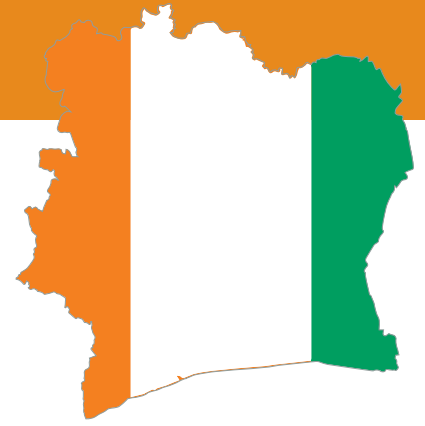


CÔTE D'IVOIRE



FIRM INFORMATION

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FIRM INFORMATION

FDKA Cabinet was born in 2000 from the fusion between two firms whose partners were Karim FADIKA and Colette Kacoutie on the one hand and Mahoua Fadika Delafosse on the other hand. The founding partners, who have all been members of the Ivory Coast Bar for more than 25 years, have each gained considerable experience in the practice of law, including business law.

TYPE OF GOVERNMENT

The governmental form of the country is democracy.

POLITICAL SYSTEM

Côte d'Ivoire opted for a presidential regime, characterized by the separation of executive, legislative and judicial powers. It has also instituted multiparty politics since 1990.

LEGAL SYSTEM

Inspired by French law, the Ivorian judicial system groups first and second level courts with the Courts of First Instance and Courts of Appeal. These jurisdictions are under the control of the Supreme Court. The Constitution initially provided for the constituent jurisdictions, namely the Court of Cassation, the Court of Accounts, the Council of State and the Constitutional Council.

TESTS FOR INSOLVENCY

What are the tests for insolvency (i.e. liquidation)?

It is the state of cessation of payments of a company which determines the liquidation in the circumstances where the company has not presented an agreement to creditors for the restructuring of its debt.

What are the tests for financial distress (i.e. business rescue or administration)?

The business rescue is applicable when it appears that the company, despite its state of cessation of payments, proposes a serious plan to pay off its liabilities.

INSOLVENCY AND RESTRUCTURING PROCEDURES

Formal insolvency procedures

These are those relating to friendly and judicial liquidation.

Formal restructuring procedures

Business rescue.

Informal insolvency or restructuring procedures

Not applicable.

LIQUIDATION

What is the aim of liquidation?

The purpose of the liquidation is to discharge the debts of the company from the proceeds from the sale of its assets.

Process required to commence a liquidation

The debtor in a state of cessation of payments must make a declaration for the purpose of obtaining the opening of a liquidation procedure within 30 days following the cessation of payments. The declaration must be lodged at the registry of the competent court against a receipt.

The debtor must further lodge, within 30 days, the documents relating to the debtor's activity, the financial statements, the security rights, the inventory of the debtor's property, the employees and the employee representatives, the partners, and those wishing to consent to new contributions.

At what point does the liquidation process commence?

The liquidation process begins with the pronouncement of the opening procedure by the competent court.

Duration of the liquidation process

The competent court shall fix the period within which the closure of the proceedings shall be examined, without that period being more than 18 months after the initiation of the procedure. However, such court may extend the term to 6 months once only, on the justifications of the trustee (syndic) and by a specially reasoned decision.



Extent of court involvement in the liquidation process

The court plays an active role in the liquidation procedure in the sense that its participation starts from the opening of the procedure.

Management of the company whilst in liquidation

The powers of the Board of Directors or the executive officers end on the date of the court decision ordering the liquidation of the company.

As for the liquidator, he is in charge of the representation of the company which he engages for all the acts of the liquidation and is invested with the most extensive powers to realize assets. He is entitled to pay the creditors and to distribute among the partners the available balance.

Filing of claims

From the opening decision and within 60 days after the second insertion in a legal notice, creditors are required to file their claims with the trustee under penalty of foreclosure.

The deadline is extended to 90 days for creditors domiciled outside the country.

In the case of secured creditors, the time limit for the filing of the receivables begins to run from the notification of the notice to be personally given by the liquidator, the debt to be produced by a bearer's letter against a receipt, by registered letter with acknowledgment of receipt, or by any means leaving a written record. Known creditors must be notified without notice by the trustee if they have not filed their claims within 15 days of the first insertion of the opening decision in a legal notice newspaper. The warning takes the form of a bearer's letter against a receipt or a registered letter with acknowledgment of receipt or any means that leaves a written record.

Factors which influence the period of the administration in a liquidation

The administrative difficulties associated with litigation brought by or against the business, or the change in the mode of administration, which is henceforth entrusted to the trustee, may be factors influencing the period of administration of the business during the liquidation.

Effect of liquidation on employees

Claims arising from the employment contract or the apprenticeship contract are guaranteed by the employees' super privilege.

However, employees may be dismissed for economic reasons, when it is urgent and indispensable.

Effect of liquidation on contracts

Contracts can be maintained or terminated, according to the decision of the liquidator.

Effect of liquidation on shareholders

They will be paid from the outstanding proceeds of the assets after payment to the creditors.

Effect of liquidation on creditors

From the opening decision, the creditors are gathered in a body of creditors represented by the trustee, who is acting in the name and in the collective interest of the body of creditors. They submit their claims to the liquidator and are classified between secured and unsecured creditors. They will be paid in full or in part, depending on the assets realized.

Pending claims, litigation, arbitration

The decision to open the liquidation order shall prohibit or preclude any enforcement proceedings by the creditors in respect of the movable and immovable property, as well as any distribution procedure which has not produced an attributive effect before the opening decision. Proceedings in process are interrupted until the creditor prosecutor has filed its claim. They are then automatically taken over, the trustee duly summoned, but tend only to the establishment of the claims and the fixing of their amount.

Voidable transactions

Several transactions made during the suspect period are unauthorized and unenforceable against the body of creditors. These transactions, which would be considered void, refer to donations, payment of debts and securities.

How is the liquidation process terminated

The liquidation ends at the decision of the competent court. The competent court may declare the closing of the operations for insufficiency of assets.

Director or officer liability

Their liability may be incurred civilly and criminally.

Consequences of director or officer liability

The civil liability of directors and officers becomes applicable in the circumstances where the asset shortfall of a company is due to the fault of the directors. Indeed, the court can decide that the debts of the company are supported by the managers through an action to fill the liabilities. In addition, the directors can be the subject of an extension of the collective procedures, but also of an extra-patrimonial sanction with the personal bankruptcy.

On the criminal side, managers can be guilty of bankruptcy and other offenses affiliated to it.

BUSINESS RESCUE / ADMINISTRATION**Process required to commence a business rescue or administration**

The debtor in a state of cessation of payments must make a declaration within 30 days of the cessation and lodge it at the registry of the competent court against a receipt, for the purpose of obtaining the opening of a judicial reorganization procedure.

Within less than 30 days, the debtor must lodge, the documents relating to the debtor's activity, the financial



statements, the security rights, the inventory of the debtor's property, the employees and the employee representatives, the partners, people wishing to consent to new contributions, and if necessary, a draft concordat (or restructuring agreement).

At what point does the business rescue or administration process commence?

The process is triggered by the opening decision by the competent court.

The court pronounces the opening of the judicial recovery if it appears to him that the debtor has proposed a serious concordat (or restructuring agreement) or can indicate that a concordat can be achieved or if a global assignment is possible.

Duration of business rescue/administration process

From the opening judgment, the recovery process has a period of 6 months, extendable once for a period of 3 months. At the end of the period, the competent court may convert it into a liquidation.

Extent of court involvement in the business rescue/administration process

The court plays an active role in the reorganization proceedings, by fixing the date of insolvency and pronouncing the opening of the procedure.

Management of the company whilst in business rescue/administration

The company will be assisted by the trustee in the business rescue in order to see its financial position rectified.

The managers participate in the continuation of the management of the business, unless the competent court decides otherwise.

Filing of claims

Information as set out under the liquidation section is applicable here.

Factors which influence the period of business rescue

These factors would be relative to litigation brought against or by the liquidators.

Funding of the company whilst in business rescue/administration

There is no law provision regarding such situation.

Effect of business rescue / administration on employees

They may be dismissed for economical reasons.

Effect of business rescue / administration on contracts

These contracts continue during the business rescue.

Effect of business rescue / administration on shareholders

They are engaged throughout the bankruptcy process.

Effect of business rescue / administration on creditors

The decision to open the company's business rescue prohibits or interrupts any legal action by the creditors to enforce any

claim they may have against the debtor to pay a sum of money, or the resolution of a contract for non-payment, or the enforcement proceedings relating to movable or immovable property.

Pending claims, litigation, arbitration and effects of the moratorium

The decision to open the company's business rescue prohibits or interrupts any legal action by the creditors to enforce any claim they may have against the debtor to pay a sum of money, or the resolution of a contract for non-payment, or the enforcement proceedings relating to on movable or immovable property.

Pending proceedings are also interrupted until the creditor has filed the claim. They are then reversed automatically but tending only to the recognition of the claims and the fixing of their amount.

The costs of legal and contractual interest, interest and late payment of all claims secured by a security or not, are also fixed.

Voidable transactions

Several transactions made during the period prior to the liquidation of the company are unauthorized and unenforceable against the body of creditors. These transactions, which would be considered void, refer to donations, payment of debts and securities.

The business rescue (administration plan)

The rescue of the company goes through a plan, the concordat, which provides:

- The terms of the continuation of the business;
- A partial or total transfer of assets;
- The persons required to execute the composition and all their obligations;
- The arrangements for maintaining and financing the enterprise;
- The employment prospects and any necessary dismissals of employees for economic reasons; and
- The replacement of the managers.

Voting on the plan

The draft of the final liquidation agreement is passed by the majority in number of creditors admitted permanently or provisionally representing at least half of the total amount of the receivables.

The plan may be voted by correspondence or through a proxy.

Cram down on creditors

The plan requires the vote of creditors before being adopted and implemented.

Implementation of the plan

The plan will be implemented in accordance with the terms of the composition.



Discharge of debt

A distribution of funds between creditors can be ordered by the judge in order to discharge the debt.

Effect on suretyships

In the event of business rescue, the decision to initiate suspends any enforcement proceedings by the body of creditors, even those with security interests.

However, that decision has no suspensive effect on the surety.

How is the process terminated

The process is terminated either by the success of the recovery plan or by its conversion into liquidation.

What is the status of the company after the business rescue

The company will recover a normal financial situation. Otherwise, it will be liquidated.

Director and officer liability

The director and officer liability as set out under the liquidation section is applicable here.

SECURITY**Types of security**

These are personal securities, with suretyship and stand-alone guaranties, movable sureties, with right of retention, property withheld or assigned as security, pledge of tangible movable property, pledge of intangible property and liens, and mortgages, conventional or forced.

Statutory prescribed forms of security**Taking of security**

Securities are taken through an agreement or a court order.

Security trustees / special purpose vehicles

Any security or other security for the performance of an obligation may be created, registered, managed and carried out by a national or foreign financial institution or credit institution acting on its behalf and acting as a security agent for the benefit of the creditors of the secured obligation (or obligations) to designate it for that purpose.

Most robust form of security available to local and/or international lenders

It is the mortgage.

Registration of security

The security's registration must be done in the Trade and Credit Register, also known as RCCM (Registre de commerce et de crédit mobilier).

Stamp duty

In the case of a bankruptcy, the required process does not require Stamp Duty.

Registration costs

Idem.

The costs depend on certain factors, including the amount of security to be recorded.

Requirements for the assignment / transfer of the registered security

This requires registration with the tax authorities and the RCCM, except for a personal guarantee and a letter of guarantee. As for mortgages, they must be registered in the land register.

Instances in which securities might be vulnerable to attack

There should be no concern if the security is legally registered.

Methods of enforcement of security

The security may be sold on public auction where there is a failure to have a friendly settlement on the enforcement of the security.

That public auction is based on an enforceable judgement.

Problems experienced when enforcing security

In practice, objections may be raised by the debtor, the guarantor or a third party.

Financial assistance requirements

Not applicable.

RECOGNITION OF FOREIGN JUDGMENTS**Instances in which your court will recognize a foreign judgment**

A foreign judgment that is enforceable against a person or company domiciled in Côte d'Ivoire may be recognized by the Ivorian court.

Requirements for recognition of a foreign judgment

Several conditions should be present such as:

- The foreign court must have jurisdiction to hear the case,
- The documents declaring the judgment must be authentic,
- The rights of the defendant must have been respected,
- The decision must have become res judicata under the law of the country in which it was made,
- The judgment must not be contrary to Ivorian public order.

Requirements for the recognition of a foreign trustee, business rescue practitioner, or an insolvency practitioner

This is not generally considered.

