

NPL and the Legal Environment

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Legal environment – desired features

- The legal environment for insolvency should*:
 1. **Provide certainty** to market participants
 2. **Maximize the value of assets** by striking a balance between liquidation and reorganization
 3. Ensure **equitable treatment of creditors** that respects the ranking of priority claims .
 4. Provide for **timely, efficient and impartial insolvency**
 5. Ensuring a **transparent and predictable process** that contains **incentives for gathering and sharing information**

Laws

- Laws across the region contain the key features of “best practice” insolvency law, but:
 - They are of **recent vintage** and never tested
 - They can lead to **confusion** because of lack of expertise and frequent amendments
 - They are **poorly integrated** with the local and constitutional framework
- As a result, insolvency law reform is central to NPL resolution efforts across the region
 - On the one hand, a strong case for **reviewing the entire insolvency regime**
 - On the other hand, the system suffers from “**insolvency reform fatigue**”
- Countries in the region should ensure that insolvency law reform projects
 - **holistically** address all known issues
 - **comprehensively** include all key stakeholders, and
 - put the focus on ensuring that the law is **relevant to the domestic context**

Judiciary

- Then judicial process does not provide a credible avenue for NPL resolution, due to
 - **Slow, ineffective and unpredictable** process
 - **Lack of experience** and an excessive workload
 - In many countries, **corrupt judiciary**
- Resolving these issues goes significantly **beyond NPL resolution**, and fall under the broader “**Rule of Law**” umbrella
- Still, some measures can be implemented “bottom up” to improve the process:
 - **Infrastructure**: improve case management IT and infrastructure , and track workload and case flow to improve resource allocation
 - **Capacity**: providing extensive training and increase resources, including the number of judges and insolvency professionals
 - **Procedure**: review grounds for appeals and implement measures to reduce frivolous claims; and enforce deadlines for judicial processes.
 - In addition, **temporary solutions** can be implemented to help reduce the workload, for example specialized courts and ad hoc processes courts for insolvency procedures

Enforcement and Execution

- Execution is plagued by significant issues, including
 - Difficulty in establishing **legal title**
 - Slow, cumbersome and complicated **auction process**
 - Poorly trained and supervised **bailiffs**
 - Poor **incentives** structure
- These can be addressed through targeted interventions, but political will and political capital is required to overcome entrenched interests