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# Insolvency and the Practice of Insolvency in Rwanda

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## ABSTRACT

*Article 3(5) of the law relating to insolvency in Rwanda describes insolvency as a situation in which an individual, a company or a partnership engaged in a business activity can no longer pay their debts as they fall due. Inability to pay their debts as they fall due gives rise to an insolvency procedure which as per article 7, it is a procedure that is initiated to administer the assets of the company, partnership or individual for the interest of all its creditors. The procedure may be voluntary or force and it might involve an entity that is insolvent or that which is solvent.*

*Insolvency and bankruptcy Both mean the same thing, but involves different parties. Insolvency is use to describe a corporate or business entity that has become insolvent while bankruptcy is use to refer to an individual who is insolvent. The cynosure of this short paper will be on corporate insolvency, the processes involved and the actors involved in the process from its inception to its conclusion taking insight from Rwanda legislation.*

**Keywords:** *insolvency, practice of insolvency, rwanda. administrator, liquidation, liquidator.*

## I. INTRODUCTION

In Rwanda, an application to proceed with an insolvency (corporate insolvency) procedure is filled within a competent court by the creditors, debtor, the directors of the company or the registrar general (registrar of companies), the shareholders or by the regulatory authority (the national bank of Rwanda).

Insolvency proceedings start when an insolvency practitioner<sup>2</sup> is appointed by the competent court to oversee the management and or the distribution of the assets of the company which is undergoing insolvency. The application to commence insolvency proceedings must contain a listing of debts and claims, relevant financial and accounting reports and any other information which the applicant considers salient and which correlate to his/her application.

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<sup>1</sup> Author is a Trainee Advocate in Rawanda.

<sup>2</sup> An insolvency practitioner is a qualified individual authorized to act as a provisional administrator, an administrator, a provisional liquidator, a liquidator, a proposed supervisor of an arrangement of debts, a supervisor of debt arrayment or a trustee.

The initiation of insolvency proceedings has the effect of staying the continuation of any and all legal actions which correlate to the debtors' assets, rights, obligations or liabilities. It also stays the execution of judgment (court judgment) related to the assets of the company, the rights to terminate legal/contractual obligations and to mortgage or transfer any assets of the company.

## **II. COMPROMISE PLAN**

During the insolvency proceedings, a compromise can be adopted with the creditors of the company. A compromise plan is another route to take in an attempt to solve the woes of the company. A compromise plan is a proposed alternative offered to creditors which includes forgiving part of the obligations owed or extending the time frame for repayment. This plan is considered and voted on by all creditors who are therein after bound by it and cannot force a liquidation or receivership<sup>3</sup> of the company. It goes without saying that a compromise plan is a better option for a company that wishes to continue business because, it buys it time to become solvent, the details of the compromise plan is not made public thereby securing the company's reputation and it ensures that the control of the company remains with the company's directors.

Under Rwandan insolvency law, compromise plans can be proposed by the debtor (the company), the insolvency practitioner overseeing the insolvency procedure or the creditors of the company. The compromise plan proposed must be grounded and must contain a listing of all the assets of the company including those held as security by the company's creditors, it must contain a detail financial statement drawn by a competent accountant, it must outline the list of and classes of creditors including the claim each class is entitled to and their attached rights, the mode of payment of each class of creditors and a forecast of the amount each class of creditors would get if the company is liquidated.

Seeing as the plan can be proposed by different persons, the proposer of the plan must inform the various stakeholders of the plan who are obligated to consider and vote for it. In Rwanda, such notice must be made at least 10 days before the meeting is held. The notice of the meeting stays all legal proceedings related to recovering claims unless the court decides otherwise.

Article 35 of the same law cited above provides that, a compromise plan is approved when 75% of the creditors present vote for it. Where several classes of creditors vote for the plan, it is assumed that the approval of one class of creditors is reliant on the approval of other classes of creditors. On the day of its approval, a supervisor is also appointed to oversee the execution of

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<sup>3</sup> Receivership explains a situation in which an enterprise is put under trust. The trustee or the receiver runs the company with the aim of increasing the value of the company. He/she also has the duty to secure the assets of the company and to manage the affairs of the company in order to pay its debts

the compromise plan.

### **III. PROVISIONAL ADMINISTRATORS AND ADMINISTRATORS IN CORPORATE INSOLVENCY**

#### **A. Provisional Administrator**

It is possible to appoint a provisional administrator who is charge to oversee the affaires of the company provisionally in line with what is best for the creditors of the company. A provisional administrator is appointed by the registrar general (of companies) upon request by any interested party. Apart from proposing a plan and overseeing its execution, a provisional administrator has the duty to convene creditors meetings and act as rapporteur during the meeting, to ensure the survival of the property to which the company is entitled to, to inspect the company's business, property and financial circumstances, to keep separate money belonging to the company from other money which is under his/her control, to carry on and manage the affairs and property of the company, to keep full accounts and other records: receipt, expenditures and other transactions relating to the company in line with generally accepted accounting techniques.

A provisional administrators' duties are complemented by his/her powers which include: (as provided in article 47 of the law relating to insolvency in Rwanda)

1. The power to change the registered office and address of the company.
2. The power to appoint new directors.
3. The power to dismiss a director.
4. The power to convene a shareholders meeting.
5. The power to represent the company in court.
6. The power to realize the property of the company in order to make a distribution to one or more secured or preferential creditors.
7. To exercise his/her powers in a manner which he/she believes is in the best interest of the company's creditors.

The appointment of a provisional administrator stays any liquidation activity as well as the powers of a liquidator. His/her activities conclude when an administration deed is concluded or a resolution to that effect is fashioned by the creditors.

#### **B. Administration**

In the course of an insolvency proceedings, an administrator is as a rule appointed to execute the administration deed which is an arrangement between a creditor and a provisional trustee

that regulate how the affairs of the company will be dealt with during an insolvency proceeding. The administration deed binds all the parties involved and prevents them from making an application for the liquidation of the company or get going with proceedings of the same nature, take charge over the company's property etc. basically, the administrator acts, has the same duties and powers like a provisional administrator.

#### **IV. ATTEMPTS TO SAFE THE INSOLVENT ENTITY**

A company which is deemed insolvent doesn't just rush into liquidation. Usually attempts are made to rescue the business, more often than not taking into consideration the consequences liquidation of the company can have on its employees and consequently the economy. The rescue process for an insolvent company is via a reorganization plan. This plan can be proposed by the debtor (the company), directors of the company, the creditors, the registrar general or the regulatory authority (the national bank of Rwanda in this case) as per article 84 of the law relating to insolvency. The application can only be made when the applicant is of the opinion that the company can be redeemed.

The application for a reorganization plan is made before the competent court (commercial court) and it has the same effect as when a provisional administrator or an administrator is appointed. However, a secured creditor may apply to the court for relief from stay on secured claims where the creditor is of the opinion that the secured assets may lose value or deteriorate, the provision of the secured assets may not be feasible or would be overly burdensome to the estate, the secured asset is not needed for the reorganization or sale of the business as a going concern.

As per article 91 of the above cited law, after the reorganization plan is ordered by the competent court, it is submitted for approval by the creditor in a creditor meeting and it is approved if 75% votes are cast in support of the plan. The administrator of the reorganization plan thereafter takes control of the property and affairs of the company and takes possible measures for rescuing the company's business and exercises all the powers the officers of the company would exercise if the company was not a subject of a reorganization plan.

In Rwanda, the activities of the administrator of a reorganization plan are sanctioned/supervised by the court who upon application or on its own motion can make an order it deems necessary when it deduces that the administrator is not effective in the exercise of his/her duties or is acting in a manner which is prejudicial to the interest of the company and its creditors. If the compromise plan or the company reorganization plan fails or any other measures that was taken fails, liquidation is seemingly the only step to pursue.

## **V. LIQUIDATION OF AN INSOLVENT COMPANY**

Liquidation of a company commences on the day a liquidator is appointed. Liquidators are appointed by the court, the directors of the company, shareholders or any other person authorized as such by the company's incorporation documents who must be an insolvency practitioner. Creditors can challenge the appointment of a liquidator if there are reasonable grounds to do so. In Rwanda, this must be done within 5 days (from the day the liquidator was appointed).

The liquidation process requires that public notices relating to the liquidation be made by the appointed liquidator. Such notice must state the date in which the liquidation commences, the liquidators' full names, the full physical address of the liquidator's office. Another very important requirement is that, the wordings "in liquidation" must be written on every invoice, order for goods or business letter issued by or on behalf of the company under liquidation.

Through the liquidation process, liquidators are duty bound to collect, realize and distribute the assets and or the proceeds from the assets of the company. They are also duty bound to keep separate the company's money from money he/she holds and to allow the accounts and records of the company to be inspected by any committee of inspectors unless he/she has reason to believe that inspections will be prejudicial to the liquidation process.

### **A. Prohibitions During Liquidation**

The commencement of the liquidation process in Rwanda prevents any person concerned from leaving or attempting to leave Rwanda with the aim of avoiding payment of money owed to the company or avoid examination, compliance with obligations imposed by the law or a court. Concerned individuals are also prohibited from concealing or removing property of the company with the intention of preventing or delaying the assumption of custody or control of the property by the liquidator. Finally, the destruction or removing of records or other documents of the company is prohibited.

### **B. Concluding The Liquidation Process**

During the liquidation process and before conclusion, the liquidator must prepare and send to every known creditor of the company as well as the company's shareholders a completion report. The completion report must contain the final report, account and documents which relate to the state of the company's assets that is; whether they have been realized, disclaimed or distributed etc. upon conclusion of the process, the liquidator delivers a final report to the registrar general which among other things must indicate that the company is ready to be

removed from the register of companies.

## **VI. CONCLUSION**

Insolvency is no easy procedure. It is in the absence of a better word “complex”.it has serious implications for everyone concerned that is; directors, shareholders, creditors, employees etc. it is important to seek professional advice and consider all available remedies which might safe the company and prevent its liquidation. Staying informed, flexible and working closely with experienced professionals who can provide guidance and support throughout the process.

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