ANGOLA
FBL ADVOGADOS

FIRM INFORMATION

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COUNTRY INFORMATION

Republic of Angola, located on the West Coast of Africa.

TYPE OF GOVERNMENT

Presidential Republic

POLITICAL SYSTEM

Democratic system.

LEGAL SYSTEM

Roman-Germanic matrix, based on a written Constitution.

TESTS FOR INSOLVENCY

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

Insolvency proceedings are applicable to natural persons, commercial entities, associations and foundations and adjacent inheritance. Insolvency is not applicable to public entities, except companies in the public domain and with minority public holdings and banking and non-banking financial institutions linked to currency and credit, insurance activity, the stock market and which provide services involving the holding of funds or securities of third parties and undertakings for collective investment.

Before Law No. 13/21 of 10 May, bankruptcy and insolvency were only dealt with in the 1961 Code of Civil Procedure, which were out of line with the national and international socio-economic context.

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

The recovery process can be extrajudicial or judicial.

INSOLVENCY AND RESTRUCTURING PROCEDURES

Formal insolvency procedures

The insolvency process is a universal execution process whose appraisal and decision is the responsibility of the Court. The process usually commences with an application from the insolvent entity or from any creditor and is followed by a hearing (for which the debtor is notified). Following an application to Court, an insolvency administrator is appointed, who must be named to represent the insolvent estate.

Formal restructuring procedures

The formal restructuring procedure in Angola is known as judicial recovery. The objective of judicial recovery is to overcome the difficult economic situation in which the debtor finds itself, by drawing up a Judicial Reorganization Plan. Judicial recovery can be requested by the debtor who, at the time of the request, has been regularly carrying out its activities for more than 12 months. The initial petition is filed with the Court. After acceptance of the request and after the appointment of the trustee, the Court orders the suspension of all actions and executions against the debtor, orders the citation of creditors and the requirement for giving public notice. The judicial reorganization plan is presented by the debtor, to the Court, within 45 days of the publication of the decision that commences judicial recovery, and any creditor may challenge the judicial reorganization plan within 30 days from the publication of the list of creditors.

Informal insolvency or restructuring procedures

Angolan law only provides for extrajudicial recovery, which is the recovery of a debtor in financial difficulty, who commits to the payment of creditors. Such a process should only be initiated when the company can overcome its financial problems and can, with a high degree of probability, remain in business after the conclusion of an agreement. Creditors representing 10% of unsubordinated claims may, by written communication, propose the negotiation of an extrajudicial recovery plan, which must comply with various requirements and be approved by 3/5 of the creditors' represented. The extrajudicial recovery plan may or may not be homologated. In so far as informal restructuring is concerned, homologation refers to a court endorsement, whose judgment is enforceable. The extrajudicial recovery plan can only be challenged within 30 days from the date of the last publicity act.

LIQUIDATION

What is the aim of liquidation?

The main aim of liquidation is to close the company and cease its commercial activity in order to allocate the assets of the company to the payment of the debts and thereafter to distribute the remainder of the assets to the shareholders of the company.

Process required to commence a liquidation

The liquidation process may be regulated by the Articles of Association of a company and, if so, would commence in accordance with such provisions.

Alternatively, a resolution could be passed by the shareholders of a company for the commencement of a voluntary liquidation or the Court, when approached, can place a company in liquidation.

Liquidation can also occur when - after the decision declaring insolvency becomes final and after the meeting for the appraisal of the report has been held - the insolvency administrator proceeds to sell all seized assets of the insolvent estate.

Banking financial institutions, on the other hand, may be dissolved by decision of the shareholders or by virtue of the revocation of authorization from the National Bank of Angola. Upon dissolution, financial institutions are immediately placed in liquidation.

At what point does the liquidation process commence?

The liquidation process commences from the moment the shareholders pass a resolution to commence with the insolvency process (or an agreement is concluded to this effect) or when an application is made to Court.

Duration of the liquidation process

The insolvency process must be closed within a maximum period of 1 year, determined from the date of the meeting to assess the report, or at the end of each subsequent period of 6 months.

Extent of court involvement in the liquidation process

The Court declares the judicial liquidation of the company and its assets. Thereafter, the Court is not typically involved in the process, unless approached on an ad hoc basis to resolve certain disputes.

Management of the company whilst in liquidation

The management of the company whilst in liquidation is placed in the hands of the insolvency administrator, who assumes the functions of the management of the company and has an obligation to act in the best interests of the company.

Filing of claims

Creditors may submit proof of their claims to the insolvency administrator after the insolvency process commences and request payment of their claims. After the declaration of insolvency, all the assets of the company are under the control of the insolvency administrator, who will promote the sale of the assets and thereafter distribute payments to the creditors in a particular order of preference.

Factors which influence the period of the administration in a liquidation

Some of the factors that may delay the winding-up process include:

- assets of the company being concealed;
- assets having been sold by the insolvent entity; or
- legal transactions concluded after the declaration of insolvency by the Court (even though such actions are ineffective).

Effect of liquidation on employees

Upon the commencement of the insolvency, employment contracts automatically terminate. However, the claims of employees must be paid first place.

Effect of Liquidation on contracts

Contracts that are in force as at the date of the commencement of insolvency can be ratified by the insolvency administrator if they are beneficial to the insolvent entity. In the absence of ratification, the creditor shall request compensation as a result of the termination of the agreement.

Effect of liquidation on shareholders

If there is surplus cash, after all creditors have been paid, the remaining assets (or proceeds from the assets) are distributed among the shareholders.

Effect of liquidation on creditors

Creditors may submit proof of their claims to the insolvency administrator and are paid from the proceeds of the sale of assets in a particular order of preference.

Pending claims, litigation and arbitration

Once insolvency is declared, all pending judicial and arbitration proceedings in relation to the company's assets are pended, unless they are subject to appeal. The aforementioned does not apply to processes where the insolvent entity is the claimant.

How is the liquidation process terminated?

Once the insolvency is declared, notification of the insolvency is published in the official Gazette and in the most read newspaper in the district. The process is terminated following the sale of all assets and rights of the insolvent entity to its assets. The deregistration process arises following the winding-up process.

Director or officer liability

Directors may be held personally liable for their acts or omissions in relation to a company.

Consequences of director or officer liability

A director or officer may be subject to civil and criminal liability for damage that he or she has caused to the insolvent's assets.

Civil consequences

A director or officer of a company may be held personally liable for any damages suffered by the company, the shareholders and/or the creditors as a result of his or her acts or omissions.

Criminal consequences

If a director or officer commits an act such as fraud, provides false information or misappropriates assets, he or she can be held criminally liable.

JUDICIAL RECOVERY

What is the aim of judicial recovery?

The judicial recovery process does not reach the liquidation stage. This is because it aims to facilitate the recovery of the company through the formulation of a recovery plan.

Process required to commence judicial recovery

The company is placed in judicial recovery at the instance of the company itself, the remaining shareholders, or by creditors who hold 10% of the non-subordinated credits of the company.

At what point does judicial recovery commence?

It begins with the institution of a petition, accompanied by:

i) a detailed exposition of the concrete causes of the debtor's patrimonial situation and the reasons for the difficult economic situation in which the company finds itself; and

ii) accounting statements for the last two fiscal years.

Duration of the judicial recovery process

In the decision to grant judicial recovery, the judge sets the period for execution of the judicial recovery plan, which must not exceed 1 year.

Extent of court involvement in the judicial recovery process

After the judicial recovery is granted, the judge is only involved if there is a breach by the company of its obligations in terms of the judicial recovery plan or if the obligations in the judicial recovery plan are fulfilled and the Court declares, by sentence, the end of the judicial recovery process.

Management of the company whilst in judicial recovery

The management of the company whilst in judicial recovery is placed in the hands of the administrator, who assumes the functions of the management of the company and has an obligation to act in the best interests of the company.

Filing of claims

If any creditor contests the judicial recovery plan, the judge calls a general meeting of creditors to resolve on the recovery plan. If the plan is rejected at the general meeting of creditors, the judge has the power to declare the insolvency of the company.

Factors which influence the period of the administration in a judicial recovery

In the judicial recovery process, anything that prevents the administrator from obtaining reliable information necessary to monitor the company's activities can delay the process.

Effect of judicial recovery on employees

The complete list of workers must be included in the initial petition for judicial recovery, including the respective functions, salaries, compensation and other remuneration to which they are entitled, with an indication of the month to which they relate and a breakdown of the amounts pending payment.

Effect of liquidation on contracts

The administrator may enter into new contracts when necessary, if approved by a judge, in order to assist in the exercise of his functions. Existing contracts are reviewed and included in the judicial reorganisation plan.

Effect of liquidation on shareholders

Shareholders have the obligation to provide information to the administrator and abide by the provisions of the judicial recovery plan.

Effect of liquidation on creditors

A creditors' commission is constituted which is an advisory body that exercises a supervisory and/or advisory function over the judicial body that administrator, the execution of the reorganization plan, progress of the process and compliance with the law.

Pending claims, litigation and arbitration

The suspension of all legal actions and executions, including in respect of taxes, against the company is ordered.

Voidable transactions

Every act which may affect the insolvent entity's assets is automatically ineffective unless it is ratified by the Judicial Administrator. It will only be ratified if there is a benefit to the insolvent entity's assets.

How is the judicial recovery process terminated?

Judicial recovery ends with the fulfilment of overdue obligations. The judge declares, by sentence, the end of the judicial recovery and determines the payment of the administrator's fees, the determination of the balance of the judicial costs, presentation of the judicial administrator's report, dissolution of the creditors' committee and communication to the commercial registry office.

Director or officer liability

Directors may be held personally liable for their acts or omissions in relation to a company.

Consequences of director or officer liability

A director or officer may be subject to civil and criminal liability for damage that he or she has caused to the insolvent's assets.

Civil consequences

A director or officer of a company may be held personally liable for any damages suffered by the company, the shareholders and/or the creditors as a result of his or her acts or omissions.

Criminal consequences

If a director or officer commits an act such as fraud, provides false information or misappropriates assets, he or she can be held criminally liable.

SECURITY

Types of security

There are two types of security, with different levels of seniority available in Angola - personal security and security in rem. The in rem guarantees would, in an order of preference, prevail over personal guarantees. The most common of the in rem guarantees is the mortgage over real estate and the commercial pledge, which is often used to take over shares in a company.
The personal guarantees, on the other hand, that are commonly used are bails, guarantee deposits and bank guarantees.

Taking of security

In order to take a mortgage over real estate, the law requires the granting of a public deed (i.e. formalizing the mortgage before a notary by way of a written document signed by the parties) and thereafter the registration of the deed in the Land Registry Office. A pledge over shares or over any movable property will require an agreement between the parties. With regard to a pledge over shares, such security must be registered in the Commercial Registry Office.

Security trustees and special purpose vehicles

Security trustees and special purpose vehicles are not used in Angola.

Most robust form of security available to lenders

A mortgage over real estate and a pledge over shares is the most common and robust form of security available in Angola.

Registration of security

Securities in Angola need to be registered. Registration is done depending on the nature of the security or of the secured asset, the Land Registry Office (real estate), the Commercial Registry office (company related matters), by the Vehicles Registry Office (vehicles) or even by the Central Registry Securities Office - CRGM - Central de Registo das Garantias Mobiliárias – entity responsible for registration of all other types of securities which are not registered by the previous registry offices whatever their name, nature of the secured asset and way of constitution. Eventually, in future, CRGM will the sole registry office congregating all registry offices in one, with different departments.

Stamp duty

Stamp duty is payable in respect of security taken in terms of Angolan law, but the costs depend on the nature of the security taken and the duration of its existence. As such, security with a duration of less than 1 year attracts stamp duty of 0.3% and security with a duration equal to or above 1 year attracts stamp duty of 0.2%. Security without any duration or with a duration equal to or above 5 years attracts stamp duty of 0.1%. Such tax rates are applied to the total value of the security. The duty is payable to the tax authority by the beneficiary of the security, until the end of the following month in which the security was taken.

Registration costs

The registration costs for security vary as such costs are dependent on the value of the loan that is being secured. The cost of registering security is payable when the documents are submitted to the relevant registry.

Requirements for the assignment or transfer of security

In order to transfer or assign real security to another person or entity, a public deed needs to be completed, and an irrevocable power of attorney is generally executed authorizing a person to give effect to the transfer and registration in the Land Deeds Registry. Movable property or shares, on the other hand, can be transferred or assigned pursuant to an agreement to that effect concluded between the parties together with re-registration, in the case of shares, in the Commercial Deeds Registry.

Instances in which security might be vulnerable to attack

Angolan law creates an order of preference in respect of security taken. It provides that senior security (Privilégios Creditórios) in favour of the Government and/or Local Authorities (e.g. General Tax Authority), or in favour of other third parties (e.g. employees), ranks ahead of in rem guarantees that are granted in favour of third parties. Thereafter, personal security is ranked (i.e. bails and guaranteed deposits).

Methods of enforcement of security

Security is enforced in Angola by making application to Court. No form of security can be enforced outside of Court.

Problems experienced when enforcing security

The main concern surrounding the enforcement of security in Angola relates to the bureaucracy in the public service coupled with the lack of knowledge of persons employed in the relevant offices and Courts regarding the procedures for the enforcement of security.

Financial assistance requirements

If a company wishes to grant security to another company, approval from its competent corporate bodies (which can be the shareholders and/or the board of directors) is necessary.

RECOGNITION OF FOREIGN JUDGMENTS

Instances in which your court will recognize a foreign judgment

Foreign judgments may be recognized in Angola. To do so, the foreign judgment would need to be analysed by the competent Angolan Supreme Court, whereafter, if it deems it fit, it can confirm the judgment.

Requirements for recognition of a foreign judgment

In order for a foreign judgment to be recognized in Angola, the following requirements will need to be satisfied:

- There must be no doubt about the authenticity of the document and the decision made in such judgment;
- The judgment must be final and not subject to appeal or retrial, according to the applicable foreign law;
- The judgment must have been decided by a Competent Court according to the Angolan law on conflicts of jurisdiction;
- The same case must not have been pending before or decided by an Angolan Court (except where the enforcement of a foreign judgment is being sought when an Angolan Court has recognized that such foreign Court or arbitral tribunal has jurisdiction);
- The defendant to the proceedings must have been duly notified directly or indirectly, save where Angolan law would exempt such notification;
- The judgment must not contain decisions contrary to Angolan public policy principles; and
- Such judgment must not contravene Angolan private law, should such law be found to be applicable pursuant to Angolan provisions on the law of conflicts.

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

No provision exists in Angolan law for the recognition of a foreign trustee, business rescue practitioner or insolvency practitioner.


INSOLVENCY
BANKRUPT