

International Standards & Best Practice in Insolvency and Creditor Rights



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AGENDA

- Overview of international standards and best practice in insolvency and creditors' rights.
- Snapshot of some lessons learned in insolvency reform.
- Experiences in secured transactions reform in Eastern Europe.
- Experiences in global insolvency reform, including countries that share Nigeria's UK Companies Act historic model.

The World Bank and Insolvency - Financial Crises

- 1997/98 financial crises drew attention to:
 - domestic and international impact of weak legal and institutional frameworks
 - lack of understanding by market participants of financial system vulnerabilities
 - linkages between speed of response and speed of economic recover
- G7/G22/APEC/Financial Stability Forum response

GLOBAL FINANCIAL FRAMEWORK: CORE STANDARDS: ASSESSMENT AREAS

Transparency

- **Data Dissemination (IMF)**
- **Fiscal Transparency (IMF)**
- **Monetary and Financial Policy (IMF)**

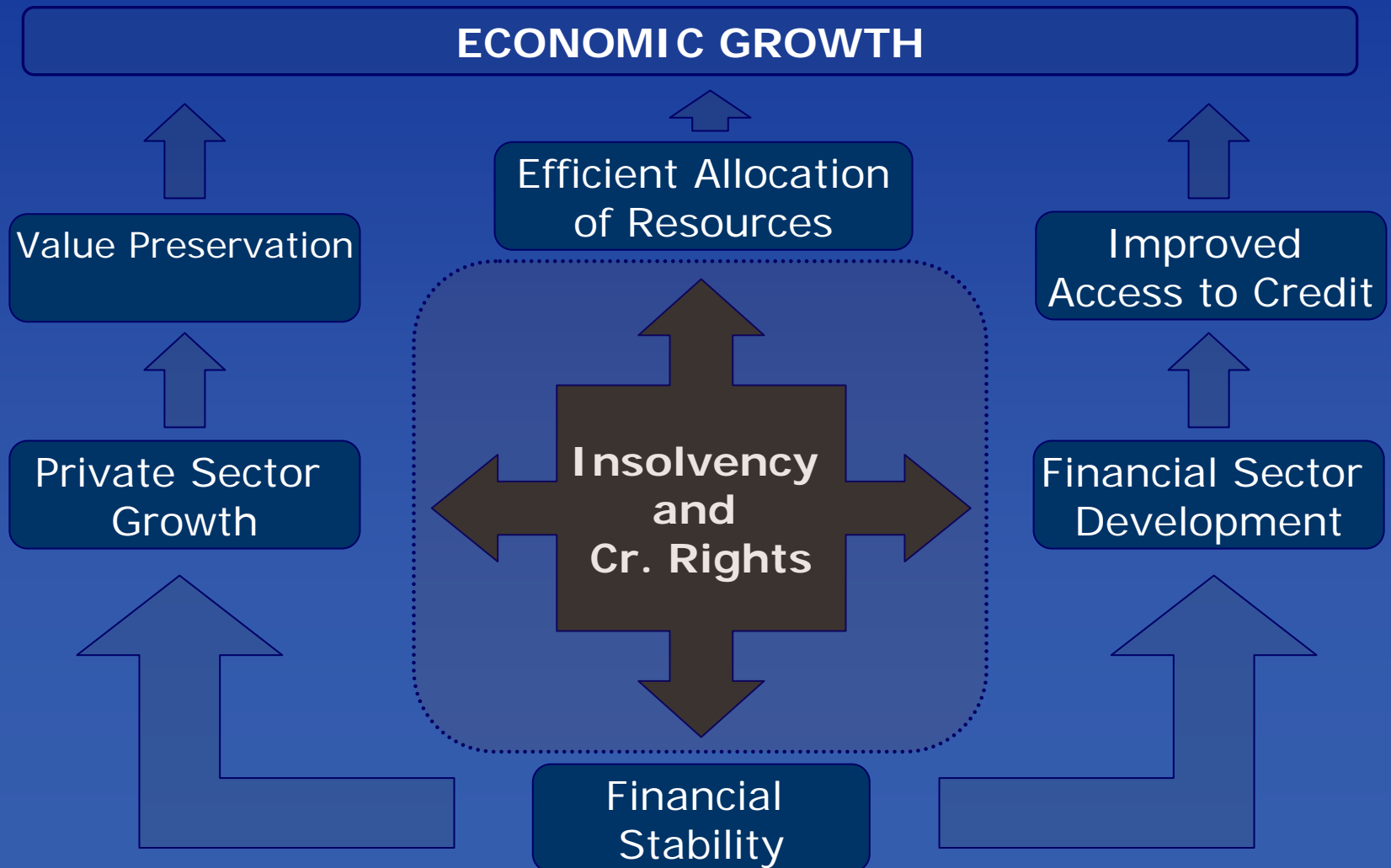
*Financial
Sector*

- **Banking Supervision (BCP)**
- **Payment and Settlement (CPSS)**
- **Insurance Supervision (IAIS)**
- **Security Regulation (IOSCO)**
- **Anti-Money Laundering (IMF/WB)**

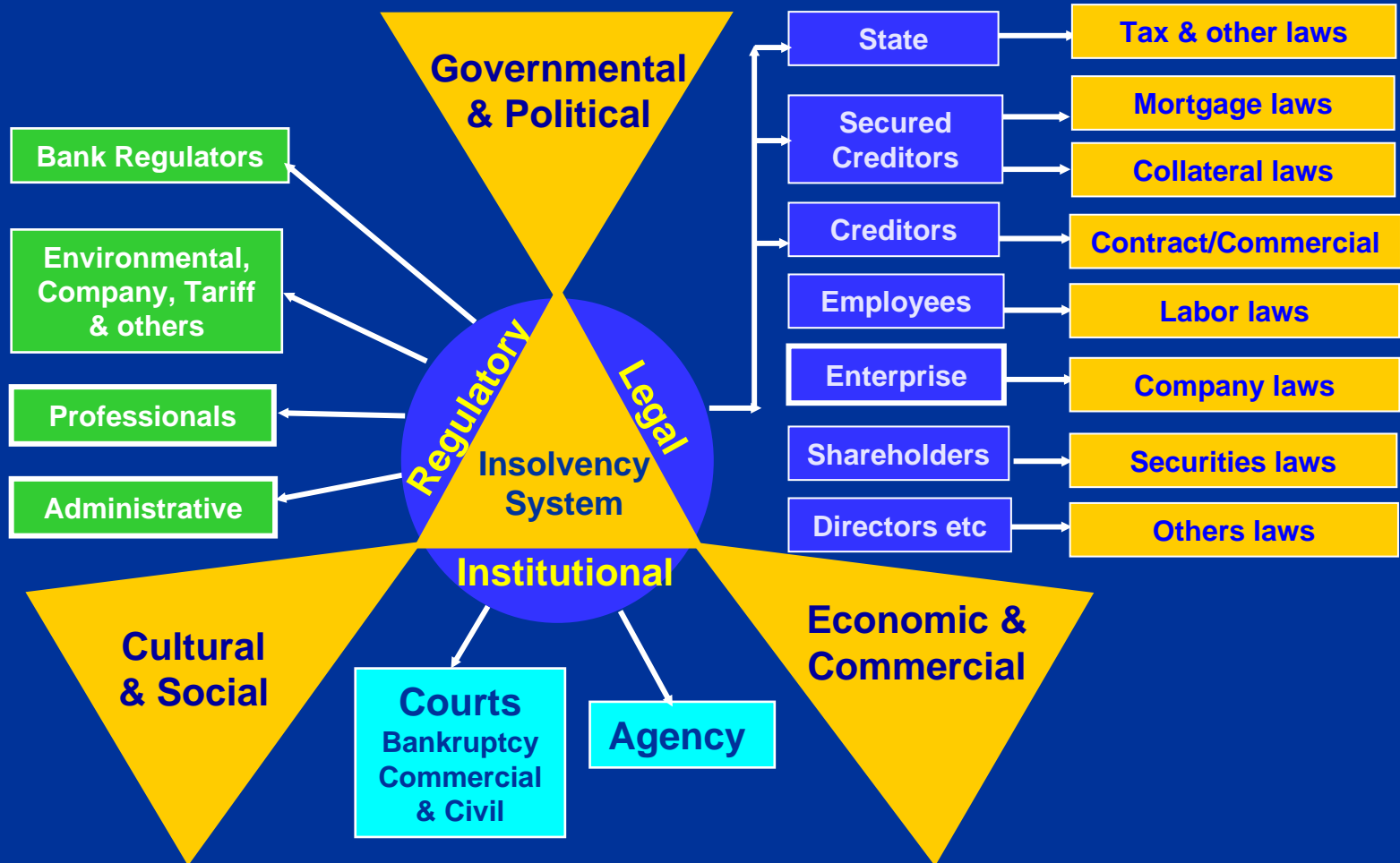
*Market
Infrastructure*

- **Corporate Governance (OECD)**
- **Accounting & Auditing (IAS/ISA)**
- **Insolvency & Creditor Rights (IBRD)**

Importance of Effective Insolvency Systems



Context for Insolvency Systems



World Bank Principles - Scope

Credit Access / Protection

IPG A1-5

- ♦ **Compatibility of Systems**
- ♦ **Collateral Systems**
 - immovable / movable
- ♦ **Registry Systems (Transparency)**
- ♦ **Enforcement Systems**
- ♦ **Public Auction & Collections**

Credit Risk Management

IPG B1-5

- ♦ **Credit Information systems**
- ♦ **D & O Liability**
- ♦ **Risk Management Practices**
- ♦ **Workout Framework**
- ♦ **Enabling Framework (i.e. tax treatment of bad debts, NPLs)**
- ♦ **AMCs & systemic corrective measures**

Enforcement / Insolvency

IPG C1-D9

- ♦ **Corporate Exit Mechanisms**
 - ♦ **Liquidation**
 - ♦ **Rehabilitation**
 - ♦ **Quasi-formal restructuring**
-
- ♦ **Implementation**
 - Institutional Systems
 - Regulatory Systems

RISK ASSESSMENT CONTINUUM

Increasing financial distress



Credit Access

- ◆ Credit Assessment
- ◆ Information
- ◆ Identify Security
- ◆ Negotiation
 - ◆ pricing
- ◆ Contracting
- ◆ Registry
- ◆ Monitoring

Risk Management

- ◆ Risk Assessment
- ◆ Information
- ◆ Identify Options
- ◆ Negotiation
 - ◆ pricing
- ◆ Amend Contracts
- ◆ Possible action
- ◆ Monitoring

Resolution / Recovery

- ◆ Enforcement
- ◆ Formal Insolvency
 - Liquidation, Rescue
- ◆ Security Rights
- ◆ Information
- ◆ Negotiation (Plan)
- ◆ Implementation
- ◆ Monitoring

Risk Evaluation Process



Nigeria: Goals for Insolvency Reform

- Foster commercial confidence and predictability
 - Markets more accurately price, manage, resolve default risk
 - Establish a predictable backdrop for negotiations
 - Reduce asset deterioration and promote credit access
- Safety valve for corporate distress
 - Salvage viable businesses and preserve jobs (rescue)
 - Efficient transfer of assets (bankruptcy)
- Vital to balance in commercial relationships
 - Encourage responsible corporate behavior & governance
 - Penalize owners and managers who lack financial discipline or behave irresponsibly

World Bank Insolvency Reform: Lessons Learned (1)

“Not so special after all?”

- Virtually no correlation between having a specialized bankruptcy court and a system that is perceived by users as being more predictable and transparent.

Lesson: Courts that are specialized in name only, do not add value.

World Bank Insolvency Reform: Lessons Learned (2)

“Time is money”

- Strong correlation between systems that work quickly and those that are cost-effective.

Lesson: If we can remove inefficiencies from the system that cause delays, we can increase the returns of all creditors.

World Bank Insolvency Reform: Lessons Learned (3)

“Great minds think alike”

- Strong correlation between judicial competence and trustee/administrator competence.

Lesson: Insolvency administrators and insolvency judges can mutually reinforce competence.

Nigeria ICR ROSC – Preliminary Findings

- Legislative Drafting is not the Cure-All

The regulatory and judicial institutions designed to implement the *Companies and Allied Matters Act* do not work.

Nigeria ICR ROSC – Preliminary Findings

- Large Disconnect Between Perceptions of Providers and Clients.

Corporate Affairs Commission Registry
Courts

Nigeria ICR ROSC – Preliminary Findings

- Law is Only Part of the Solution

Basic structural problems within Nigeria often act as an obstacle to improving the lending environment.

The Way Forward

- Finalize draft recommendations
- Convene Stakeholders' Committee
- Work with Stakeholders' Committee to finalize recommendations for delivery to government.
- Work with government to implement recommendations.