

abiLIVE Faculty: Understanding African Insolvency Regimes

Charles Phiri is a managing director with CP Advisers (Pty) Ltd. in Johannesburg, South Africa, where he focuses on effective business management practices, cross-border insolvency, international trade, bankruptcy and turnaround strategies, enterprise development and mentoring of business owners. He is an international restructuring expert and an insolvency practitioner with a wide range of expertise in bankruptcy law, business rescue and turnaround strategies, corporate debt restructuring, tax law, business advisory, cross-border insolvency and implementing of business rescue plans to distressed companies in line with Chapter 6 of Companies Act 71 of 2008 (South Africa). Mr. Phiri is licensed by the Companies and Intellectual Property Commission (CIPC) as a Senior Insolvency Practitioner. He has spent more than 10 years in financial services and supply chain. In that time, he has worked in various senior roles. Previously, Mr. Phiri had spent most of his career at SAB Miller Africa, where he was part of its Business Unit revenue management team, debt restructuring and mergers and acquisitions. He takes appointments as a receiver and restructuring officer in financially distressed multiple sectors in South Africa. From 2020-22, Mr. Phiri served as a board member of the Turnaround Management Association of Southern Africa (TMA), heading its Transformation Committee. He also is an ABI member.

Rita Baguma Birungi is an associate partner with Ligomarc Advocates in Kampala, Uganda, in its Insolvency and Business Restructuring Department. She leads a team that advises and litigates on the full spectrum of insolvency proceedings, debt and business restructuring, debt collection and related matters. Ms. Birungi is an experienced and registered insolvency practitioner and has acted as liquidator, receiver and caretaker. She actively participates in administration and other insolvency proceedings, both local and cross-border. She previously worked with Standard Chartered Bank Uganda Limited and as a research assistant at the faculty of law at Makerere University. In Uganda, Ms. Birungi is a renowned speaker on insolvency matters at conferences and workshops organized by the

Uganda Law Society, the office of the Official Receiver and the Institute of Certified Public Accountants, and she also has trained various institutions, including being a guest lecturer at the Law Development Centre. Ms. Birungi has actively participated in insolvency-related consultancies, including the Consultancy on the Implementation of the Insolvency Act 2011 and Regulations Thereunder to the office of the Official Receiver. In 2019, she was appointed co-caretaker of the Uganda Performing Rights Society, the only music collective management organization in Uganda. Ms. Birungi has contributed to write-ups on insolvency in Uganda to the World Bank and INSOL International. Upon invitation, she recently submitted a Uganda chapter to an INSOL International publication on MSME's Practical Challenges and Risk Mitigation Post Covid-19. Ms. Birungi is an advocate of the High Court of Uganda and an INSOL Fellow, having completed the prestigious Global Insolvency Practice Course offered by INSOL International. She received her M.S. in finance and financial law from the University of London, her Bachelor of Laws degree with honors from Makerere University Kampala, and her diploma in legal practice from the Law Development Centre.

Isaac Bizumuremyi is the founder and managing partner at Lex Chambers, a corporate and transactions law firm in Kigali, Rwanda. He has been in private practice for the last 16 years in the areas of corporate law, commercial transactions, commercial arbitration, employment law, commercial litigation and insolvency. Mr. Bizumuremyi is a licensed insolvency practitioner in Rwanda and a member of INSOL International - London, as well as an INSOL International local partner of INSOL's Future Leaders Program in Rwanda. He is currently the chairperson of the Insolvency Committee of the East African Law Society, and he is an arbitrator and a member of the London Institute of Chartered Arbitrators (Ciarb) and the African Association of Arbitrators. Mr. Bizumuremyi received his LL.M. in international trade and commercial law from the University of Essex in England, his M.A. in human rights law from the University of London, his Postgraduate Certificate in International Business Law from the University of Cumbria in England, and his LL.B from the University of Rwanda.

Dr. Zolani Buba is an attorney, restructuring professional and tax expert at Inolaz Advisory in Western Cape, South Africa, for which he serves as managing director. He boasts significant experience and technical expertise in tax, tax administration

and commercial law. Dr. Buba has authored a number of articles in the areas of business rescue, tax and tax administration, and he is a contributor to the fourth edition of Companies and Other Business Structures in South Africa. He previously worked at EY in its tax advisory division and for South African Revenue Services (SARS) as the national specialist for business rescue within its Enforcement division. Dr. Buba received his B.Soc.Sci., LL.B., LL.M. in taxation and Ph.D. in commercial law from the University of Cape Town.

A close-up photograph of a person's hands holding a small, round, woven basket. The basket is covered in colorful beads, with a central section featuring a map of Uganda. The map is outlined in blue and filled with yellow and orange beads. The person holding the basket is wearing a patterned garment with a geometric design in red, yellow, and black. The background is blurred green foliage.

Uganda

Insolvency Regime

Ligomarc
ADVOCATES

ANDERSEN



INTEGRITY • RELATIONSHIP • EXCELLENCE

- Uganda an East African country, 241,038 sq km with a population estimated at 45.9m people in 2024. It is bordered by Kenya in the east, Sudan in the north, Democratic Republic of the Congo in the west, Rwanda in the southwest while Burundi and Tanzania are in the south.
- Uganda as is the case with the rest of Africa was colonised by the British government around the 1860s. It gained its independence from British rule on 9th October 1962.
- Uganda- main sectors are Agriculture 24.2%; Industry 25.5%; and Services 50.3% sectors.





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Economic Outlook



GDP Growth: Economy Financial Year 2023/24 expanded by 6.0% to Shs 202,131 billion (52.9bn\$) from Shs 183,004 billion (48bn\$) in Financial Year 2023/24.

Comparisons: 6% growth exceeds Sub-Saharan Africa's average (3.8%) and global average (2.9%).



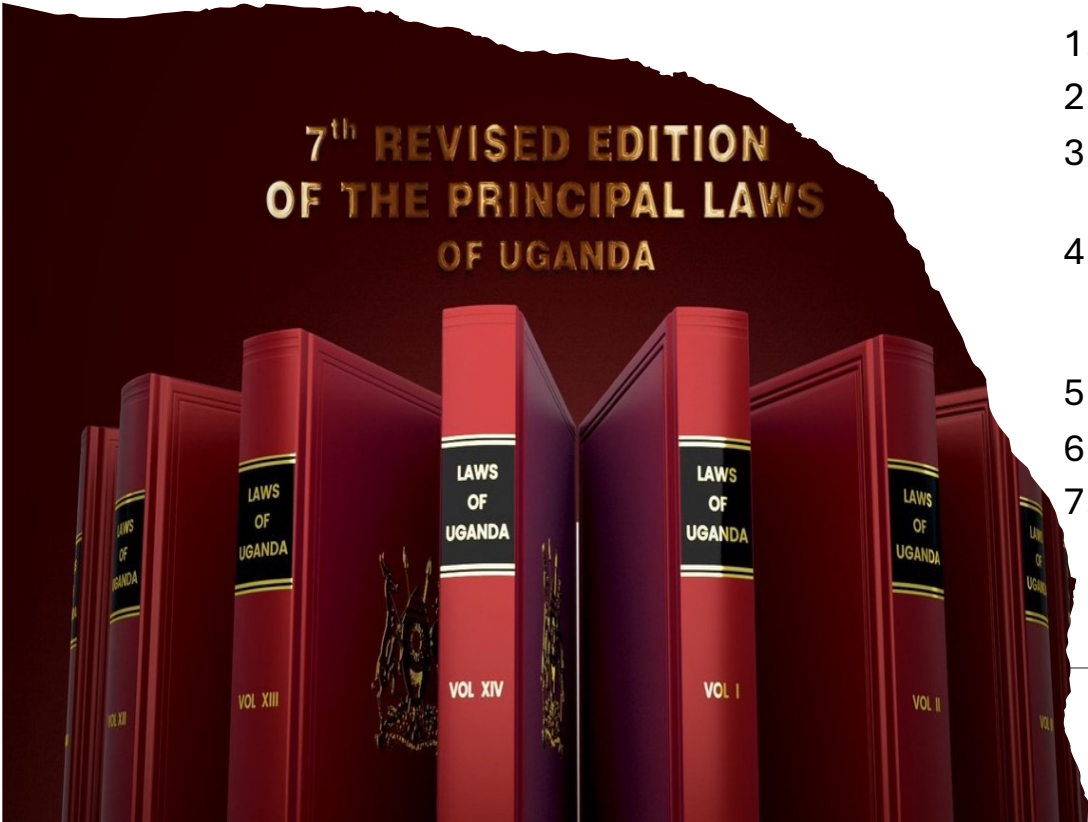
Economic Size: Economy estimated at Shs 202 trillion (USD 53.3 billion), up from Shs 184.3 trillion (USD 48.8 billion).

GDP per Capita: USD 1,146 compared to USD 1,081 in FY2022/23.



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Legal System

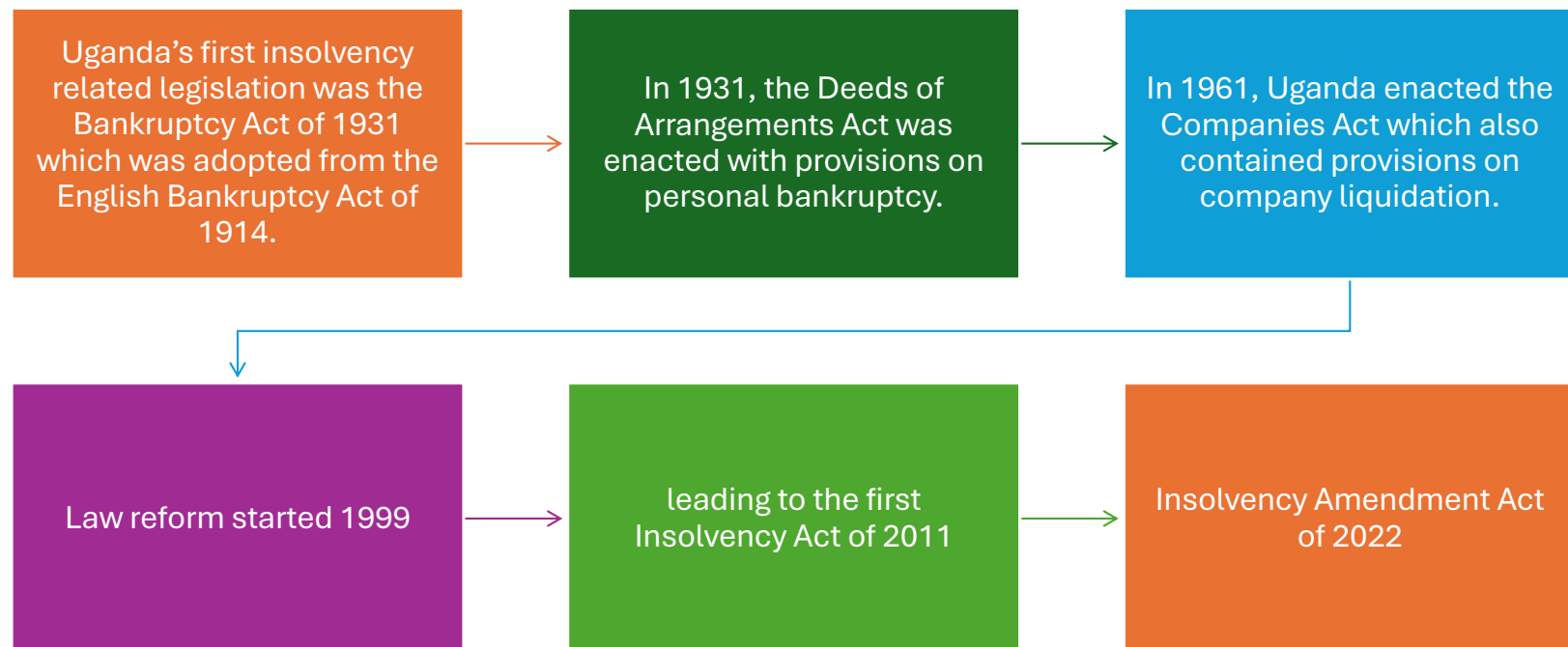


7th REVISED EDITION OF THE PRINCIPAL LAWS OF UGANDA

- Based on the English legal system.
- Main sources of law:
 1. The 1995 Constitution of the Republic of Uganda;
 2. Acts of Parliament;
 3. Statutory instruments or subsidiary legislation made by Executive authorities;
 4. Case law, some drawn from English Common Law, but now mostly as developed by local Ugandan courts;
 5. Doctrines of Equity
 6. International treaties and conventions, and
 7. Customary Law (where applicable)

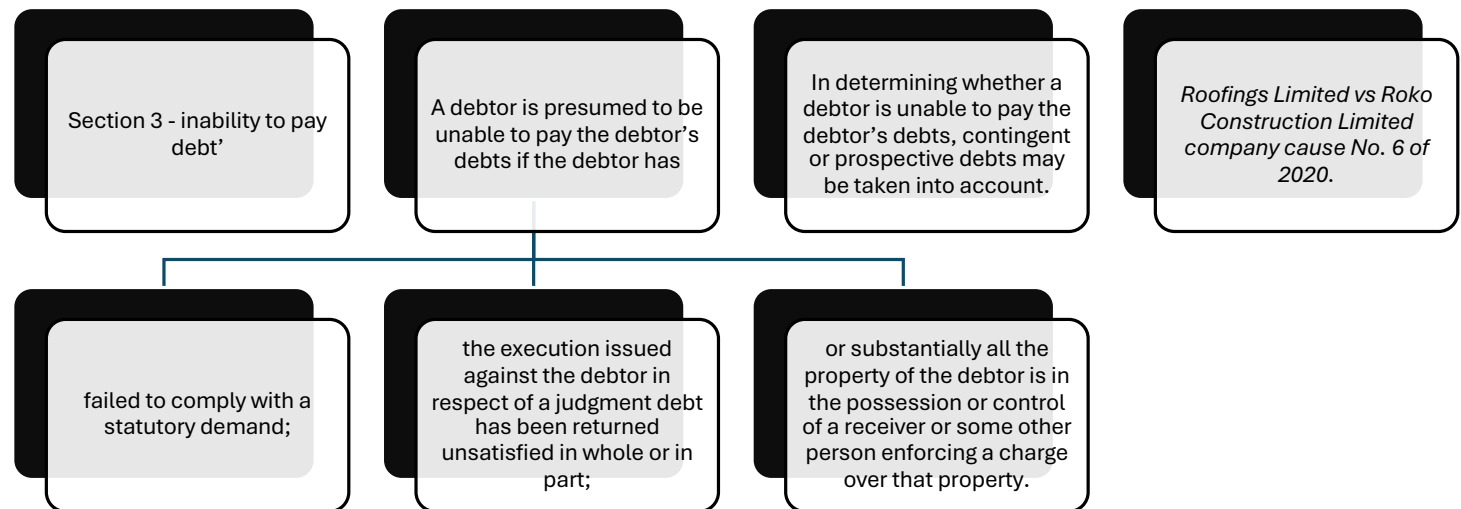


Insolvency Regime Transition





Current- Understanding of Insolvency





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General Application Provisions

Proof of debt by
creditors

Mutual Credits

Ranking of
Creditors (except
for Receiverships)

Void and voidable
transactions-

Interest Claims

Creditor meetings



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General Characteristics of Formal Insolvency Proceedings

Insolvency
Practitioners is
appointed to
take over
business – No
DIP

Involvement &
Powers of the
Court

Proceedings
must be
published in
media

Regular reports
must be
provided to
creditors and
regulator

Post
commencement
financing for
Arrangements
and
Administration-
no detailed
regulation

Insolvency
Practitioners
have statutory
duty to
investigate and
or report
improprieties

No special
regulation for
MSMEs,
essential
contacts, other
no corporate
entities



Recognised Formal Insolvency Proceedings

Individuals

- Bankruptcy
- Arrangements

Companies

- Provisional Administration
– Administration
- Receivership
- Liquidation
- Arrangements &
Compromises



Main Business Rescue Options

- Arrangements for individuals - *This is a rescue mechanism that basically allows a debtor/creditor to seek a moratorium from the court during which time they negotiate with creditors and if successful enter into an arrangement for payment of the debt.*
- Administration for companies – *Mechanism through which a company binds its creditors to a moratorium during which time it can revive the businesses and pay off creditors. Application can be made by creditors*
- Arrangements & Compromises – *Mechanism through which a company can enter into settlement or compromise with creditors with or without a moratorium.*



Alternative/Indirect Business Rescue Options

- Receivership- *a creditor enforcement action which is exercised pursuant to a special contractual arrangement. It is commonly provided for in fixed and floating debentures which are created by companies as security for repayment of their loan obligations.*
- Liquidation- members' voluntary, creditors' voluntary, liquidation by court or subject to supervision of court



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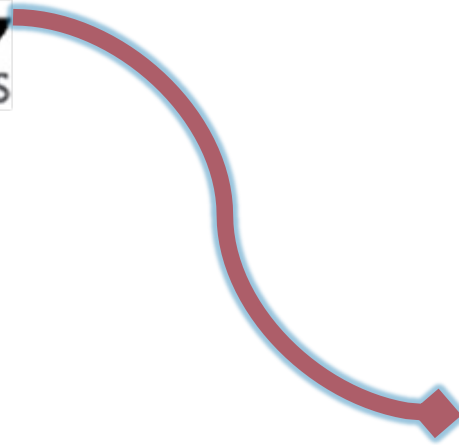
Documents	2016/2017	2017/2018	2018/2019	2019/2020	2020/2021	2021/2022	2022/2023
Other insolvency documents filed; Statement of Affairs, Interim, Preliminary & Final Reports				225	475	689	1,193
Insolvency Practitioners registered		16		64	102	87	118
Companies liquidated	10	31		15	28	20	53



Cross Border Insolvency

- Uganda adopted the UNCITRAL Model Law
 - Cooperation between courts & representatives
 - Foreign representatives have access to Ugandan courts- commence and follow proceedings
 - Recognition of foreign proceedings
 - Interim relief such as stay of proceedings

Rita Baguma Birungi



Asante Sana
Thank you 😊



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(A Civil Law Jurisdiction)



ABOUT RWANDA

Rwanda is a small central African country lying on 23,338 square Kms with 13 million (Population)



THE LEGAL SYSTEM

Rwandan legal system is a hybrid system but strongly dominated by the civil law system.

THE HISTORY OF RWANDAN INSOLVENCY LAW

First insolvency law is that of 1925 on the prevention of insolvency (Repealed)

In 1934 was the enactment of the first commercial insolvency-

Modern insolvency law was passed in 2009 but did not cover individual Bankruptcy

The 2009 law was repealed in 2018 by a law relating to insolvency and bankruptcy

The 2018 law was also repealed by the current 2021 law relating to insolvency (covering both corporate insolvency and individual bankruptcy)

INSOLVENCY REGIMES UNDER the RWANDAN LAW

Rwandan
insolvency
provides for
the following
insolvency
regimes

- 1) APPOINTMENT OF THE IP TO PRESERVE THE DEBTOR'S ASSETS
- 2) REORGANISATION (*Rescue Plan*)
- 3) COMPROMISE (*Rescue Plan*)
- 4) LIQUIDATION (*Corporate Assassination*)

Commencement of insolvency proceedings

- Grounds for commencement of Insolvency proceedings
- 1. **Cash flow insolvency.** *The debtor is unable to pay its debts when they fall due in the normal course of business;*
- 2. **Balance sheet insolvency:** *Assets of the debtor are less than its liabilities plus its stated capital.*
-



Court oversight during insolvency proceedings

Only Court may appoint an IP

General insolvency application is filed to court (where the applicant has no future plans for the debtor).

Court grants the application by appointing a provisional IP and the court shall supervise the proceedings until termination.

Compromise is an out of court workout, but which is later submitted to court for supervision. Court continues to receive and make determinations on different applications.

In the shareholders' approved liquidation, court has no supervisory power but may receive and make determination on any application relating to the company under liquidation.

STATUS OF STAKEHOLDER S (Reorganization)

Directors and other officers of the company remain in place but with no powers except to be consulted by the IP

Shareholders organ is retained but its roles are unclear

Employment contracts remain in force. However, this labour permits distressed employers to terminate employment contracts

Compromise

- Who can arrange a compromise?
 1. Debtor
 2. Creditor
 3. IP

Status of stakeholders during compromise

1. The duties and appointment of directors and other officers of the company are determined in the compromise proposal
2. The law is silent on the shareholders' powers during the compromise arrangement
3. The law is silent on the fate of employees during compromise supervision

Liquidation

- Liquidation occurs when a liquidator is appointed by any of the following:
 - 1) shareholders by a special resolution;
 - 2) the directors or any other person, if the company's incorporation document so requires or permits;
 - 3) the court.
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Status of stakeholders during liquidation

- 1) The company's officers remain in office but cease to have any powers.
- 2) The shareholder cease to exercise their powers under the law or Articles of Association.

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Who meets the cost of each regime

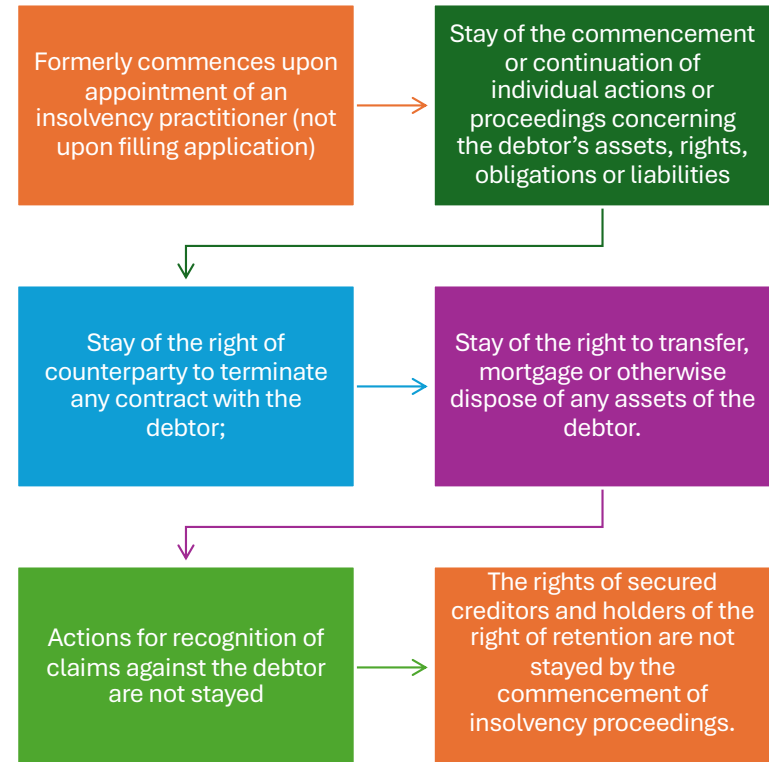
- In all insolvency regimes, the debtor meets the costs associated with each insolvency regime unless the court decides otherwise

STEPS of insolvency proceedings

Save for the liquidation application, general or BR Insolvency proceedings takes the following processes:

- First level, the company is placed in provisional administration. When creditors approve BR plan, the debtor transitions to Administration
- Level 2: Administration may rescue the debtor, and the administration terminates when all creditors are satisfied according to their claims or in accordance with compromise plan
- Level 3: Put into liquidation when the creditors determine so.

Effects for general insolvency proceedings



Effects of Reorganisation Application

The following are the effects of filling of a BR application:

- Commencement is upon court's appointment of a provisional insolvency administrator
- Stay of the rights of secured creditors for maximum 6 months if no court order for BR has been issued. If court granted BR order, this period may be extended up to 18 months by court
- No commencement or continuation of legal proceeding, including enforcement action, against the debtor, or in relation to its property, or property lawfully in its possession.
- BR Plan must within 45 days following Court's order granting BR Order submit BR Plan to the creditors for approval within 30 days
- Approval of BR plan is 75% of all creditors or of each class of creditors
- Creditors within the same class are offered equal treatment.

Termination of business reorganisation plan

THE TERMINATION REORGANIZATION ENDS WHEN:

- the reorganization plan has been implemented by the administrator;
- the company creditors resolve that the reorganization should end;
- the company creditors appoint a liquidator by a resolution passed at a meeting to determine the future of the company;
- the company fails to execute the reorganization plan within the time allowed by the court;
- the court appoints a liquidator.

Debtor Protections under THE Rwandan law

THE FOLLOWING ARE DEBTOR PROTECTIONS AVAILABLE AT LAW:

- Appointment of a provisional insolvency administrator
- On application to court for reorganisation
- At the notice for convening of creditors meeting for compromise plan (Secured creditors are not affected)
- At the appointment and acceptance of a liquidator



Rights of creditors

Secured creditors rights are affected for max 6 months only in case of BR application

Right to attend general meeting of creditors and vote (% of his/her debt to overall debt)

Right to elect their representatives to the creditors committee

Right to call for general meeting of creditors (min 2 creditors)

Right to file a suit against the debtor in administration for recognition and registration of their claims

Approval of BR, or Liquidation

Approve or disapprove appointed IP

Right to information

Rights of SHAREHOLDERS

1. To participate in BR
2. To give opinions/comments to the administrator
3. To receive residual payments

AND



South African Insolvency Regime

An overview of Business Rescue

Presented by:

Dr Z.Buba





Introduction: Scope of Presentation

Business rescue as process

1. Primary source of information
2. Important definitions
3. What is “*business rescue*”
4. Overview of business rescue proceedings
5. Business rescue step - by – step
6. Why business rescue?
7. Outcome of business rescue proceedings
8. Voting on the Plan and consequences



Primary source of information:

Section 128 to 154

Chapter 6 of the Companies Act, 2008



Important definitions

- **Affected person(s)** – shareholders/ creditors and employees represented or not
- **Business rescue plan** – section 150
- **Business rescue practitioner** – person appointed to oversee the company during business rescue proceedings
- **Financially distressed**- section 128



Definition: Business Recue – 4 Components

1. Facilitate the rehabilitation of a company that is financially distressed
2. Temporary supervision of the company, and of the management of its affairs, business and property;
3. Temporary moratorium on the rights of claimants against the company or in respect of property in its possession; and
4. development and implementation of a plan to rescue the company, through:
5. Restructure of affairs, debt and other liabilities
6. Achieve solvency OR
7. Achieve higher dividend for creditors *or shareholders* than from immediate liquidation



The Mechanics: section 129 procedure

- Step 1 What triggers the filing for business rescue?
- Step 2 Appointment of business rescue practitioner
- Step 3 First meeting of creditors
- Step 4 The business rescue plan
- Step 5 Future of the Company
- Step 6 Why business rescue?
- Step 7 Voting on plan



Step 1:

What triggers the filing for Business rescue?
“FINANCIALLY DISTRESSED”:

- Co. appears to be reasonably unlikely to be able to pay its debts as they become due and payable within the ensuing 6 months; or
- Co. appears to be reasonably likely to become *insolvent* within the ensuing 6 months.

What happens:

(a) A factually insolvent tech company able to pay its creditors versus an illiquid mining company with a strong balance sheet versus a finance company both solvent and liquid facing a damages lawsuit?



Step 1: Additional information

- The special resolution must state reasonable grounds for initiating business rescue proceedings
- What will be regarded as reasonable grounds?
 - Company is “*financially distressed*”
 - Must be a reasonable prospect of **rescuing** the company
- How descriptive can an unsupported affidavit be?
- No responsibility to rigorously screen affidavits by Companies Intellectual and Property Commission (CIPC)
- Result are business rescues without merit, no reasonable prospect or even no financial distress present.



Step 1: Solvency question- section 4 or 128(1)(f)

- Section 4:
- **Commercially solvent** – will the company be able to pay its debts as it becomes due in the ordinary course of business (for a period of 12 months)?
- **Factually solvent** – do the assets of the company at fair value exceed the liabilities of the company at fair value?
- Slightly different tests finding application within the Companies Act



- The company must first file a notice of the resolution to begin business rescue proceedings to CIPC and then publish such a notice to all affected persons within **5 business days**.
- A business rescue practitioner must be appointed within **5 business days** after notice was filed
- In practice, the business rescue practitioner either assists the directors with the notices or he/she sends out these notices.
- The BRP must convene and preside over first creditors meeting within 10 business days of his/her appointment having been confirmed



STEP 3: First meeting of Creditors

- **Give notice** to all affected parties of the **date, time, place** and **agenda** for the meeting 5 business days before schedule date.
- **Inform** all affected parties of the anticipated success of the business rescue proceedings
- Receive proof of claims from affected parties



STEP 4: The business rescue plan

- BRP must consult with all affected parties and prepare a business rescue plan
- The business rescue plan must be published 25 business days after the date of the appointment of the BRP.



STEP 4: Contents of Plan

(i) **Background:**

- list of material assets
- List of creditors
- Probable dividend
- List of holders of company's issued security
- Copy of written agreement of practitioner's remuneration
- Statement of formality of business rescue plan



STEP 4: Contents of Plan (continued)

(ii) Proposals:

- Nature and duration of moratorium
- Extent to which the company will be released from its debts
- On going role of the company
- List of available property
- Order of preference
- Benefits of adopting the plan



STEP 4: Contents of Plan (continued)

(iii) Assumptions and conditions:

- Statement of conditions that must be satisfied
- Effect of business rescue on employees
- Circumstances under which business rescue will end



STEP 5: Future of the Company

- Appointed practitioner must convene a meeting to determine the future of the Company
- The BRP must convene this meeting 10 business days after he published the business rescue plan to all affected parties
- The agenda must include a summary of the rights of all affected parties



STEP 6: Why business rescue

- Benefit of a temporary moratorium on any recovery process by any creditor. (all collection steps must be halted)
- The “temporary moratorium” could span for a number of years
- Desire to avoid liability for reckless trading
- Abuse of process to avoid legitimate repayment of liabilities
- Genuine distress and need for a debt reprieve
- Desire to avoid scrutiny of a liquidation process



STEP 6: Why business rescue

- Outstanding employee remuneration rank higher in priority than in a liquidation scenario
- Contracts pre - business rescue can be suspended or cancelled by the Practitioner
- Directors can continue to fulfil their duties under the supervision of the business rescue practitioner
- Guarantees given by the company are no longer enforceable



STEP 7: Voting on Plan

- For the plan to be approved, it has to be supported by more than 75% of the value of the creditors present/ represented by proxy
- 50% of this vote should be by independent creditors
- The BRP can seek a vote to prepare and publish a revised plan or
- Advise the meeting that the Co will apply to court to set aside the result of the vote on basis of being inappropriate
- If no further action is taken in this regard – the BRP must file a notice of termination of the Business Rescue Proceedings.

THANK YOU

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