Insolvency Law Reform & some preliminary thoughts on Nigeria

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GEORGIA

- Needed completely new law;
- Lack of institutional capacity

SOLUTION

- New law that suited economic condition
- Training programme for judges and IPs
- New government department
SERBIA

Law is quite good but lack of institutional capacity to deliver benefits

Power struggle between judges and new regulator

SOLUTION

Roundtables between supervisors; judges and IPs

Training

Revisions to poorly drafted regulations
KENYA

- Old 1948-based law
- Corruption
- Poor corporate governance

SOLUTION

- New companies law
- On-going fight against corruption
- Will need new insolvency law
JAMAICA

- Poor 1948-based laws
- Low compliance by banks
- Judicial delays destroying respect for courts
- SOLUTION
- Unregistered charges treated as unsecured for solvency purposes
- Realistic court targets
- New commercial courts
- New insolvency law required
1. Liquidation – too slow -average 10 years
2. Sick Industrial Companies Act 1985 governed restructurings – complete failure. Abuse to delay creditors
3. Rampant asset stripping
4. Lack of sanction against management and asset stripping
5. Creditors could not recover their loan, nor enforce collateral.
6. No credit bureau to track delinquents
India – Secured Transactions

- Specialized debt recovery tribunals for banks/financial institutions to recover loans, now functioning well
- New enforcement of security and reconstruction of distressed assets law
- Secured creditors now able to seize, manage and sell collateral upon non-payment of debt after a simple notice
Secured creditors can sell distressed loan with underlying collateral to specialized Asset Recovery Companies.

Secured creditors can sell security even when a dispute is pending in DRT – debtor has no incentive to delay case in DRT.

The effect is banks force debtors to come to the table to either repay loan or negotiate a restructuring.
India – Insolvency and Rehabilitation

- Companies Law revamped
- Creditors committee supervise company restructuring
- Qualified professionals as restructuring managers and liquidators
- Time limited moratorium against creditor proceedings during restructuring – moratorium extended only with consent of creditors’ committee or majority of creditors
India – Insolvency and Rehabilitation (Cont’d)

- Special courts of qualified persons to be established – fast track dispute resolution
- Simplified procedures and strict time-frames for every stage of the proceeding
- Strict penalties for mismanagement and other offences - asset stripping made difficult
India – Credit Bureau

- Credit Information Bureau (India) Limited set up as a private company in 2001, but started functioning only recently.

- Credit Information Companies (Regulation) Act 2005 covers the rights and responsibilities of credit bureaus, rights and obligations of member credit institutions, and safeguards the privacy of individuals.

- Central Bank supports credit bureaus & directs banks to report problem accounts to deal with ‘customer secrecy’ issues.
NIGERIA

- Very poor 1948-based law with no method of rehabilitation
- Poor corporate governance
- Abuse of security filing requirements
- Judicial delays and abuse
- Unqualified practitioners
- Lack of realistic sanctions
- Lack of knowledge at government level
NIGERIA –
insolvency law solutions

Reform of insolvency law which will include

- Qualified practitioners
- Licensing of practitioners
- Government supervision
- Inclusion of rehabilitation process - carrot
- Wrongful trading – stick
- Modern cross-border terms
Dead Ducks, Lame Ducks and Very Important Lame Ducks
Dead ducks need burying as quickly and economically as possible
NIGERIA –
other solutions

- All under one court – develop expertise
- End of abuse of court system
- Education of community – lenders, judges, IPs, creditors
- Reform of land tax systems which encourage abuse
- Enforcement of security registration requirements
- Credit reference bureaux required
NIGERIA - results

- Greater willingness to lend by bankers
- Better banking practices – more stable banks
- Reduction in loss of potentially viable businesses
- Improvement in standing of Nigerian commerce
- Greater transparency – less corruption
- Speedier systems – better recycling of wealth
- Greater revenue collection