

SENEGAL

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FIRM INFORMATION

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TYPE OF GOVERNMENT

The government coordinates the nations politics under the direction of the first Minister. He is accountable to the President and the Parliament.

POLITICAL SYSTEM

Multi-party Democracy.

LEGAL SYSTEM

Civil law system based on French law.

TESTS FOR INSOLVENCY

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

If the receiver cannot rescue the company, the activities of the company ceases and the liquidation will then commence.

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

When the company encounters financial difficulties, the business rescue process will commence in order to save the company and allow it to continue trading.

INSOLVENCY AND RESTRUCTURING PROCEDURES

Formal insolvency procedures

Friendly liquidation and judiciary liquidation (bankruptcy).

Formal restructuring procedures

Business rescue.

Informal insolvency or restructuring procedures

Not applicable.

LIQUIDATION

What is the aim of liquidation?

There are two types of liquidations: a friendly liquidation and a judicial liquidation. Both of them aim to sell the assets of the company in order to pay the liabilities of creditors.

Process required to commence a liquidation

Friendly liquidation - the process begins with the company's

decision to wind up and liquidate the company (resolution taken through a shareholder's extraordinary meeting). The resolution will appoint one or more liquidators to proceed to liquidate the company.

Judicial liquidation (bankruptcy) - when a company is bankrupt, this means that it has financial issues and cannot pay off its liabilities. If this occurs, any creditor, the company or the court can apply for the liquidation of the company. The liquidation can also result from the failure of a "réglement préventif" (a situation aimed at avoiding the insolvency or the cessation of the activity of the company).

At what point does the liquidation process commence?

The company commences with liquidation once the dissolution is effective, no matter the kind of liquidation concerned.

Duration of the liquidation process

According to the law, the duration of the liquidation process cannot exceed 3 years starting from the effective date of the winding up of the company. However, in practice, it may happen that the 3 year period is not observed and is extended.

Extent of court involvement in the liquidation process

Unless there is an express convention between the parties or it is a friendly liquidation, the liquidation will be effected in terms of Chapter II of the AUSGIE. Art. 223. The decision to place the company into liquidation and the appointment of the liquidator will be in the discretion of the Judge. Moreover, the court decision that orders the liquidation shall also appoint one or more liquidators for a 3 year mandate which is renewable.

Management of the company whilst in liquidation

The role, responsibility and powers of the board of directors, the CEO/managing director shall terminate from the date of the court decision ordering the liquidation. From that date, the liquidator shall assume the role, responsibilities and powers related to the company. In general, the role, responsibilities and powers of the liquidator are to sell the company's assets, in order to pay the creditors and if any, distribute the outstanding balance to the shareholders.



Filing of claims

Two legal announcements informing the creditors of the liquidation must be made in a newspaper and in the Government Gazette (for secured creditors) and within a period of 30 days following the second announcement. In this period all secured and unsecured creditors must provide the liquidator with their claims. Failing this, these claims will be rejected. The deadline is 60 days for creditors resident outside of the jurisdiction. Known creditors (including those on the balance sheet) and secured creditors that have not provided their claims, shall be notified in person by registered mail or any other written notice.

Factors which influence the period of the administration in a liquidation

The liquidators replace the directors in managing the company in the liquidation process which could be a factor contributing to any delays in the process.

Effect of liquidation on employees

As the company ceases to trade as soon as the liquidation is effective, all the employees are dismissed.

Effect of liquidation on contracts

Unless otherwise stated, all contracts are terminated.

Effect of liquidation on shareholders

If available, shareholders will be paid from the outstanding proceeds of the assets after payment to the creditors.

Effect of liquidation on creditors

These are classified between secured and unsecured creditors. Payment of creditors is effected in accordance with their position in the classification of creditors. If there are sufficient assets to pay the creditors, all creditors will be paid in full. However, if the assets are insufficient to pay all the creditors, such creditors will get paid in proportion to their debts.

Pending claims, litigation, arbitration

These proceedings are suspended, save for the claims of secured creditors.

Voidable transactions

Usually, the judge determines a period within which transactions that caused the financial difficulties for the company are to be declared void. Thus several transactions that had been signed in that period would be considered void. These transactions are as follows: donations, payment of debts and securities taken in respect of a debtor's goods. Moreover if those transactions caused prejudice to the creditors, they are also considered void. Examples would be gratuitous transactions completed in the 6 months prior to the insolvency and would include certain onerous transactions.

How is the liquidation process terminated?

The liquidation process terminates when the company pays off its liabilities and distributes all the remaining assets to the shareholders. The bankruptcy judge records this termination.

Director or officer liability**Civil consequences**

A court can pronounce the personal bankruptcy of the officers that committed serious offenses. This might include those officers that have not declared certain social liabilities within a period of 30 days from the liquidation of the company.

Criminal consequences

There are two types of bankruptcy: simple bankruptcy and fraudulent bankruptcy. Sentences for directors and officers might include 5 to 10 years of a jail sentence for fraudulent bankruptcy.

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

The company must be in an insolvent state. The business rescue must be declared 30 days after the declaration of insolvency and the declaration must be filed with the competent officer of the court with documents to justify the financial situation of the company (documents include an extract from the Register of Commerce, turnover of the company, financial statements, cash flow statements, debts and receivables statements and inventory of all of the company assets).

At what point does business rescue commence?

First, the debtor has to propose an offer of fair composition 15 days after the declaration of insolvency. Then, if the composition is accepted, the relevant court must pronounce the opening of the procedure before the expiration of a period of 30 days after such referral. The relevant court pronounces the commencement of the business rescue process if it notes the insolvency (18 months after the pronouncement of the decision of opening), and if it accepts that the debtor proposed a fair composition (detailing the measures for the recovery of the company, the payment plan of receivables and the guarantees of execution of the Concordat).

Duration of business rescue

18 months after the decision opening the procedure.

Extent of court involvement in the business rescue

The relevant court actively participates in the attempts to rescue the business by fixing the date of insolvency and pronouncing on the opening of the procedure. The court can designate a judge or any qualified person to obtain all the information on the financial situation of the debtor and the composition of the recovery that he proposes. The court will appoint a bankruptcy judge (responsible for ensuring the expediency of the procedure) and/or one or three receivers (in charge of representing the creditors).

Management of the company whilst in business rescue

The receiver will assist the company in the business rescue process in order to allow the company to reach a normal financial situation.



Filing of claims

Two legal announcements informing the creditors of the business rescue must be made in a newspaper and in the Government Gazette (for secured creditors) and after a period of 30 days following the second announcement, all secured and unsecured creditors must provide the business rescue practitioner with their claims. Failing this, these claims will be rejected. The deadline is 60 days for creditors living out of the jurisdiction. Known creditors (including those in the balance sheet) and secured creditors that have not provided their claims, shall be notified in person by registered mail or any other written notice.

Factors which influence the period of business rescue

During the process of business rescue, the receiver assists the directors. Directors cannot take any decision or act of alienation without the consent of the receiver.

Funding of the company whilst in business rescue

There is no restriction concerning the funding of the company in business rescue, save for the loan contracts that must be declared to the bankruptcy judge.

Effect of business on employees

The aim of the opening of collective proceedings is not to terminate the working contracts of employees. However redundancies for economic reasons can occur.

Effect of business rescue on contracts

These continue in business rescue (supply agreements, leases, instalment sale agreements and/or facility agreements).

Effect of business rescue on shareholders

Following the opening of the business rescue, all stocks, shares and securities owned by shareholders are blocked. They can be transferred only with the approval of the bankruptcy judge. The transferability of the social rights of the officers will be recorded with the Register of Commerce.

Effect of business rescue on creditors

The decision of opening of the business rescue procedure suspends all of the creditor proceedings. Time is needed to identify the rights and claims against the company. The suspensions of the individual proceedings also apply to the creditors, which claims are secured by a general privilege or special security.

Pending claims, litigation and arbitration

All these proceedings are suspended.

Effect of the moratorium

The approval of the moratorium renders it binding on all the creditors whatever the nature of the claims.

Voidable transactions

Usually the Judge determines a period within which transactions that caused the financial difficulties for the company are declared void. Thus, several transactions that had been signed in that period are considered void. These transactions are as follows: donations, payment of debts, and securities taken in respect of the debtor's goods. Moreover if those transactions caused

prejudice to the creditors, they would also be considered void. Examples would be gratuitous transactions completed in the 6 months prior to the insolvency and would include certain onerous transactions.

The business rescue

The fair composition is set out in a plan (Concordat) and is composed as follows:

- Terms for the continuation of the company's business;
- Partial transfer of assets with precise indications of assets that need to be sold;
- Persons entitled to execute the composition and all subscribed commitments necessary for the business rescue;
- Terms of maintenance, financing and settlement of liabilities that existed prior to the decision of opening;
- Employee redundancies that must be attended to; and
- Replacement of the directors.

Voting on the plan

The bankruptcy judge must give approval for the fair composition plan if he believes that its terms are realisable. The receiver presents a report on the state of the business rescue and presents a report on the situation in respect of the state of assets and liabilities of the company and his opinion on the composition. After submission of the report, creditors can vote on the plan. The vote by correspondence and procuration are admitted.

Cram down on creditors

The court can impose the plan on the creditors.

Implementation of the plan

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

Discharge of claims

As indicated in the approved composition.

Effect on suretyships

A composition will have no effect on the suretyships that will remain unchanged and with full effect.

How is the process terminated?

The process terminates when the recovery of the company becomes effective, otherwise the procedure is converted into liquidation.

What is the status of the company after the business rescue?

There are 2 possible outcomes: The company may recover to a normal financial situation or in the event of failure of the business rescue the process is converted into liquidation.

Director and officer liability

Civil consequences

The same consequences as applies to liquidations are applicable here.



SECURITY

Types of security

Personal guarantees: guarantee and/or a letter of guarantee.
Property guarantees: right to hold the debtor's assets, lien, retained or transferred property as a guarantee and/or a pledge.

Mortgages: either by agreement or by a court order.

Taking of security

Save for the personal guarantees, any other securities are taken through an agreement or a court order.

Security trustees or special purpose vehicles

The security trustee is an agent responsible for the constitution, the inscription and the realisation of one or more securities or any other guarantee in respect of the execution of an obligation. The security trustee has the power to represent the creditors; he also defends their interests.

Most robust form of security available to lenders

It is the mortgage over real estate property.

Registration of security

The registration of tangible security is done on the request of the creditor, or the securities agent or the constituent with the Register of Commerce.

The registration of the general preferential of the public treasury, of the customs administration and the institution of social welfare, is done at the behest of the public accountant of the creditor's administration.

For the inscription of securities, the security trustee, the constituent or the public accountant must present to the court officer/office in charge of holding the trade registry, a registration form containing details of the identification and the domicile of the parties, the nature and the date of the title generator of the security, the duration of the registration, the maximum amount of the secured debt and the designation of the encumbered assets.

Mortgages on real estate property are registered with the land register.

Stamp duty

Stamp duty: 2000 FCFA for the competent court office, inscription done by the security trustee, the constituent or the public accounting.

Registration costs

The calculation of the cost payable shall depend on many factors, such as the amount of the secured obligation. The fees are normally payable by the debtor in the case of a security agreement and by the creditor in the event of security given under a court order.

Requirements for the assignment or transfer of security

The security must be registered with tax authorities and the Register of Commerce, save for a personal guarantee and letter of guarantee. Mortgages over property must be registered with the land register.

Instances in which securities might be vulnerable to attack

If the security is legally registered, there should be no concern regarding its enforcement.

Methods of enforcement of security

Based on an enforceable judgement, the security shall be sold on public auction where there is a failure to have a friendly settlement on the enforcement of the security.

Problems experienced when enforcing security

Objections can be raised either by the debtor, the guarantor or a third party that may have an interest in preventing the enforcement of the security.

Financial assistance requirements

Not applicable.

RECOGNITION OF FOREIGN JUDGMENTS

Instances in which your court will recognize a foreign judgment

Subject to exequatur, any final judgment for a specific sum, including an award of damages, given by a court of the State of New South Wales, as the case may be, under the Transaction Documents may be enforced in Sénégal by suit on the judgment.

Requirements for recognition of a foreign judgment

A foreign judgment would be recognised and accepted by the courts of Sénégal without re-trial or examination of the merits of the case, unless it is shown that (i) the foreign court did not have jurisdiction in accordance with its jurisdiction rules, (ii) the party against whom the judgment of such foreign court was obtained had no notice of the proceedings, or (iii) the judgment was obtained through collusion or fraud or was based on clear mistake of law or fact, or (iv) the judgment was contrary to public policy applicable in Sénégal.

