**A Comparative Analysis of Simplified Micro and Small Enterprise (MSE) Reorganization Procedures**

*Early Learnings from Approaches on Three Continents*

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Global Insolvency Practice Course, INSOL

February 2024

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# **Introduction**

Simplified insolvency frameworks for small enterprises became good international practice in 2021. For important reasons. Small and medium enterprises account for 90% of businesses and more than 50% of employment worldwide.[[1]](#footnote-1) Yet, insolvency laws were traditionally designed with larger companies in mind – expensive, multistep, lengthy procedures with extensive information disclosure, which required a lot of professional support. All those elements are important for large enterprise insolvencies where there can be thousands of creditors of different classes, across many borders. However, they are more of a hindrance for micro and small enterprises who may have low capacity and only have a few major creditors who are passive through an insolvency process.

Given that simplified procedures are now good practice, many countries are starting to draft them into their laws.[[2]](#footnote-2) Therefore, it is timely to critically examine a cross-section of procedures and draw learnings from them to benefit those countries currently thinking about or already drafting new procedures. To date, there has been little detailed comparative analysis of MSE procedures across jurisdictions in different regions.

The focus of the paper is on simplified judicial reorganization, not liquidation. Although simplified procedures should include both a liquidation and reorganization procedure, this paper focuses on reorganization as there are a richer set of issues to examine in a reorganization procedure as compared to liquidation.[[3]](#footnote-3) However, that is not to diminish the importance of liquidation procedures for MSEs. Liquidation, which should lead to a discharge, is important to encourage entrepreneurship, enable a fresh start and a reduction of zombie companies.

This paper provides a comparative analysis of reorganization processes of a region and two countries in three continents: the Organization for the Harmonization of Business Law in Africa (OHADA)[[4]](#footnote-4) region, Singapore and the United States of America (USA). The paper concludes with a critical analysis of the different approaches and based upon that analysis, offers observations for strengthening future frameworks.

To undertake the analysis described above, the paper is divided into three sections: (i) overview of the good practice for MSE insolvency which has recently been adopted; (ii) key features of the simplified reorganization procedures in OHADA, Singapore and the USA; (iii) a critical analysis of those laws given good practice as well as the objectives of simplified procedures and a discussion of some early lessons.

# **Good Practice for MSE Simplified Reorganization Procedures**

To provide context for the analysis, this section provides an overview of the development of good international practices for MSE insolvency as well as the key components of the good practices.

*The Evolution of the Global Insolvency Standard*

The global standard for insolvency and creditor/debtor regimes (ICR Standard) comprises the World Bank’s Principles for Effective Insolvency and Creditor/Debtor Regimes (WB Principles)[[5]](#footnote-5) and the United Nations Commission on International Trade Law (UNCITRAL)’s Legislative Guide on Insolvency Law.[[6]](#footnote-6) The Financial Stability Board describes the standard as a “broad-spectrum assessment tool to assist countries in their efforts to evaluate and improve insolvency and creditor/debtor regimes.”[[7]](#footnote-7)

The movement to change the ICR Standard to include simplified procedures for MSEs began in the 2010s.[[8]](#footnote-8) To research the issue, the World Bank published two reports exploring the specific needs of MSEs in insolvency procedures as well as some of the existing country frameworks.[[9]](#footnote-9) This led the World Bank to amend the WB Principles in 2021 to include recommendations for simplified procedures. In concert with the World Bank, UNCITRAL released the Part Five of the Legislative Guide on Insolvency of Micro- and Small Enterprises (UNCITRAL Guide).[[10]](#footnote-10) Further, the International Insolvency Institute and the Asian Business Law Institute published a Guide on the Treatment of Insolvent Micro and Small Enterprises in Asia in 2022.[[11]](#footnote-11)

*Key Features of the MSE Insolvency Standard for Reorganization*

The ICR Standard specifies important recommendations for an MSE simplified insolvency procedure. This section examines key recommendations which apply to reorganization procedures.

To begin, the UNCITRAL Guide states that the key objectives for an MSE simplified framework are the following (paraphrased to simplify):[[12]](#footnote-12)

* Expeditious, simple, flexible, and low-cost;
* Easily accessible;
* Promoting fresh start;
* Ensuring protection of persons affected by simplified proceedings, including creditors, employees, and other stakeholders;
* Providing effective measures to facilitate participation by creditors and other parties in interest, and to address creditor disengagement;
* Implementing an effective sanctions regime to prevent abuse or improper use and to impose appropriate penalties for misconduct;
* Addressing concerns over stigmatization because of insolvency; and
* Where reorganization is feasible, preserving employment and investment.

There are a number of major features of the ICR Standard specifically for MSEs which are related to reorganization:[[13]](#footnote-13)

* **Institutional Support and Tools:** support for MSEs use the simplified procedures should be made available. This includes provision of a competent authority, independent professionals, templates, schedules, standard forms, and electronic means of communication.[[14]](#footnote-14)
* **Commencement**: judicial and natural persons should have access based upon a clear definition of who is an MSE.[[15]](#footnote-15) Further, there should be easy access to the procedure at an early stage of financial difficulty, with debtors only required to show basic evidence of insolvency or financial difficulty.[[16]](#footnote-16)
* **Procedural Formalities and Deadlines**: formalities should be kept to a minimum and procedures should be distilled down to what is essential. Further, deadlines and notices should be trimmed to enable swifter use of the procedures.
* **Role of the Debtor**: The standard approach in simplified reorganization proceedings should be that the debtor remains in management: running the daily operations and in control of the assets.[[17]](#footnote-17) If it is not appropriate to have the debtor manage the company because of alleged fraud, mismanagement or incompetence, then there must also be a mechanism for the debtor to be replaced entirely or partially by a competent third party.[[18]](#footnote-18) If necessary the competent authority should appoint an independent professional to assist the debtor with preparing a reorganization plan.[[19]](#footnote-19)
* **Creditor Engagement & Voting**: Where creditors need to normally approve certain matters which affect their rights (i.e., voting on a reorganization plan), there should be a deemed approval mechanism. If the relevant creditors are notified and there is neither an objection nor sufficient opposition within time periods established, the matter is deemed to be approved. In other words, silence is approval. Further, there should be a means of voting electronically where appropriate.[[20]](#footnote-20) Submission of creditors’ claims should be simplified, either by debtors submitting a list or by creditors with minimal formalities.[[21]](#footnote-21)
* **Conversion**: The law should allow conversion of simplified proceedings into ordinary proceedings and simplified reorganization to liquidation and vice-versa.[[22]](#footnote-22)
* **Costs**: There should be a mechanism to cover the costs of running the simplified insolvency procedure where the debtor does not have sufficient funds to cover those costs.[[23]](#footnote-23) Further, the simplifications in the procedure should reduce costs overall for MSEs.

# **Key Features of Simplified Procedures in the Jurisdictions**

This section examines the simplified reorganization procedures enacted in OHADA, Singapore and the USA for MSEs. Each section describes the legislative framework, institutional support, and the key substantive components in the procedure for MSEs. The three jurisdictions were chosen as they have quite diverse cultural, legal, and economic contexts – this range offers a wide scope for potential learnings.

## OHADA

Member countries of OHADA adopted a significantly revised Uniform Act on Insolvency in 2015 (OHADA Act), which include simplified procedures for small enterprises.[[24]](#footnote-24) The simplified procedures are contained in their own sections, but they are very brief and must be read alongside the entire OHADA Act of 140 pages.[[25]](#footnote-25) Under the OHADA Act, a small enterprise is defined as “any sole proprietorship, company or other legal entity governed by private law whose number of employees is less than or equal to twenty, turnover does not exceed fifty million CFA francs, excluding taxes for twelve months prior to the action.”[[26]](#footnote-26)

There are no specific institutional changes for the simplified procedure. A regular insolvency trustee is appointed (called *mandataire judiciaire)* to assist the debtor. The trustee is involved extensively with the procedure – for example, assisting the debtor with compiling the required information to file the commencement petition as well as the reorganization plan, communicating with creditors and monitoring the implementation of the plan.[[27]](#footnote-27) There is also no reduction in the trustee’s compensation from a regular procedure. Despite the extensive responsibilities outlined in the OHADA Act, the profession of insolvency trustee has only been created in a few OHADA jurisdictions.[[28]](#footnote-28) Other than the text of the law, there are no supporting guidance or forms available.

The following are the key substantive elements of the procedure: (i) to commence the proceeding, the debtor needs to show it is insolvent by making a statement with 10 pieces of supporting documentation showing its financial position;[[29]](#footnote-29) (ii) the debtor remains in possession, but reports to a trustee;[[30]](#footnote-30) (iii) within 45 days, the debtor, with the assistance of a trustee, will file a reorganization plan (called a judicial composition);[[31]](#footnote-31) (iv) at least 15 days before the court decides on the confirmation of the plan, the trustee sends the proposed plan to creditors by hand delivery or registered mail; (v) if the plan proposes a debt reduction or if payment deadlines are extended beyond 2 years, each concerned creditor is required to agree;[[32]](#footnote-32) (vi) the final plan will be proposed to the court taking into account the creditors’ replies and the court can rule without a vote subject to certain conditions.[[33]](#footnote-33)

It is difficult to assess how successful the simplified procedures have been in OHADA. Although from the limited statistics available, very few insolvency procedures have been brought to the commercial courts. No overall statistics are available through the highest appeals court of OHADA (Common Court of Justice and Arbitration)[[34]](#footnote-34) on the use of the insolvency procedures. Some statistics are available at the country level, which are quite low. For example, the Commercial Court in Dakar, Senegal shows that in 2019 that there were only 3 reorganization procedures.[[35]](#footnote-35) The statistics do not break them down into simplified procedures. The other large commercial court in OHADA located in Abidjan has no statistics available on its website broken down by insolvency proceeding.[[36]](#footnote-36)

## Singapore

In 2020, Singapore amended the Insolvency, Restructuring and Dissolution Act 2018 (Singapore Act) to temporarily create simplified procedures for small debtor debt restructuring (SDRP) and winding up. The Singapore Act came into force in January 2021.[[37]](#footnote-37) Although the simplified procedures were meant to be temporary, they have been extended to 2026 and it is reported that Singapore may make the procedures permanent.[[38]](#footnote-38) The procedures are relatively self-contained in the 68-page amendment. Enterprises are eligible to use the procedures subject to many conditions, including if: (i) annual turnover does not exceed $10 million SGD; (ii) have no more than 30 employees and 50 creditors; (iii) the liabilities do not exceed $2 million SGD and (iv) the value of realizable assets does not exceed $50,000 SGD.[[39]](#footnote-39)

With respect to institutional arrangements, the Singapore Act establishes a special insolvency administrator to assist with the reorganization procedure called a Restructuring Advisor.[[40]](#footnote-40) The Restructuring Advisor needs to be a qualified accountant.[[41]](#footnote-41) The duties of the Restructuring Advisor include: (i) assisting the enterprise to draft the proposed restructuring plan; (ii) if the Advisor thinks the plan is feasible, help the enterprise seek agreement with the creditors on the plan; (iii) if the voting thresholds are met, bring the plan to the Court for approval; (iv) advise the court on termination of the plan.[[42]](#footnote-42) Forms are available on Singapore’s Ministry of Law web site to apply for the simplified restructuring procedure.[[43]](#footnote-43)

The SDRP simplifies the existing pre-package scheme of arrangement, including the following key features: (i) the debtor remains in possession as default; (ii) automatic moratorium from creditors actions, including secured creditors;[[44]](#footnote-44) (iii) no vote of creditors is required on the plan after sufficient notification and opportunity to object;[[45]](#footnote-45) (iv) court must be satisfied that had a meeting taken place at least two-thirds in the value of creditors or class of creditors would have voted in favor (down from 75% in the regular procedure);[[46]](#footnote-46) (v) agreement on the plan should be reached in 90 days.[[47]](#footnote-47)

Although it is unclear if they represent all the cases, there were only three notices of SDRP each in 2022 and 2023 listed on the Singapore Ministry of Law’s Official Receiver web site.[[48]](#footnote-48) There were more than four times that number of simplified winding up cases noted on the same web site.

## USA

The United States of America enacted the Small Business Reorganization Act (SBRA, also called subchapter v) in 2019, which became effective in February 2020.[[49]](#footnote-49) The SBRA amended Chapter 11 of the Bankruptcy Code and added Subchapter V. The aim of the SBRA is to “provide a fast track for small businesses to confirm a consensual plan with the assistance of a private trustee.”[[50]](#footnote-50) The SBRA is structured as a partially self-contained procedure but does refer to dozens of other sections in the Bankrutpcy Code, which it either disapplies or modifies. Small businesses can qualify for the expedited procedure if they have less than about $2.7 million in debts. That limit was temporarily increased during the COVID-19 pandemic to $7.5 million and has been extended through June 2024.[[51]](#footnote-51)

With respect to institutional modifications, there is a new trustee function called subchapter V trustee. These trustees have been selected to assist small businesses and they must “possess strong administrative, financial and interpersonal skills” and while bankruptcy experience is desirable, it is not mandatory.[[52]](#footnote-52) Further, costs and fees have been reduced overall.[[53]](#footnote-53) A detailed handbook was created by the US Trustee’s Office to outline the duties and responsibilities of subchapter V trustees. There are also several templates to use in a subchapter v case.[[54]](#footnote-54)

A number of major substantive procedural changes were also made by the SBRA: (i) by default, a creditors’ committee will not be appointed unless ordered for cause;[[55]](#footnote-55) (ii) only the debtor may file a reorganization plan and must file it within 90 days of the petition date;[[56]](#footnote-56) (iii) the content requirements for the reorganization plan has been simplified;[[57]](#footnote-57) (iv) voting is not necessary for confirming a plan and can be crammed down if certain requirements are met;[[58]](#footnote-58) (v) owners of the business may retain their equity provided the plan is “fair and equitable” and does not “discriminate unfairly”;[[59]](#footnote-59) (vi) discharge is available for all debts after all payments under the plan are completed.[[60]](#footnote-60)

The US Trustee’s office reports a steady increase in SBRA cases from 1,117 in 2020 to almost 2,000 in 2023. These cases are 21 percent more likely to have a plan confirmed than for small businesses using the regular Chapter 11 procedure.[[61]](#footnote-61) Lastly, the median time to confirmation of a plan was 4 months shorter under SBRA cases as compared to regular cases.[[62]](#footnote-62) US Bankruptcy Judges and other commentators have remarked that the SBRA is working as the US Congress had intended.[[63]](#footnote-63)

# **Comparative Analysis**

This section considers whether the OHADA, Singapore and the USA adhere to the main recommendations of the ICR Standard as described in the first section above. Then, the paper draws upon that analysis and overall content to offer early lessons for strengthened simplified reorganization procedures for MSEs.

## Adherence to the International Standard

### **Institutional Support and Tools**

To varying degrees, all three jurisdictions provide some institutional support to MSEs in the simplified procedure. All provide the support of an insolvency administrator. Singapore and the USA have created new roles just for the MSE procedures. While Singapore’s Restructuring Advisor is a new role, other than being a qualified accountant, they do not have to have specialized knowledge of MSEs. The USA has adapted the regular trustee role, focused on business knowledge and strong interpersonal skills. OHADA has not adapted the role of trustee for MSEs.

With respect to other tools, the USA and Singapore have produced a few forms and templates. Singapore has created an online application for commencement of the procedure as well as a template for a business plan and creditor’s list.[[64]](#footnote-64) The USA has created a detailed handbook for the subchapter V trustees. In OHADA, no forms or templates exist or any other enabling tools. None of the jurisdictions have special electronic tools for MSEs. OHADA seems to preclude electronic means of delivery of certain documents such as delivery of the plan which the OHADA Act says must be delivered by post or hand.

### **Eligibility & Commencement**

The legislation in all jurisdictions contain definitions of who is eligible to use the simplified procedure. The simplest definition is from the USA, which is solely based upon the outstanding debt of the debtor. The OHADA definition is based upon the number of employees and annual turnover. Singapore has a complex definition with five components, which may be hard (especially for the smallest companies) to demonstrate adherence to.

With respect to easy access to the procedure, OHADA has a very high barrier to entry. A debtor in OHADA needs to provide at least 10 pieces of supporting documentation showing its financial position. The debtor also needs to prove that they are insolvent.[[65]](#footnote-65) In Singapore, the company does not need to be insolvent to access the procedure but needs to include a company special resolution and list of creditors with is application. In the USA, as per the normal Chapter 11 reorganization, there is no need for the debtor to be insolvent. However, with the petition to commence they need to provide a balance sheet, cash flow statements, a statement of operations, and federal tax returns to the court with their bankruptcy petition.[[66]](#footnote-66)

### **Fewer Procedural Formalities and Shorter Deadlines**

The three jurisdictions reduce formalities, shorten deadlines, and simplify notices. In OHADA, the debtor has 45 days[[67]](#footnote-67) to file a reorganization plan instead of 60 days after opening a procedure.[[68]](#footnote-68) The decision to use the simplified procedure cannot be appealed.[[69]](#footnote-69) As described below, the procedure to vote on the plan has also been adapted. Otherwise, all other normal procedures are in place. Both the USA and Singapore have reduced formalities to a larger extent. In the USA, there are several procedures which have been shortened or removed under the simplified framework. For example, there is no appointment of an official committee of unsecured creditors. Further, only the debtor can file a plan, not creditors. Lastly, a status conference needs to be held within 60 days of commencement and a plan needs to be filed within 90 days[[70]](#footnote-70) – under normal Chapter 11 cases a plan needs only to be filed “as soon as practicable.”[[71]](#footnote-71) With respect to Singapore, the plan must also be adopted within 90 days after commencement.[[72]](#footnote-72)

### **Role of the Debtor**

In all jurisdictions, the default position is that the MSE debtor remains in control of the company with varying degrees of assistance from an insolvency administrator. In OHADA, the debtor remains in place to carry out usual daily management activities and reports to the insolvency administrator.[[73]](#footnote-73) However, the role of the insolvency administrator is extensive. For example, the debtor must provide the insolvency administrator with all books and records,[[74]](#footnote-74) receive all mail and e-mail of the debtor, take inventory over the debtor’s estate[[75]](#footnote-75) and prepare many reports.[[76]](#footnote-76) Under the Singapore Act, the restructuring advisor is appointed to assist the debtor in negotiating a reorganization plan with creditors; seek agreement on the plan from the creditors; and if it meets the criteria, make an application for court approval of the plan.[[77]](#footnote-77) In the USA, the debtor remains in possession[[78]](#footnote-78) and the key role of the subchapter V trustee is to facilitate the process to develop consensual reorganization plan, operate the business if the debtor is removed and monitor the payments under the plan.[[79]](#footnote-79)

### **Voting on a Plan & Creditors’ Claims**

The ICR Standard recommends establishing simplified voting mechanisms and, to combat creditor passivity, that silence or lack of negative vote of a creditor on a duly notified plan is counted as an affirmative vote. Further, the method of submission of creditors’ claims should also be simplified. Both issues are discussed below.

With respect to OHADA, although the process is simplified from the regular plan voting mechanism, there is no cram down or deemed approval mechanisms. In fact, it is the opposite, creditors’ silence means rejection rather than acceptance. The plan must be hand-delivered or sent by registered mail to each creditor.[[80]](#footnote-80) The agreement of each impaired creditor is required. If a creditor does not reply to the plan, they are counted as rejecting the plan. There is some ambiguity in the law whether the court may decide to confirm a plan even though creditors have rejected it. For the final confirmation of the plan, the court reviews all the creditors’ responses and then “may give a ruling on the confirmation…without creditors being called to vote.”[[81]](#footnote-81) Creditors’ claims must be sent to the insolvency administrator within 60 days of notification (in a newspaper) of the commencement. Claims must be sent by hand-delivery or registered mail – there is no provision for electronic communication.[[82]](#footnote-82) It is unclear how the plan can be filed within 45 days of opening of the procedure (as mentioned above) if creditor claims must only be sent in 60 days after notification. Presumably, the plan is filed with the understanding that it includes all known creditors, but the law does not specify.

In Singapore, the voting mechanism has been simplified, which includes a deemed approval mechanism. The company must inform all creditors of the plan and how it may affect their rights.[[83]](#footnote-83) Creditors then can file an objection with the court. Among other requirements, to approve the plan the court must be satisfied that “had a meeting of the creditors or class of creditors been summoned, a majority of at least two‑thirds in value of the creditors or class of creditors, present and voting either in person or by proxy at the meeting or any adjourned meeting, would have voted in favour”[[84]](#footnote-84) of the plan. The threshold of two-thirds is also lower than the normal three-quarters in value of the creditors or class of creditors under the regular framework. The creditors’ claims procedure is also simplified as a list of claims are provided by the debtor with the application for commencement.[[85]](#footnote-85)

In the USA, the plan approval process has been significantly simplified and there is a deemed approval mechanism. There are two methods of approval. With a consensual plan approval, all impaired classes accept the plan. Otherwise, it is non-consensual (i.e., cram-down) where the Court may confirm the plan if is fair and equitable,[[86]](#footnote-86) and it does not discriminate unfairly.[[87]](#footnote-87) The non-consensual simplified approach significantly simplified the regular Chapter 11 approach where, for example, at least one impaired class must accept the plan.[[88]](#footnote-88) The SBRA does not outline how voting on the plan is carried out. With respect to creditors’ claims, the debtor files the list of claims at the time of petition and the court sets the deadline for creditors to dispute the claims.[[89]](#footnote-89) The trustee must also examine the claims for any impropriety.[[90]](#footnote-90) However, the US Trustee Handbook states that “[t]he trustee should bear in mind the goal of subchapter V to reduce expenses and not undertake work on claims that duplicates efforts by the debtor or holds no prospect of benefit to the case that would outweigh the administrative costs[.]”[[91]](#footnote-91)

### **Conversion**

Good practice recommends that the law specify that conversion can be done from simplified to ordinary procedures as well as from reorganization to liquidation and vice-versa. Further, that the effects of such conversion are clearly stated. None of the jurisdictions adhere to all these recommendations.

Under the OHADA Act, provisions on the conversion from reorganization and liquidation are contained in the regular procedure. The law specifies that the court may decide not to apply the simplified procedure at any point before the plan is confirmed but does not specify how conversion would work or the effects of such conversion.[[92]](#footnote-92)

In the USA, conversion is not dealt with specifically under the text of simplified regime. However, it is possible to convert a reorganization case to a liquidation case under the normal Chapter 11 procedure.[[93]](#footnote-93) The procedure does not conform to good practice with respect to conversion to and from an ordinary to a simplified procedure. There is no text in the law for this type of conversion, although it still may be possible as US Bankruptcy Judges have wide discretion.[[94]](#footnote-94)

Singapore’s procedure allows for the simplified procedure to be discontinued under certain circumstances, such as not fulfilling the eligibility criteria, insufficient creditor support or failing to cooperate with the Restructuring Advisor.[[95]](#footnote-95) However, there are no provisions on the consequences of such discontinuation – whether the procedure converts to a regulator procedure or liquidation.

### **Costs**

MSEs may struggle to find enough resources to cover the costs of a reorganization, even when the business is viable. Except for OHADA (to a limited extent), none of the jurisdictions examined have facilities to draw from to cover costs.

Under the OHADA Act, in the regular procedure there is a limited mechanism to cover expenses incurred in a reorganization – although, it is unclear how it would function in practice.[[96]](#footnote-96) In case of a lack of funds, the “Treasury” shall give “advances.” These are to be paid back “as a priority on the first collections.”[[97]](#footnote-97) There is no definition of who the “Treasury” is in the OHADA Act, and the mechanism seems to only work if there are enough assets which need to be liquidated to pay for the expenses. Costs may be reduced further from a modest reduction in time to prepare a plan and a simplified voting procedure. Although, it does not seem likely that the simplified procedures would lead to very much cost reduction as compared to the regular procedure.

In Singapore, the fees for a simplified restructuring are an initial application fee of $450 SGD and an administration fee of $18,750 SGD. The administration fee includes a subsidy from the government of 25%.[[98]](#footnote-98) These fees are meant to cover some of the costs for a company, but additionally they are responsible for legal advice, and the cost of publishing notices.[[99]](#footnote-99)

The SBRA has reduced some fees and costs. For example, the normal US Trustees’ fees (which can be up to $30,000 a quarter for large cases) have been eliminated in favor of reasonable compensation to the subchapter v trustee for actual, necessary expenses.[[100]](#footnote-100) Further, as described above, the unsecured creditors’ committee was eliminated, only the debtor can file a plan, and no detailed disclosure statement is necessary.

## Early Observations and Lessons

This last section of the paper draws from the analysis above to make several early observations about potential learnings from the jurisdictions examined. These are early observations as the only jurisdiction in this paper where there is some (although still very limited) empirical analysis is the USA. Not all the lessons described below will be able to be replicated in all jurisdictions because of diverse cultural, economic, and legal contexts. However, they still provide a good starting point for a future more in-depth review.

***Lesson 1: Bespoke institutional support is critical, especially with respect to insolvency administrators.***

The ICR Standard highlights the importance of professionals and institutions for the effective functioning of MSE procedures.[[101]](#footnote-101) Many small businesses may lack the capacity to understand their options, negotiate with creditors and develop an effective restructuring plan. This is a clear area where professionals can assist.

In the procedures explored here, both the USA and Singapore established a specialized category of professionals to assist the debtor in the reorganization proceedings. These professionals assist the debtor with many procedures, including developing and negotiating a restructuring plan and communication with the parties and court. The simplified procedure in OHADA relies on the regular insolvency administrators, which are supposed to be selected in accordance with regulations in each Member State.

As discussed above, the United States has had the largest number of cases under its simplified insolvency framework. Further, early data shows that the debtor was able to confirm a plan in 62 percent of cases not dismissed.[[102]](#footnote-102) In a study of the initial effects of the SBRA, all participants noted the most impactful modification in the simplified procedure was the introduction of the subchapter v trustee.[[103]](#footnote-103) The approach of creating a pool of trustees selected specifically for skills which will assist a small enterprise negotiate a restructuring through a highly competitive process[[104]](#footnote-104) seems to have been successful. The US Trustees office also provided the trustees with a detailed handbook on the procedures and provided extensive training.

Jurisdictions may want to consider adopting a similar approach and identify professionals in their country who have the appropriate business and interpersonal skills to assist MSEs. Further, specialized training programs could also be developed for these professionals to teach them the basics regarding the legal and accounting aspects of insolvency.

***Lesson 2: Deemed approval coupled with a cram down help enable plans to succeed.***

As discussed above, MSEs often face the problem of creditor passivity. The cost for creditors of engaging in an insolvency process is sometimes too high to justify the time and professional fees. Creditors can also hold out and delay processes if they think they may obtain more recovery. One of the most important obstacles to small businesses successfully using Chapter 11 in the USA was a lack of cramdown when creditors did not agree to a plan.[[105]](#footnote-105) The existence of the cram down itself may encourage creditors to seek a consensual negotiation leading to a plan.[[106]](#footnote-106) However, such a cram down would likely only be effective in a jurisdiction with sufficient safeguards for creditors as well as courts who can quickly and properly evaluate objections from creditors.

***Lesson 3: Create simple, not just simplified legislation.***

Simplicity is at the heart of the MSE insolvency good practice. However, it is not enough to remove a few requirements from an already complex procedure. The MSE procedure should be designed from the start with simplicity in every element.

One of the most important in this regard is eligibility criteria, which is how MSEs know they can use the procedure. The ICR Standard recommends having well defined and simple eligibility criteria. The OHADA Act and SBRA both have eligibility definitions which are easy to follow, using the number of employees and annual turnover on one hand and the outstanding debt of the debtor on the other. However, Singapore has a complex definition with five components and twelve exceptions where small businesses would still not be eligible. As noted above, Singapore has very few simplified reorganization cases – one barrier could be that small enterprises are not sure if they would fit the entry criteria.

Another element of simplicity which is not specifically prescribed in good practice but is important for accessibility is the structure of the legislation itself. All the jurisdictions examined structured their simplified procedures as a section of the existing insolvency law. The OHADA Act has very few provisions for simplified reorganization. The reader would need to refer to the entire complex law, which has almost 300 articles to understand the procedure from start to finish. The Singapore Act and SBRA are more like standalone procedures, with much of the detail in the simplified procedure itself. However, the SBRA disapplies many regular Chapter 11 articles, so the reader would need to refer back to them to understand the whole procedure.

# **Conclusion**

This paper has provided a brief comparative analysis of simplified reorganization procedures for MSEs in three jurisdictions. The adherence of those procedures to the key features of international good practice for MSE insolvency was also examined. Finally, based upon the analysis, the paper made several early observations for strengthening MSE frameworks which supplement the international good practice standard. These emphasize the importance of: specialized insolvency administrators, deemed approval and cramdown for successful reorganizations and accessible legislation.

The goal of this short paper was to examine three jurisdictions with quite different economic, cultural, and legal contexts to explore potential lessons for future new or amended MSE reorganization procedures. A future deeper analysis would benefit from expanding the number of jurisdictions examined beyond three, reviewing data from cases and conducting interviews with entrepreneurs on their experiences using the system.

# **Bibliography**

1. Andre, Christophe; Demmou, Lilas, “Enhancing Insolvency Frameworks to Support Economic Renewal”, OECD Working Paper No. 1738, December 2022.
2. Gotberg, Brook E., “Reluctant to Restructure: Small Businesses, the SBRA, and COVID-109”, 95 American Bankruptcy Law Journal 389 (2021).
3. Gurrea-Martínez, Aurelio, “Implementing an insolvency framework for micro and small firms”, International Insolvency Review, vol. 30, 2021, pp. S46–S66.
4. Han, Denise, "Initial Effects of Subchapter V of Chapter 11 Bankruptcy During COVID-19" (2021). Undergraduate Honors Theses.187. https://scholarsarchive.byu.edu/cgi/viewcontent.cgi?article=1178&context=studentpub\_uht
5. Harner, Michelle; Goodwin-Maigetter, Kimberly, “Subchapter V Cases by the Numbers”, ABI Journal, October 2021 at p. 12.
6. Hotchkiss, Edith; Iverson, Benjamin; Zheng, Ziang, “Can Small Businesses Survive Chapter 11” Unpublished Draft, February 2024.
7. Janger, Edward J., “The U.S. Small Business Bankruptcy Amendments: A Global Model for Reform?”, International Insolvency Review, vol. 29, 2020, pp. 254-266.
8. Landry, Robert J. III. "Subchapter V and the COVID-19 Disruption: Did Congress Get Small Business Bankruptcy Reform Right This Time?" Ohio State Business Law Journal, vol. 16, no. 1, 2021, pp. 66-90.
9. Mokal, Riz, et al., Micro, Small, and Medium Enterprise Insolvency: A Modular Approach, Oxford University Press (2018).
10. Mulevičienė, Salvija, “Evaluation of the Effectiveness of Insolvency Frameworks: Does the Small Business Perspective Matter?” Entrepreneurship and Sustainability Issues, Volume 8, no. 2, 2020, pp. 383-398.
11. Norton III, William L.; Bailey, James B., “The Pros and Cons of the Small Business Reorganization Act of 2019”, 36 EMORY BANKR. DEV. J. 383 (2020).
12. Rea, Katherine, “There is a New Trustee in Town”, ABI Journal, December 2019 at p. 36.
13. UNICTRAL, *Legislative Guide on Insolvency of Micro- and Small Enterprises*, Part Five (2021).
14. World Bank Group, *Principles for Effective Insolvency and Creditor/Debtor Regimes* (2021).
15. World Bank Group, *Report on the Treatment of MSME Insolvency* (2017).
16. World Bank Group, *Saving Entrepreneurs, Saving Enterprises: Proposals on the Treatment of MSME Insolvency* (2018).

1. See <https://www.worldbank.org/en/topic/smefinance>, accessed on 2/10/2024. Data is not available worldwide on micro enterprises – most datasets are of small and medium enterprises. [↑](#footnote-ref-1)
2. Countries will also be benchmarked in the World Bank’s upcoming Business Ready Report (B-READY). B-READY will include a component on Business Insolvency, which includes points for countries who have a simplified MSE insolvency procedure in place. See https://www.worldbank.org/en/businessready. [↑](#footnote-ref-2)
3. For example, the UNCITRAL Guide for MSEs has double the number of recommendations for reorganization than for liquidation. See https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/msms\_insolvency\_ebook.pdf. [↑](#footnote-ref-3)
4. The OHADA region was established by the Treaty on the Harmonization of Business Law in Africa (OHADA) signed in 1993. Seventeen States are members: Benin, Burkina Faso, Cameroon, Central African Republic, Côte d’Ivoire, Congo, Comoros, Gabon, Guinea, Guinea Bissau, Equatorial Guinea, Mali, Niger, the Democratic Republic of Congo (DRC), Senegal, Chad, and Togo. [↑](#footnote-ref-4)
5. World Bank, Principles for Effective Insolvency and Creditor/Debtor Regimes, 2021 (WB Principles). [↑](#footnote-ref-5)
6. See Financial Stability Board Standard: https://www.fsb.org/2011/01/cos\_051201/. [↑](#footnote-ref-6)
7. Ibid. [↑](#footnote-ref-7)
8. World Bank Group, Report on the Treatment of MSME Insolvency (2017) “arises out of a panel presentation that took place during the 2015 meeting of the World Bank Group’s Insolvency and Creditor/Debtor Regimes Task Force.” P. iii. [↑](#footnote-ref-8)
9. Ibid.and World Bank Group, Saving Entrepreneurs, Saving Enterprises: Proposals on the Treatment of MSME Insolvency (2018). [↑](#footnote-ref-9)
10. See https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/msms\_insolvency\_ebook.pdf. [↑](#footnote-ref-10)
11. See https://abli.asia/abli-publications/guide-on-the-treatment-of-insolvent-micro-and-small-enterprises-in-asia-april-2022/. [↑](#footnote-ref-11)
12. UNICTRAL, Legislative Guide on Insolvency of Micro- and Small Enterprises, Part Five, 2021 (UNCITRAL MSE Guide), p. 5. See also WB Principles C18. [↑](#footnote-ref-12)
13. Some important aspects of an effective reorganization procedures such as a stay of actions are not discussed because they are not specific to MSEs. [↑](#footnote-ref-13)
14. UNCITRAL MSE Guide, Recommendation 279. [↑](#footnote-ref-14)
15. WB Principles, C19.1. [↑](#footnote-ref-15)
16. WB Principles, C19.2. [↑](#footnote-ref-16)
17. WB Principles, C19.5 ; UNCITRAL MSE Guide Recommendation 284. [↑](#footnote-ref-17)
18. UNCITRAL MSE Guide, Recommendation 286. [↑](#footnote-ref-18)
19. UNCITRAL MSE Guide, Recommendation 338. [↑](#footnote-ref-19)
20. WB Principles, C19.7; UNCITRAL MSE Guide, Recommendation 288. [↑](#footnote-ref-20)
21. UNCITRAL MSE Guide, Recommendations 319-321. [↑](#footnote-ref-21)
22. WB Principles, C19.3. [↑](#footnote-ref-22)
23. WB Principles, C19.9; UNCITRAL MSE Guide, Recommendation 280. [↑](#footnote-ref-23)
24. OHADA Uniform Act on the Organization of Collective Procedures 2015 (OHADA Act). [↑](#footnote-ref-24)
25. For example, the simplified reorganization procedure is only 10 articles in length. [↑](#footnote-ref-25)
26. OHADA Act, Article 1-3. [↑](#footnote-ref-26)
27. OHADA Act, Articles 41-46. [↑](#footnote-ref-27)
28. Ivory Coast and Senegal. Although, it is also not clear whether the trustee regulations have been fully implemented even in these two countries. [↑](#footnote-ref-28)
29. OHADA Act, Articles 26 & 145-2. The procedure relaxes the standard for three pieces of information as part of the statement: the summary financial statement can be any document which shows the economic position of the debtor, a provisional inventory and an estimate of employees’ salaries can be provided. [↑](#footnote-ref-29)
30. OHADA Act, Article 52. [↑](#footnote-ref-30)
31. OHADA Act, Article 145-3. [↑](#footnote-ref-31)
32. OHADA Act, Article 145-8. Failure of a creditor to reply to the trustee’s letter means rejection of the proposal. [↑](#footnote-ref-32)
33. OHADA Act, Articles 127 & 145-9. [↑](#footnote-ref-33)
34. See https://www.ohada.org/ccja-en-bref/. [↑](#footnote-ref-34)
35. See [https://tribunaldecommerce.sn/wp-content/uploads/2020/02/Chiffres20clc3a9s20du20contentieux20traitc3a920au20TCHCD202019.pdf](https://tribunaldecommerce.sn/wp-content/uploads/2020/02/Chiffres20clc3a9s20du20contentieux20traitc3a920au20TCHCD202019.pdfm), accessed on 2/20/2024. [↑](#footnote-ref-35)
36. See https://tribunalcommerceabidjan.ci/accueil. [↑](#footnote-ref-36)
37. See https://io.mlaw.gov.sg/corporate-insolvency/sip-faq/. [↑](#footnote-ref-37)
38. See https://www.businesstimes.com.sg/singapore/smes/minlaw-looking-making-simplified-insolvency-programme-micro-small-firms-permanent. [↑](#footnote-ref-38)
39. Singapore Insolvency, Restructuring and Dissolution Act 2020 (Singapore Act), Article 250F. [↑](#footnote-ref-39)
40. Singapore Act, Article 72D. [↑](#footnote-ref-40)
41. Singapore Act, Article 72D(7). [↑](#footnote-ref-41)
42. Singapore Act, Article 72L. [↑](#footnote-ref-42)
43. See https://io.mlaw.gov.sg/corporate-insolvency/sip-faq/. [↑](#footnote-ref-43)
44. Singapore Act, Article 72K. [↑](#footnote-ref-44)
45. Singapore Act, Article 72M. [↑](#footnote-ref-45)
46. Singapore Act, Article 72M (3)(d). [↑](#footnote-ref-46)
47. Singapore Act, Article 72Q. [↑](#footnote-ref-47)
48. https://io.mlaw.gov.sg/corporate-insolvency/notices/ [↑](#footnote-ref-48)
49. The United States Small Business Reorganization Act, 2019 amended the United States Code, 2012 Edition, Supplement 3, Title 11 – BANKRUPTCY (11 USC). [↑](#footnote-ref-49)
50. Handbook for Small Business Chapter 11 Subchapter V Trustees, p. 1. [↑](#footnote-ref-50)
51. See Bankruptcy Threshold Adjustment and Technical Corrections Act, Pub. L. No. 117-151, 2022. [↑](#footnote-ref-51)
52. See <https://www.justice.gov/ust/eo/private_trustee/vacancies/11ad> and 11 USC 1183. [↑](#footnote-ref-52)
53. United States Code, 2012 Edition, Supplement 3, Title 28 - JUDICIARY AND JUDICIAL PROCEDURE at section 1930 (6). [↑](#footnote-ref-53)
54. See https://www.uscourts.gov/forms/bankruptcy-forms. [↑](#footnote-ref-54)
55. 11 USC § 1181 (b). Although, no definition of what “cause” means is included in the SBRA. [↑](#footnote-ref-55)
56. 11 USC § 1189. [↑](#footnote-ref-56)
57. 11 USC § 1190. In particular, a detailed disclosure statement does not need to be filed. The requirements are only a brief history of the business operations, a liquidation analysis of projections of the debtor’s ability to make payments under the proposed plan. [↑](#footnote-ref-57)
58. 11 USC § 1991(c). For example, the plan needs to provide all the projected disposable income of the debtor within a period of 3-5 years and there is a reasonable likelihood that the debtor will be able to make all payments under the plan. [↑](#footnote-ref-58)
59. 11 USC § 1991(b). [↑](#footnote-ref-59)
60. 11 USC § 1992. [↑](#footnote-ref-60)
61. Hotchkiss, Edith; Iverson, Benjamin; Zheng, Ziang, “Can Small Businesses Survive Chapter 11” Unpublished Draft, February 2024, p. 4. [↑](#footnote-ref-61)
62. See https://www.justice.gov/ust/page/file/1499276/dl?inline. [↑](#footnote-ref-62)
63. Harner, Michelle; Goodwin-Maigetter, Kimberly, “Subchapter V Cases by the Numbers”, ABI Journal, 12 October 2021, p. 49. [↑](#footnote-ref-63)
64. See https://io.mlaw.gov.sg/corporate-insolvency/forms/. [↑](#footnote-ref-64)
65. OHADA Act, Article 25: “Insolvency means that the debtor is unable to pay its due claims out of its available assets except in situations where credit reserves or payment deadline extensions consented by creditors enable the debtor to deal with current debts.” [↑](#footnote-ref-65)
66. 11 U.S.C. § 308, 1116, 1187 [↑](#footnote-ref-66)
67. OHADA Act, Article 145 [↑](#footnote-ref-67)
68. OHADA Act, Article 27 [↑](#footnote-ref-68)
69. OHADA Act, Article 145-6. [↑](#footnote-ref-69)
70. 11 USC § 1189 [↑](#footnote-ref-70)
71. 11 USC § 1106(a)(5). [↑](#footnote-ref-71)
72. SDRA, Article 72Q [↑](#footnote-ref-72)
73. OHADA Act, Article 52 & 112. [↑](#footnote-ref-73)
74. OHADA Act, Article 54. [↑](#footnote-ref-74)
75. OHADA Act, Article 63. [↑](#footnote-ref-75)
76. OHADA Act, Article 112. [↑](#footnote-ref-76)
77. SDRA, Article 72L. [↑](#footnote-ref-77)
78. 11 USC § 1184. [↑](#footnote-ref-78)
79. 11 USC § 1183. [↑](#footnote-ref-79)
80. OHADA Act, Article 145-8. [↑](#footnote-ref-80)
81. OHADA Act, Article 145-9. [↑](#footnote-ref-81)
82. OHADA Act, Article 78. [↑](#footnote-ref-82)
83. Singapore Act, 72M. [↑](#footnote-ref-83)
84. Singapore Act, 72M (3)(d) [↑](#footnote-ref-84)
85. Singapore Act, 72E (2)(a)(ii) [↑](#footnote-ref-85)
86. With respect to each class of claims or interests that is impaired and has not accepted the plan. The test for “fair and equitable” includes a requirement that the plan includes all the debtor’s disposable income for a 3–5-year period. [↑](#footnote-ref-86)
87. 11 USC § 1191(b). [↑](#footnote-ref-87)
88. 11 USC § 1129(a). [↑](#footnote-ref-88)
89. 11 USC § 502(a). [↑](#footnote-ref-89)
90. 11 USC § 1183. [↑](#footnote-ref-90)
91. US Trustee’s Handbook, p. 3-15. [↑](#footnote-ref-91)
92. OHADA Act, Article 145-7. [↑](#footnote-ref-92)
93. 11 USC § 1112. [↑](#footnote-ref-93)
94. Gennaioli, Nicola & Rossi, Stefano, "Judicial Discretion in Corporate Bankruptcy," 23 Review of Financial Studies, Society for Financial Studies 2010, pgs. 4078-4114. [↑](#footnote-ref-94)
95. Singapore Act, 72Q(7). [↑](#footnote-ref-95)
96. OHADA Act, Article 50. [↑](#footnote-ref-96)
97. OHADA Act, Article 50. [↑](#footnote-ref-97)
98. See https://io.mlaw.gov.sg/corporate-insolvency/sip-faq/. [↑](#footnote-ref-98)
99. See https://io.mlaw.gov.sg/corporate-insolvency/sip-faq/. [↑](#footnote-ref-99)
100. 11 USC § 4 (3); 28 USC § 1930(a) [↑](#footnote-ref-100)
101. WB Principles D1.6 [↑](#footnote-ref-101)
102. Harner, Michelle & Goodwin-Maigetter, Kimberly, “Subchapter V Cases by the Numbers”, ABI Journal, 12 October 2021, p. 49. [↑](#footnote-ref-102)
103. See Han, Denise, "Initial Effects of Subchapter V of Chapter 11 Bankruptcy During COVID-19" (2021). Undergraduate Honors Theses. 187. https://scholarsarchive.byu.edu/cgi/viewcontent.cgi?article=1178&context=studentpub\_uht [↑](#footnote-ref-103)
104. See <https://www.justice.gov/opa/pr/us-trustee-program-ready-implement-small-business-reorganization-act-2019>, accessed 2/25/2024. 250 trustees selected out of an initial 3000 applicants. [↑](#footnote-ref-104)
105. Gotberg, Brook E., Reluctant to Restructure: Small Businesses, the SBRA, and COVID-109”, 95 American Bankruptcy Law Journal 389 (2021), p. 407. [↑](#footnote-ref-105)
106. Andre, Christophe; Demmou, Lilas, “Enhancing Insolvency Frameworks to Support Economic Renewal”, OECD Working Paper No. 1738, 2022, p. 16. [↑](#footnote-ref-106)