,66 Modernizing International Trade Law to Support Innovation and Sustainable Development,UNCITRAL(2017).

[3] Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency,6 TUL. J.INT'l & COMP.L.415(1998).

are facing increasing pressure to fall into line. In both Africa and South America, several states have been actively exploring procedures for treating individual insolvency, and South Africa put in place such a process in 2005, followed by Colombia in 2012.

UNCITRAL's Legislative Guide does not reflect this later legislative activity and the key lessons informing evolving insolvency policy for individual debtors.[4] While the Guide expressly encompasses consideration of issues specific and sometimes unique to natural persons, it fails to identify key policies and procedures that a decade of experience has shown to be most salient in this particular context. Although the Guide expressly avoids consideration of "market" problems, small businesses, which constitute the bulk of commercial players in today 's world, share far more with average customers than with big corporate debtors. As the European Commission's recent study on individual insolvency pointedly observes, "procedures that are designed for corporate and/or larger business debtors may be inappropriate" for sole traders and family entrepreneurs.[5] And as the Guide itself admits, cases involving individual debtors will inevitably involve "the intersection of business indebtedness with consumer indebtedness," and "it may not always be possible to separate the debts into clear categories." Consequently, the rules governing insolvency resolution for natural persons should apply to all such persons, as "it may not be feasible to have rules on business debts of natural persons that differ from the rules applicable to consumer debts." It is high time for UNCITRAL to revisit its Legislative Guide project to include major recent developments with respect to the most prominent issues affecting individual debtors and their personal insolvency resolution. As the Guide acknowledges, "society is constantly evolving, [so] insolvency law cannot be static, but requires reappraisal at regular intervals to ensure that it meets current social needs." The upheaval of the Great Recession and the consequent fundamental shifts in individual insolvency policy have revealed social needs to which the Guide does not respond.[6] No wholesale revision is required; rather, the Guide could be significantly enhanced simply by including a more deliberate consideration of a few particular sticking points that have divided modern procedures, created notable inefficiencies, and undermined UNCITRAL's original goal to "foster and encourage the adoption of effective national insolvency regimes."

## 2. EMERGING TOPICS OF PARTICULAR RELEVANCE TO INDIVIDUAL DEBTORS

In our diverse world, one would expect a substantial degree of variation among national insolvency laws, and the Legislative Guide acknowledges and accepts this.[7] Nonetheless, some key issues are especially vital to efficient and effective insolvency

[4] Anneli Loubser,Aiding the Development of a New Insolvency Law in South Africa:The UNCITRAL Draft Legislative Guide on Insolvency Law,15 S.AFR. MERCANTILE L.J. 396(2003).

[5] Susan Block-Lieb & Terence Halliday,Harmonization and Modernization in UNCITRAL's Legislative Guide on Insolvency Law,42 TEX.INT'l L.J. 475(2007).

[6] Jason J.Kilborn,Elaborating UNCITRAL's Legislative Guide on Insolvency Law:Principles for Natural Persons,66 Modernizing International Trade Law to Support Innovation and Sustainable Development,UNCITRAL(2017).

[7] UNCITRAL's Legislative Guide on Insolvency Law

systems, and they reflect important developments and trends and, sometimes, a high degree of consensus on better practices.[8] Two such issues are introduced generally in the Guide but could benefit from greater elaboration specific to the context of natural person debtors: (1) standards for commencing an insolvency case, and (2) requirements for obtaining a discharge of unpaid debts.

## 2.1. COMMENCEMENT STANDARDS FOR INSOLVENCY PROCEEDINGS

The Legislative Guide recognizes that "the standard to be met for commencement of insolvency proceedings is central to the design of an insolvency law," and it endorses standards that are "transparent and certain" to encourage and facilitate financially distressed debtors in seeking relief voluntarily, but also "balanced with appropriate and adequate safeguards to prevent improper use." It proceeds to discuss the two commencement standards common to corporate cases: equitable insolvency (cessation of payments) and balance-sheet insolvency (debts exceeding present asset value).[9]

This discussion masks the struggles witnessed in recent years to control access to debt relief for individuals. Natural persons cannot simply grind to a halt; they must carry on existing as best they can, providing for their own and their dependents' basic survival needs.[10] Neither the general cessation nor the balance-sheet test is particularly appropriate to this context, and modern personal insolvency laws have struggled to find the right balance between encouraging debtors to obtain relief and discouraging debtors from abusing that opportunity. Modern laws differ dramatically in the degree to which they limit or condition, both formally and practically, individual access to personal insolvency relief. Often these standards are neither transparent nor certain, and some are more problematic than others.

### 2.1.1. INSOLVENCY, OVERINDEBTEDNESS, HOPELESSNESS?

The Legislative Guide would benefit from a frank evaluation of the cacophony of differing definitions of financial distress that entitle individuals to commence an insolvency case.[11] In the natural person debtor context, debt levels and income play a more prominent role than payment behavior or asset value. Existing approaches identify the necessary degree of financial distress in widely varying ways, whether by definition (e.g., inability—not simple cessation—to service debts as they come due) or other objective indicators (e.g., minimum debt levels or debt-to-income ratios). European authorities have sought for many years to identify an optimal, uniform approach to defining "overindebtedness," but a final solution remains elusive.

It would be useful for the Guide to identify and evaluate the opaque and restrictive

[8] Jeffrey D.Dunn,UNCITRAL Adopts Legislative Guide on Secured Transactions,2 Insolvency & Restructuring INT'l 40(2008).

[9] Jeffrey D.Dunn, UNCITRAL Adopts Legislative Guide on Secured Transactions,2 Insolvency & Restructuring INT'l 40 (2008).

[10] Jason J.Kilborn,Elaborating UNCITRAL's Legislative Guide on Insolvency Law:Principles for Natural Persons,66 Modernizing International Trade Law to Support Innovation and Sustainable Development,UNCITRAL (2017)

[11] UNCITRAL's Legislative Guide on Insolvency Law.

approach taken by emerging individual overindebtedness regimes like those in Scandinavia and Eastern Europe. To commence a case under the Danish law, for example, debtors must clear two high hurdles: First, debtors must establish their "qualified insolvency," a restrictive notion that implies hopeless financial collapse. Even deeply insolvent debtors can be barred from relief if their standard of living is higher than what the court in its unfettered discretion considers "reasonable," or even if the debtor's future financial situation is "uncertain." Before a reform in 2005, this second criterion all but excluded small business operators, as fluctuating business income rendered the debtor's financial future too uncertain. Even after the reform, temporary unemployment (perhaps following the collapse of a small business) might still undermine the "certainty" of the debtor's distress.[12] Second, the court must adjudge the debtor deserving of relief based on a vague and opaque reasonableness standard. Originally, the Danish law directed courts to presume that relief was inappropriate, though a 2005 reform reversed the presumption.[13] Other Scandinavian regimes apply similar access criteria, and all have extremely high rates of rejecting debtor applications.

Another cautionary tale of an untransparent and overly demanding commencement standard comes from Poland. Effective since early 2009, the Polish law originally allowed access only to debtors whose financial distress was caused by exceptional circumstances entirely beyond their control.[14] In the first two-and-a-half years of the law's effectiveness, debtors submitted over 2000 applications for relief, but the courts admitted only 60 as meeting the stringent entry requirement. Polish policymakers characterized this 2.78% admission rate as "truly insignificant" and, effective December 31, 2014, the law was amended to permit access to debtors whose insolvency was not caused intentionally or through gross negligence.

### 2.1.2. MINIMUM PAYMENT CAPACITY

Even for debtors who successfully sail past the Scylla of demonstrating financial distress, some modern laws actually deny relief to debtors who are too distressed, as they crash on the Charybdis of a further requirement of minimum payment capacity.[15] These regimes require debtors to either pay or provide assurance of future payment of the administrative fees of the process and sometimes even a minimum dividend on creditors' claims; otherwise, their cases are dismissed. This creates an ironic underclass of debtors who are too financially distressed to obtain relief from their financial distress.

The Legislative Guide points out that public interest concerns in particular may militate in favor of enabling commencement of low-asset cases like these. It also notes the particular importance of cost-effective procedures in low-asset cases commenced by

[12] Anneli Loubser,Aiding the Development of a New Insolvency Law in South Africa:The UNCITRAL Draft Legislative Guide on Insolvency Law, 15 S.AFR. MERCANTILE L.J. 396(2003).
[13] Ibid.
[14] Jason J Kilborn,Elaborating UNCITRAL's Legislative Guide on Insolvency Law: Principles for Natural Persons,66 Modernizing International Trade Law to Support Innovation and Sustainable Development,UNCITRAL(2017).
[15] Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency,6 TUL. J. INT'l & COMP.L.415(1998).

small and medium-sized businesses. It would be useful for the Guide to address more directly the counterproductive nature of excluding small entrepreneurs from modern relief systems based on their inability to pay. Even if these debtors have little or nothing to distribute to creditors, the purposes of personal insolvency legislation are quite distinct from those of traditional, creditor-oriented bankruptcy systems. Producing a benefit for creditors is only one of a large number of goals of modern personal insolvency law, which the Guide would do well to articulate (in addition to the largely creditor-oriented goals it currently lists).

The Guide misses an opportunity when it discusses mechanisms for financing the administration of low-value cases but draws no explicit connection between administrative costs and needless procedural formalities. Where applications for personal debt relief are adjudicated by courts, often with traditional formalities borrowed from corporate bankruptcy practice, the cost burden is generally substantial. Several states have reduced or eliminated formalistic procedures that are too expensive for small debtors and are not necessary to protect the practical interests of the parties.[16] In the court-based Dutch procedure, for example, after practice revealed that little or no distribution was likely in most individual debtor cases, courts exercised their discretion to stop holding official hearing for verification of creditors' claims, and the legislature formally ratified this procedural simplification as of 2008.[17] In Sweden, a formerly three-step process involving preliminary agency determinations followed by court confirmation was found to be needlessly formalistic, so it was reduced to one, agency-controlled step, with the courts standing by only as appellate bodies.[18]

### 2.1.3. MANDATORY PRE-FILING NEGOTIATION

One final commencement requirement not discussed in the Guide is a mandate for pre-filing negotiation with creditors. Debtors in several modern systems must have attempted to work out a voluntary debt adjustment with their creditors before seeking coercive relief (or have a qualified counseling agency certify that such an attempt would be futile). Unfortunately, the results of this kabuki dance are all but predetermined, as the overwhelming majority of debtors have too little to offer creditors to secure a compromise arrangement, or trust and personal judgment issues interfere with rational business negotiation.[19] In Greece, for example, of some 22,000 mandatory pre-insolvency conciliation attempts in the first years of the new personal debt relief system, only five produced voluntary workout plans. Swedish debtors experienced similarly disappointing results in these mandated negotiations, which even creditor representatives characterized as "nearly meaningless." As a result, both Sweden and Greece recently abandoned their mandatory conciliation requirement, though it remains in a few other countries, including early-

[16] Ibid.

[17] Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency,6 TUL. J. INT'l & COMP.L.415(1998).

[18] Anneli Loubser,Aiding the Development of a New Insolvency Law in South Africa:The UNCITRAL Draft Legislative Guide on Insolvency Law, 15 S.AFR.MERCANTILE L.J. 396(2003).

[19] UNCITRAL's Legislative Guide on Insolvency Law.

adopters Germany and the Netherlands, as well as some of the latest arrivals in Hungary and, the newest system, Croatia.[20]

The Legislative Guide could offer useful perspective by juxtaposing historical preference for negotiated solutions against modern evidence of the futility of such negotiations in the personal insolvency context. A recent European Commission-sponsored study concluded "the benefit of [mandatory out-of-court negotiations] may be dubious, being, rather, a prolongation of the debtor's problems and an unhelpful delay." Similarly, the World Bank observed pointedly "the merits of voluntary settlements are often illusory," citing long delays, debtors' being pressured to agree to "onerous payment plans that are not viable," and a very small rate of successful compromise. The Guide could contribute quite constructively to this growing chorus of concern about the siren song of mandatory pre-commencement negotiation.

## 2.2. REQUIREMENTS FOR DISCHARGE OF DEBT

The second major issue identified briefly in the Legislative Guide that would benefit from significant elaboration is the requirements for debtors to obtain a discharge of unpaid debt. This is a vitally important concern for debtors, as debt relief is the primary if not sole purpose of their commencing insolvency proceedings, and lawmakers continue to experiment with demonstrably troubling differences in approach.

### 2.2.1. WAITING OR PAYING FOR DISCHARGE?

The Legislative Guide distinguishes three approaches to offering discharge relief to individuals: (1) Full discharge after a liquidation of the debtor's valuable, non-exempt assets, (2) no discharge until all debts are paid or the claims prescribe, or (3) discharge after a "period … during which… the debtor is expected to make a good faith effort to satisfy its outstanding obligations." The first option represents the (in)famous US "fresh start" approach, allowing most debtors to seek an immediate discharge because they have no valuable, non-exempt property.[21] The third option has become the principal choice of legislators in Europe and elsewhere, often characterized as an "earned start," because it requires debtors to submit to a multi-year payment plan (often in addition to relinquishing non-exempt assets, if any).

First, the notion of requiring individual debtors to earn a discharge by enduring years on a subsistence budget is not uncontroversial. The European Commission's recent study on individual insolvency concludes "There appears to be little evidence on whether Payment Plans merely serve an educative, retributive and symbolic function and are not in fact economically effective in terms of repaying debt." The World Bank similarly questioned the utility of the administrative burdens of payment plans, noting "[i]n the majority of existing systems, in which fewer than one-fifth of cases initiated each year produce returns to creditors, it is highly questionable

[20] Jeffrey D.Dunn,UNCITRAL Adopts Legislative Guide on Secured Transactions,2 Insolvency & Restructuring INT'l 40(2008).

[21] Jason J.Kilborn,Elaborating UNCITRAL's Legislative Guide on Insolvency Law:Principles for Natural Persons, 66 Modernizing International Trade Law to Support Innovation and Sustainable Development, UNCITRAL (2017).

whether the administrative costs of the 'good behavior system' are justified."

Second, as the World Bank observed, a great many European "payment" plans produce nothing of the sort; that is, the debtors have no non-exempt income to distribute to creditors over the plan period, yet they receive their discharge nonetheless.[22] This is the overwhelmingly most common scenario for individual debtors in Germany, and a very common outcome of individual cases in Scandinavia. After struggling with administering pro forma "payment" plans for years, a few European states, as well as the recent Colombian law, have essentially adopted the "fresh start" approach. In Ireland, for example, the court has the power to decide whether or not to demand any future income payment from debtors via a "bankruptcy payment order." In France and Luxembourg, recent amendments allow low-income debtors' cases to be routed to a "personal rehabilitation" procedure, in which an immediate discharge follows a brief evaluation and possible liquidation of the debtor's non-exempt assets. A discussion of the futility of payment plans and the back-and-forth on this sensitive decision in the Legislative Guide would be very helpful to legislatures who are increasingly being called on to draw these lines.

**2.2.2. <u>TIME PERIOD FOR THE IMPOSED PAYMENT PLANS</u>**

If the European "good faith effort" approach is chosen, a range of other sticky questions require resolution, including two that virtually cry out for discussion in the Legislative Guide: How much time and how much payment is required for debtors to demonstrate a "good faith effort"? As to the timing part, the Guide notes fleetingly the "difficult issue" of "the length of time required to expire before the debtor can be discharged, but it offers no discussion of the torturous path of related legislative and judicial experience here.[23]

Policymakers have wrestled for many years in setting the appropriate term for debtors to earn their discharge. The European Commission has recently begun pressing for a three-year maximum discharge period, but many European states remain resistant to reducing their longer required terms. Only a handful of European states now provide a discharge within three years, however. The Dutch law originally left the discharge period to judicial discretion, though judges chose a three-year term in so many cases that this term was adopted as the statutory norm as of 2008. The discharge term under the Latvian law began at seven years in 2008, reduced in 2010 to a unique sliding scale that provides a discharge after as little as one year, with a maximum of three-and-one-half years. Ireland took a giant step in 2013 from a previous 12-year payment period, following which debtors might earn a discharge only if the court found such a result "reasonable and proper."

Other regimes remain above the three-year mark, despite years of chaotic reform on this issue. The enormously complex French system originally limited court-imposed payment plans to five years, increased to eight years from 1999-2003, then again to ten years until 2010, then back to eight years

[22] Ibid.

[23] JeffreyD.Dunn,UNCITRAL Adopts Legislative Guide on Secured Transactions,2 Insolvency & Restructuring INT'l 40(2008).

until 2016, when an ordinance reduced the maximum plan period to seven years.[24] In both Germany and Austria, a seven-year term was the original choice, which has been challenged as overly long from the very beginning. The German discharge period was reduced to six years in 2001, and in 2013, it was reduced further to five years for the relatively few debtors able to pay administrative costs, and to three years for debtors able to produce a 35% dividend for unsecured creditors. The new Romanian system includes a sliding scale, as well: One year for a 50% dividend, three years for 40%, and five years if less than 40%. Belgian legislators considered a seven-year period but reduced it to five at the last minute, without explanation. Elsewhere in Europe, a five-year payment plan is standard, with the exception of Greece and Italy at four years. In all of Scandinavia, five-year plans predominate, though under a very recent Swedish reform, effective November 1, 2016, entrepreneurs will be subject to a standard three-year plan. If the Guide could offer any perspective on which of these myriad approaches is most appropriate, much anguish by legislators and debtors could be avoided.

### 2.2.3. AMOUNT FOR THE IMPOSED PAYMENT PLANS

Along with the duration of these payment plans, a particularly sensitive topic mentioned only obliquely in the Legislative Guide is how much payment to demand of debtors. Indeed, experience has shown that this is not even the appropriate question; rather, the issue is how much income will be reserved for the debtor's family support, with the remainder distributed to creditors. The Guide notes that insolvency laws generally exclude "assets necessary to satisfy the basic domestic needs of the debtor and his or her family," but it does not discuss the trouble modern systems have had in determining how much income to exclude.[25] On this crucial issue, modern practices diverge widely, though convergence over time is again evident to a degree.

A particularly significant point of divergence is who makes this decision. Deferring to the discretionary judgment of courts or other case administrators has produced generally unsatisfying results. After commentators criticized the "scandalously low budgets" left to debtors in discretionary rulings by administrative commissions, French lawmakers adopted standard income exemptions as a minimum baseline.[26] In Sweden, statutory income exemptions were originally characterized as "guiding" in the determination of debtors' insolvency budgets, though they later became the de jure rule after having been the de facto choice of system administrators for years. A unique solution emerged in the path-breaking system in the Netherlands, which officially relegates debtors to 90% of the social assistance minimum income but allows judges to deviate upward from that standard. Dutch judges coordinated to develop a complex, written side-standard for determining these

[24] Susan Block-Lieb & Terence Halliday,Harmonization and Modernization in UNCITRAL's Legislative Guide on Insolvency Law,42 TEX.INT'l L.J. 475(2007).

[25] Jason J.Kilborn, Elaborating UNCITRAL's Legislative Guide on Insolvency Law: Principles for Natural Persons, 66 Modernizing International Trade Law to Support Innovation and Sustainable Development, UNCITRAL(2017).

[26] Jeffrey D.Dunn,UNCITRAL Adopts Legislative Guide on Secured Transactions,2 Insolvency & Restructuring INT'l 40(2008).

upward deviations, which has become the real, uniform law.

Despite these lessons in the weaknesses of open discretion, several newer systems still leave it to the courts to define proper household budgets. If the Guide offered some warning to these legislators about the known dangers of this approach, the unfortunate result for these systems and their struggling debtors might be avoided. The Legislative Guide could put legislators on the leading edge of this sharp learning curve by including some discussion and evaluation of this issue that has emerged as among the most important to individual debtors in modern insolvency policy.[27] The better practice here is for all debtors to be subject to the same, transparent, democratically established baseline of protected income.

## 3. RECOMMENDATIONS

The Working Group on Insolvency had established the structure of their Legislative Guide to Insolvency Law between the minimalist threshold of the comparative study and the maximum threshold of constitutional language allocations. The UNCITRAL Secretariat has established a number of regulations in the Legislative Guide on Insolvency Act, which can cover a variety of specificities from general declarations of commercial standards to specifically comprehensive, enacted terminology.

Firstly, "There should be a rule [about the substantive entitlements of participants in an insolvency proceeding] that [contains particular substantive provisions]." For instance, on the all-important scope of an insolvency law, a key substantive recommendation reads: "The insolvency law should govern insolvency proceedings against all debtors that engage in economic activities, whether natural or legal persons, including state-owned enterprises, and whether or not those economic activities are conducted for profit."

Secondly, "There should be a rule [about how an insolvency proceeding should be conducted] that [contains particular procedural elements]." For example, on commencement of an insolvency proceeding, a procedural recommendation provides that: "The law generally should specify that, where a creditor makes the application for commencement: (a) Notice of the application promptly is given to the debtor.

Thirdly, Some imperative recommendations are conditional and provide roughly as follows: "If a rule [about some substantive or procedural topic of insolvency law] is enacted, then it should [have the following content]." For instance, the Guide recognises that not all statute requires all the classes to support a proposal in its provisions on confirmation of a reorganisation plan. It did however suggest that the legislation on insolvency, in this subcategory of nations, should discuss the care of those classes not voting in favour of a scheme that otherwise has been adopted by the pre requisites where the policy does not mandate the approval of the scheme for insolvency in all categories. This procedure should be in line with the reasons given.

[27] Susan Block-Lieb & Terence Halliday,Harmonization and Modernization in UNCITRAL's Legislative Guide on Insolvency Law,42 TEX.INT'l L.J. 475(2007).

## 4. CONCLUSION

If UNCITRAL is to modernize insolvency law and support sustainable development, it needs to address more fully the critical issues facing the other 99% of entrepreneurs suffering from financial distress. It is not sufficient to mention that these natural person debtors exist and face complex problems, but then proceed to concentrate on the appropriate structure of insolvency law for the 1% of corporate debtors. Sustainable success in international trade, including insolvency resolution, must be based on the success of the millions of small entrepreneurs who will be at the vanguard of advancing their national economies. These debtors and their families will be the engines driving future, sustainable economic growth, and they must be considered in determining the best structure for business law regimes. The Legislative Guide has for the past decade left lawmakers searching for solutions to the unique concerns of resolving these debtors' financial failure. Society has evolved, and so should the Guide. A deliberate discussion of these issues among the world's leading experts at UNCITRAL might produce durable solutions, but at the very least, it could signal the potential dangers of certain approaches and offer more holistic guidance on insolvency law for a new century.

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