DRC
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FIRM INFORMATION

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COUNTRY INFORMATION

The Democratic Republic of Congo ("DRC") is located in Central Africa. To the north, it borders the Central African Republic and South Sudan. To the east, it borders Uganda, Rwanda, Burundi, and Tanzania. To the south, it borders Zambia and Angola and the Republic of Congo and the Atlantic Ocean to the west. The DRC is the second-largest country in Africa and the 11th largest in the world. With a population of over 75 million people, the DRC is the most populous French-speaking country, the 4th most populous nation in Africa, and the 19th most populous country in the world.

TYPE OF GOVERNMENT

A Democracy and Semi-Presidential Government.

POLITICAL SYSTEM

The Constitution, promulgated on 18 February 2006 as amended by the Law No 11/002 of January 2011, established the institution of the Third Republic which introduced a democratic system and a semi-presidential system into the DRC with a bicameral Parliament.

LEGAL SYSTEM

The Congolese legal system is primarily based on Belgian law. This is as a result of the colonial past and occupation of the DRC by Belgian colonialists, who influenced the legal system of the DRC. The Constitution endorsed the doctrine of separation of powers, which emphasizes the independence of the judiciary, legislature, and government executive bodies. The judiciary is composed of the Constitutional Court, the Civil and Military Courts under the control of the Court of Cassation, the Council of State and the Administrative Courts. Specialised Courts may also be established ad hoc, such as Juvenile Courts.

TESTS FOR INSOLVENCY

The test for insolvency (i.e. liquidation)

Insolvency law in the DRC is governed by the Uniform Act on the organization of collective proceedings and the discharging of debt dated 10 September 2015 (Uniform Act on collective proceedings or UACP). Collective procedures established by the UACP are open to all individuals who conduct an independent professional activity – this includes self-employed individuals, private legal entities as well as any state-controlled entity formed as a private legal entity. The activities are not only restricted to commercial activities but also include civil, handicraft, or agricultural activities[1].

Conciliation, preventive settlement, judicial redress and liquidation procedures shall apply to legal entities governed by private law that carry out an activity subject to a special regime, unless otherwise provided for in the specific regulations governing that activity. Activities subject to a special regime within the meaning of this Uniform Act and the texts governing them include, in particular, those of credit institutions within the meaning of banking law, microfinance institutions and financial market participants, as well as those of insurance and reinsurance companies of the States parties to the OHADA Treaty.

A company may be placed in liquidation if it is unable to pay its debtors or if it has lost its share capital[2]. Insolvency means the suspension of payments (cessation des paiements), which is the trigger allowing a party to initiate curative insolvency proceedings. It is defined as the state in which the debtor is unable to pay its outstanding liabilities with its current assets, but excluding from outstanding liabilities, credit reserves or payment terms which the debtor enjoys from its creditors, and which allow it to meet its outstanding liabilities[3].

However, it should be noted that key concepts such as an "irremediably compromised situation" (which is the pivotal point between judicial recovery and the liquidation of assets) and "serious financial or economic difficulties" (which is the trigger allowing the debtor to initiate preventive settlement) are not specified in the UACP and have only been defined through case law.

The test for financial distress (i.e. business rescue or administration)

Business rescue is applicable when a company is unable to pay its debts with its available assets[4]. A Competent Court will order the commencement of business rescue proceedings if it appears that the debtor has proposed a genuine composition with its creditors. Failing which, the Court will make an order for the liquidation of the company. The Court may, at any time during business rescue proceedings, place the company in liquidation if the Court believes that the debtor is not offering, or is no longer able to offer, a genuine composition with creditors[5].

[1] Article 1-1 of the UACP
[2] Articles 2 and 25 of the UACP
[3] Article 1-3 of the UACP
[4] Article 25 of the UACP
[5] Article 33 of the UACP

INSOLVENCY AND RESTRUCTURING PROCEDURES

Formal insolvency procedures

In the DRC, there are 3 formal insolvency procedures for a company, namely, precautionary regulation, judicial redress and liquidation procedures. The precautionary regulation is a pre-insolvency rescue procedure designed to avoid the cessation of payments or the cessation of the activities of the company and allows for the discharging of the debts of the company by way of a preventive agreement[6]. Judicial redress aims to safeguard the company and discharge its debts by way of an agreement of redress. As for the liquidation procedure, its purpose is the realization of the assets of the debtor to discharge its debts.[7]

New procedures have been created for companies facing actual or foreseeable difficulties, but which are not yet insolvent, with a view to avoiding suspension of payments and safeguarding the relevant debtor, by concluding an amicable agreement with its main creditors and counterparties. It is a consensual and confidential procedure.

The Uniform Act, which accounts for entrepreneurs, also covers "every natural person exercising an independent professional activity whether civil, commercial, handicraft or agricultural"[8]. The resulting effect is that it applies to farmers, craftsmen, business starters, freelance professions, whether regulated or not.

The Uniform Act provides for a conciliation procedure. It gives exclusive jurisdiction on collective proceedings to any Competent Court in Member States[9]. The Uniform Act provides for the rules to ensure the regulation and supervision of legal representatives in a bid to professionalize the trades of bankruptcy administrators and preventive settlement experts. Certainly, the role of bankruptcy administrators in ensuring that collective proceedings run smoothly and efficiently cannot be overemphasized. This regulation is considered an essential factor in ensuring the achievement of the objectives of the Uniform Act. Thus, if bankruptcy administrators are found to be technically incompetent, of bad character, careless regarding the rules of conduct of proceedings or if they embezzle funds generated from the proceedings, the company will not be rescued, nor will its creditors be paid.

There are two preventive proceedings in insolvency matters where the company has not yet suspended payment(s).

These are :
i. Conciliation, which is a completely new procedure; and
ii. Preventive settlement, which has innovated only in some aspects.

One of the innovations of the Uniform Act is the establishment of a conciliation procedure with a strong amicable dimension, in the sense that its commencement does not affect the rights of creditors or those of the debtor. A conciliator who is appointed is a mere facilitator in finding an agreement between the parties, i.e. he/she is an intermediary between the debtor and creditors.[10]

Although preventive settlement proceedings have not been substantially modified, important amendments were made to enhance its efficiency and ensure better protection for creditors.

The conciliation overarching objective is to find an amicable agreement with major creditors and co-contractors of the debtor in order to relieve him of his difficulties. Regarding the conditions for the commencement of a preventive settlement procedure, the debtor must not be in suspension of payment and must also prove severe financial or economic difficulties. Among the documents to be furnished by the debtor in support of his/her claim, there must be a proposed agreement with creditors. It is in view of this proposed agreement and its seriousness that the procedure may be instituted through an order of the President of a Competent Court, which shall also appoint an expert in such matters. It is worth noting that the Uniform Act on collective proceedings provides for specific rules to ensure the independence and impartiality of the President of the Competent Court and allows the debtor and any creditor to request for his/ her replacement if neither impartiality or independence are met.[11]

Regarding creditors, a "new money" privilege has been instituted for people who grant new loans or supply services or goods to companies facing difficulties. Before approving the preventive settlement, the Competent Court must verify that the conditions for granting this privilege are met and shall mention this fact as well as the amount in its decision to avoid subsequent disputes. A new simplified preventive settlement procedure is also provided. This variant of preventive settlement is meant for small businesses and remains optional. When they meet the conditions for a preventive settlement procedure, the parties have the choice to commence the procedure or not.

Formal precautionary regulation procedures

A debtor company may approach a Court regarding precautionary regulation procedures. It would be required to indicate its financial position, the prospects of it recovering, and the extent to which its liabilities will be settled. The request is sent to the President of the Competent Court having jurisdiction.[12]

[7] Article 2 of the UACP.
[8] Article 1-2 of the UACP.
[9] Paragraph 1 and 2 of article 3 of the UACP.
[10] Chapter 1 of Title II of the UACP.
[11] Chapter 2 of Title II of the UACP
[12] Article 5-2 of the UACP

The debtor's request must be accompanied by the following documents, which must be dated, signed, and certified by the applicant, and must be dated less than thirty (30) days prior -

a certificate of registration, enrolment, or declaration of activity in a professional register or association or, failing that, any other document proving the regularity of the activity carried out by the debtor;

i. summary financial statements including the balance sheet, income statement, a financial table of resources and uses, the attached statement and, in any event, the amount of turnover and profits or losses for the last three (03) financial years or, failing that, any other document that can establish the financial and economic situation of the debtor;

ii. a statement of cash flow and a statement of receivables and payables, indicating the names, capacities, and addresses of creditors and the due dates or, failing that, any other document establishing the debtor's ability to meet its current liabilities with its available assets;

iii. a document indicating the number of employees and the amount of wages and payroll expenses on the date of the application or, failing that, any other document that can be used to identify and count the debtor's employees and estimate the amount of wages and payroll expenses;

iv. a statement from the debtor declaring on his honor that he is not in a state of insolvency;

v. a detailed statement of the personal and real securities given or received by the company and its officers;

vi. a statement from the debtor indicating that they are not currently subject to a conciliation agreement and, in any event, that they are not subject to any ongoing preventive settlement, judicial restructuring or liquidation proceedings;

vii. an inventory of the debtor's assets, indicating any movable assets subject to claims by their owners and those subject to a retention of title clause or, failing that, a provisional inventory if the petition is filed by a debtor that meets the definition of a small business;

viii. a document listing the names, first names, and addresses of the employee representatives;

ix. in the case of a legal entity, a list of the members who are jointly and severally liable for its debts, indicating their surnames, first names, and addresses, as well as the names and addresses of its directors;

x. if the debtor proposes a person to be appointed as an expert in preventive settlement, a document indicating the full name, qualifications, and domicile of that person and a statement from that person specifying that they meet the conditions set out in the Uniform Act under review;

xi. where applicable, a document indicating the surnames, first names, positions, and addresses of the persons who intend to make a new cash contribution or provide a new good or service, with an indication of the amount of the contribution or the value of the good or service;

xii. a draft preventive agreement; and

xiii. where applicable, a document indicating the surnames, first names, and addresses of the creditors joining the debtor's application, and the amount of their claims and any security attached to them.

No application for the opening of preventive settlement proceedings may be filed by the debtor: (i) if a preventive or reorganization agreement is still in force; (ii) before the expiry of a period of three (03) years from the approval of a previous preventive agreement; and (iii) before the expiry of a period of eighteen (18) months from the end of a preventive settlement that did not result in a preventive agreement.

Within 30 days of filing a petition with the Court, the company must make an offer to its creditors indicating the measures and conditions envisaged for the recovery of the company, including -

- arrangements for the continuation of the business;
- the people required to run the company and all commitments needed to rescue the company;
- the terms for maintaining and financing the company to ensure the implementation of a plan;
- the identification and retrenchment of redundant employees; and
- the replacement of the executives of the company.

If the draft composition agreement appears to be serious, the president of the competent court opens the proceedings and appoints a preventive settlement expert to report on the financial and economic situation of the debtor company and the prospects for recovery, taking into account the delays and discounts granted or likely to be granted by creditors and any other measures contained in the draft composition agreement.

The appointed expert shall be subject to the provisions and requirements of this Uniform Act. (Provide every guarantee of independence, neutrality, and impartiality in all collective proceedings. He must not have or derive any personal, moral, or financial interest in the mandate entrusted to him). He shall be informed without delay of his assignment by the president of the competent court by letter delivered by hand against receipt or by registered letter with acknowledgment of receipt or by any other means leaving a written record. The president of the competent court may, in his decision appointing the expert, grant him an advance on his remuneration.

The debtor or any creditor may, at any time, request the president of the competent court to replace an expert who

falls under any of the incompatibilities set out in this Uniform Act or who does not act diligently in the performance of his duties. In this case, the president of the competent court, upon receiving an objection, shall hear, in a closed hearing, the explanations of the applicant(s) and the expert. His decision, pronounced in open court, shall be accompanied by provisional enforcement by operation of law. It may be appealed within fifteen (15) days of its pronouncement.
It is important to note that the decision to initiate preventive settlement suspends or prohibits all individual proceedings seeking payment of debts incurred prior to said decision for a maximum period of three (03) months, which may be extended by one (01) month under the conditions below -

It is important to note that the decision to initiate preventive settlement suspends or prohibits all individual proceedings seeking payment of debts incurred prior to said decision for a maximum period of three (03) months, which may be extended by one (01) month, upon a specially reasoned decision by the President of the competent court at the request of the expert or the debtor.[13]

Within 3 months of the date on which the Competent Court is approached (or on an extended time as sanctioned by the President of the Court), an expert (appointed to assess the affairs of the debtor and broker an agreement with the creditors and the company) will submit a copy of its report, which contains the preventive agreement proposed by the debtor with its creditors, to the debtor and file two copies with the registry of the Competent Court[14]. The expert is required to comply with these deadlines, failing which he or she may be held liable to the debtor or creditors. After the filing of the report, the President of the Competent Court will summon the debtor, without delay and at least 3 days before the hearing, to be heard in a non-public hearing and may call the expert or one or more creditors[15]. The debtor may bring the matter before the competent court himself. The preventive settlement continues to have effect, in particular with regard to the suspension of individual proceedings by creditors, until the court rules. If the court is not seized of the matter under the conditions mentioned above or if it does not rule within thirty (30) days of being seized of the matter, the preventive settlement shall automatically terminate, with creditors regaining the exercise of all their rights and the debtor regaining full administration of his assets.

The Court can make a ruling on the matter immediately or at the latest within 30 days from the date on which the case was brought[16]. The Court will either determine that the company be rescued (with the security of a moratorium on claims against it), or the company be placed in liquidation.

If the competent court finds that the debtor has ceased payments, it shall, ex officio, rule on the judicial reorganization or liquidation of the assets. Where the debtor's situation so warrants, it shall approve the preventive agreement, noting the terms and concessions granted by the creditors and acknowledging the measures proposed by the debtor for the reorganization of the business. The payment terms and discounts granted by creditors may vary. The competent court shall approve the preventive agreement if: (i) the conditions for the validity of the composition agreement are met; (ii) no grounds based on the collective interest or public policy appear to prevent the composition agreement; and (iii) the payment terms granted shall not exceed three (03) years for all creditors and one (01) year for wage creditors.

The approval of the preventive agreement makes it binding on all creditors prior to the decision to initiate preventive settlement proceedings, whether their claims are unsecured or secured by collateral under the terms and conditions of payment and discounts they have granted to the debtor. The approval of the agreement also makes it binding on persons who are jointly liable or who have granted a personal security interest or assigned or transferred property as security when they have paid the debtor's debts incurred prior to that decision.

The decision of the competent court approving the preventive agreement terminates the expert's assignment and the preventive settlement procedure.

The decisions of the competent court relating to the preventive settlement are provisionally enforceable. Decisions rejecting the application to initiate preventive settlement proceedings or terminating preventive settlement proceedings, or rejecting the approval of a preventive composition agreement, may be appealed by the debtor before the court of appeals within fifteen (15) days of their pronouncement. The decision to initiate preventive settlement proceedings may be appealed by creditors and the public prosecutor before the court of appeals within fifteen (15) days of the first publication if they believe that the company is insolvent. The decision approving the preventive agreement may be appealed by the public prosecutor and creditors before the court of appeals within fifteen (15) days of its pronouncement for the former and from the date of the first publication for the latter. The appeal shall be lodged with the court of appeals within fifteen (15) days of the pronouncement of the decision or, in the case of the latter, from the date of the first publication.

The court of appeal shall rule within thirty (30) days of the case being referred to it. If the court of appeal finds that the debtor has ceased payments, it shall provisionally set the date of cessation and order the reorganization or liquidation of the assets and shall refer the proceedings to the court competent to rule, in particular on the appointment of a bankruptcy judge. Within three (03) days of the decision of the court of appeal, the clerk of that court shall send an extract thereof to the clerk of the court of first instance, which shall publish it.

[13] Article 9 and 13 of the UACP
[14] Article 13 of the UACP
[15] Article 14 of the UACP
[16] Article 14 of the UACP

Informal Insolvency or Restructuring Procedures

There are no informal insolvency or restructuring procedures for a company in the DRC.

LIQUIDATION

What is the aim of liquidation?

The aim of liquidation is to provide lenders with a higher degree of confidence that when a business is unable to pay its debts, appropriate procedures will be followed to maximize the value of the business.

Process required to commence liquidation

When a debtor is unable to meet its liabilities with its available assets, it must make a declaration of insolvency to commence insolvency proceedings.

The reorganization and assets liquidation proceedings may be opened at the request of a creditor (irrespective of the nature of its claim, provided that it is certain, of a fixed amount and due), ex officio by the competent court (namely based on information furnished by the representative of the public prosecutor, auditors of legal entities governed by private law) and by the public prosecutor[17].

1) The following documents, dated less than thirty (30) days prior, must be attached to this declaration:a certificate of registration, enrollment, or declaration of activity in a professional register or association or, failing that, any other document proving the regularity of the activity carried out by the debtor.

2) the summary financial statements including the balance sheet, income statement, a financial table of resources and uses, the attached statement and, in any event, the amount of turnover and profits or losses for the last three (03) financial years or, failing that, any other document that can establish the financial and economic situation of the debtor if the declaration is made by a debtor that meets the definition of a small company.

3) a financial statement and a statement of receivables and payables, indicating the names, capacities, and addresses of creditors and the due dates

4) A detailed statement of the assets and liabilities, personal and real securities given or received by the company and its managers.

5) an inventory of the debtor's assets, indicating any movable assets subject to claims by their owners and those subject to a retention of title clause or, failing that, a provisional inventory of the debtor's assets if the application is filed by a small business debtor.

6) the list of workers with an indication of the amount of unpaid wages and payroll taxes on the date of the request or, failing that, any other document that allows the debtor's workers to be identified and counted and the amount of unpaid wages and payroll taxes to be estimated if the declaration is made by a debtor of a small company.

7) A document indicating the names, first names, and addresses of the employee representatives.

8) a statement from the debtor indicating that they are not subject to a conciliation agreement currently in force or a composition agreement currently in force and, in any event, that they are not subject to any preventive settlement, receivership, or liquidation proceedings that have not yet been concluded; where applicable, if the debtor has benefited from a conciliation agreement or a composition agreement, the amount of the claims remaining due to creditors benefiting from the privilege, as well as their names and addresses.

9) if it is a legal entity, a list of the members who are jointly and severally liable for its debts, indicating their names and addresses, as well as the surnames, first names, and addresses of its directors.

10) where applicable, a document indicating the names, positions, and addresses of the persons who intend to make a new cash contribution or provide a new good or service, with an indication of the amount of the contribution or the value of the good or service.

11) where applicable, a draft concordat for judicial reorganization.

This declaration may also be made by a creditor, provided that the debt is certain, liquid, and due[18]. This declaration must be made within 30 days of the suspension of payments and must be lodged with a Competent Court[19]. The Court will order the liquidation of the assets of the company when a composition or rescue of the business is not possible.

Where a trustee (syndic) has knowledge of facts that may justify personal bankruptcy, he/she shall immediately inform the public prosecutor and the receiver and submit a report thereon to them within 10 days[20]. The receiver shall forward the report to the President of the Competent Court, failing which, the receiver may himself make a report to the President of the Competent Court. As soon as the report is submitted to the President of the Competent Court, he shall immediately have the Court Registrar summon by extrajudicial act, at least 8 days in advance, the debtor or the top executives of the legal entity to appear before the Court

[17] Article 29 UACP
[18] Article 28 of the UACP
[19] Article 25 of the UACP
[20] Article 200 of the UACP

on a certain day in order to be heard by the Competent Court behind closed doors. This hearing will be in the presence of the trustee after he/she has been duly summoned by the Court Registrar by hand-delivered letter against a receipt, by registered letter with acknowledgement of receipt or by any means leaving a written record. A copy of the report shall be appended to the summons under penalty of nullity[21].

The accused debtor or top executives of the legal entity shall appear before the Court in person. In instances where they are unable to appear on grounds deemed duly plausible, they may be represented by a proxy with a power of attorney enabling him/her to represent the parties before the Court. Where the debtor or the top executives of the legal entity do not appear before the Court or are not represented, the Competent Court shall again summon them to appear in the same form and set time limits[22]. In case of a repeated default, the Competent Court shall give an adverse ruling against them[23].

Independent of information provided in the criminal record, decisions pronouncing personal bankruptcy shall be entered in the Register of Commerce and Securities. With regard to top executives of non-commercial legal entities, such decisions shall be entered into the Registry as well as on the margin of the entry stating the reorganization or assets liquidation. Such decisions shall, furthermore, be published by the Court Registrar in the newspaper empowered to publish legal notices within the jurisdiction of the Court that gave the ruling under the conditions set forth by the Uniform Act[24].

The point at which the liquidation process commences

The liquidation process commences on the date on which the Competent Court makes an order to place the company in liquidation[25].

The competent court, which concludes that there is indeed insolvency, shall decide on the opening of judicial assets liquidation proceedings if the following two conditions are not met (i) if it appears that the debtor has proposed a sustainable composition within the meaning of Article 27 above or that such an arrangement may likely succeed; and (ii) Or, where an overall insolvency is realistically foreseen.

In any case, at the expiry of the six (06) month-period from the decision to open the reorganization proceedings, which may be extended for a duration of three (03) months, the court shall convert the reorganization into assets liquidation, ex officio or at the request of any interested party.

In the decision to open the reorganization or assets liquidation proceedings, the competent court shall appoint the receiver among the sitting judges of the court hearing the case, excluding its president, unless the latter is a single judge. It may also, if it deems necessary, appoint a deputy receiver.

The competent court shall also appoint no more than three (3) trustees. The appointed expert for preventive settlements of a debtor may not be appointed trustee[26].

Once the liquidation order has been made, the creditors shall form a union. The Trustee (Syndic) shall, within 30 days of taking office, submit to the receiver a statement drawn up based on available information containing an assessment of available or realizable assets, unsecured debts, and debts guaranteed by real special security or a privilege with, in case of legal entity, all information on possible pecuniary liabilities of its top executives(s)[27].

When the judgment decrees the conversion of reorganization to assets liquidation proceedings, the trustee (syndic) shall commence the liquidation operations while he/she completes, where appropriate, the verification of claims and establishes the order of creditors. He shall continue activities commenced before the decision to open the assets liquidation proceedings[28].

Duration of the liquidation process

Under the Uniform Act, the competent court shall set the time period at the end of which the closing of the proceedings is examined provided that such time period may not exceed eighteen (18) months from the opening of the procedure. If the closing of the proceedings cannot be ruled at the end of such period, the competent court may extend the term by six (06) months only once by a specially reasoned decision, after hearing the justifications of the trustee. Passing this deadline, the competent court shall order the completion of the asset's liquidation, ex officio, or at the request of any interested party[29].

The extent of the court's involvement in the liquidation process

The Court is involved in the liquidation process from the date on which the decision is taken to place the company in liquidation.

In fact, the competent court shall appoint the receiver among the sitting judges of the court hearing the case, if it is necessary, appoint a deputy receiver. The competent court shall also appoint no more than three (3) trustee(s).

Under the authority of the competent court, the receiver shall ensure regular and rapid progress of assets liquidation

[21] Article 200 of the UACP
[22] Article 200 of the UACP
[23] Article 201 of the UACP
[24] Article 202 of the UACP
[25] Article 32 of the UACP
[26] Article 35 of the UACP
[27] Article 146 of the UACP
[28] Article 146 of the UACP
[29] Article 33 of the UACP

proceedings, protection of the interests at stake and achievement of the objectives pursued. The competent court may, at any time, replace the receiver and the trustee[30].

Management of the company whilst in liquidation

The receiver shall ensure, under the authority of the competent court, regular and rapid progress of liquidation proceedings, protection of the interests at stake and achievement of the objectives pursued.

The Trustee(s), Controllers and the public prosecutor shall assist the trustees in the performance of their duties and the receiver in his mandate to oversee the implementation of the reorganization or assets liquidation proceedings and to further the interests of the creditors.

The trustee's mission during the liquidation proceedings shall be overseen by the receiver.

The receiver shall keep the public prosecutor informed on the progress of the reorganization or assets liquidation proceedings. He may, at any time, require transmission of all deeds, books or documents related to the proceedings[31].

In the event that a liquidation proceeding is opened following completion of a preventive insolvency proceeding or where a judicial recovery is converted into liquidation a proceeding, proceeds from liquidation of the relevant debtor will be allocated first to the "new money" creditors, including in priority to the cost of judicial proceedings and before "super-privileged" employees[32].

Filing of claims

All creditors in the body, except creditors of maintenance claims shall, under penalty of foreclosure, lodge their claims with the trustee from the date on which the decision to open liquidation proceedings was taken and up to the expiry of a period of sixty (60) days following the second publication of the decision in a newspaper empowered to publish legal notices[33].

Creditors residing outside the national territory where the proceedings have been opened shall enjoy a time limit of ninety (90) days to file their claims.

Where creditors do not file their claims within the period set forth in articles 78 and 79 above and were not released from their foreclosure, they shall not be included in the distributions and dividends. Defaulting creditors may only be released from foreclosure by a reasoned decision of the receiver insofar as the claims status has not been determined and lodged[34].

Upon expiry of the deadline described above, in the absence of a challenge or dispute, or the time limit, where there has been a challenge or dispute, the trustee shall prepare a statement of claims containing his proposals for final or provisional acceptance or rejection of claims, with an indication as to whether they are unsecured or secured, guaranteed by a security and the nature thereof. The statement of claims shall be deposited at the court registry after verification and signature by the receiver[35].

Within 3 days of the commencement of liquidation, the company must provide the trustee with its books of account, and a list of creditors is created[36]. Creditors are required to submit their claims to the trustee. To do this, they are required to provide the trustees, directly or by registered post, with a statement indicating the amount of the debt due at the date of the commencement of liquidation and that which may become due on any maturity dates. The creditor would also need to prove the existence and amount of the debt, the origins of the debt, any security that underpins the claim, whether such claim is liquid and/or the subject of any litigation[37].

In view of the above, every creditor mentioned on the balance sheet and whose security is duly published or whose claim has been filed shall be admissible, during a period of fifteen (15) days with effect from the date of the publication in a newspaper empowered to publish legal notices or of receipt of the notice provided , to formulate their opposition.

The opposition shall be formed directly at the court registry or by an extrajudicial act addressed to the court registry by any means proving actual receipt by the addressee, sent to the court registrar against the decision of the receiver. This opposition shall have no admissibility if it is filed by a creditor whose claims or security has been discussed or disputed and who did not provide any explanations to the receiver.

Factors which influence the period of administration in a liquidation

The administrative difficulties presented by liquidation instituted by or against the company are a factor that may delay the finalization of the liquidation process.

Effect of liquidation on employees

In the DRC, as at the date of the commencement of liquidation, contracts of employment are immediately terminated, and employees are given preferential treatment for their claims.

Where dismissals for economic reasons are urgent and essential, the trustee may be authorized to proceed with them by the receiver, notwithstanding any provision to the contrary, but without prejudice to the right to prior notice

[30] Article 39 of the UACP
[31] Article 47 of the UACP
[32] Articles 5-11, 166 and 167 of the UACP
[33] Article 78 of the UACP
[34] Article 83 of the UACP
[35] Article 86 of the UACP
[36] Article 55 of the UACP
[37] Article 80 of the UACP

and to compensation relating to the termination of the employment contract.

In the first instance, it is proposed to dismiss the workers with the least professional aptitude for the jobs retained and, in the event of equality of professional aptitude, the workers with the least seniority in the debtor company, seniority being calculated in accordance with the provisions of applicable labor law.

Effect of liquidation on contracts

Notwithstanding any statutory provision or contractual clause or indivisibility, the mere opening of asset liquidation proceedings shall not cause the abrogation or termination of a running contract[38]. When a company is placed in liquidation, the liquidator may decide to either terminate or maintain certain contracts. The liquidator will make such decision with his sole discretion.

Effects of liquidation on shareholders

The shareholders are kept informed of the state of the company by the liquidator for the duration of the liquidation. However, where the assets liquidation of a legal entity shows insufficient assets, the top executives liable, in whole or in part, for the debts of the legal entity, may be compelled by the competent court to assign their equity interests, capital securities or securities giving access to capital thereof or order compulsory assignment by the trustee, where necessary, after valuation.

Effects of liquidation on creditors

The decision to open judicial recovery or liquidation proceedings gives rise to a body of creditors represented by the trustee (the Syndic) who, alone, acts on its behalf and in the collective interest, and can bind it.

Creditors submit claims to the liquidator and are paid out in full or in part depending on the amount for which the assets of the company are realized.

Pending claims, litigation and arbitration

Actions for the recovery of property may be revived or instituted only where the claimant has not complied with the formalities and deadlines provided for by the law. Claims accepted by the receiver, the official receiver, or the Competent Court shall be enforced within 3 months of the date on which notice for the revival or institution of any such action is given or from the date on which the Court accepts the claim. The liquidator may elect to proceed, settle or withdraw any pending liquidation or arbitration proceedings that was initiated at the instance of the company. The same applies to pending proceedings brought against the company.

The decision to open a liquidation of assets interrupts or prohibits any legal action on the part of all creditors making up the general body of creditors, with a view to[39]:

- ordering the debtor to pay a sum of money;
- to rescind a contract for non-payment of a sum of money.

The decision to open an insolvency proceeding also stops or prohibits all enforcement proceedings by these creditors on both movable and immovable property, as well as any distribution procedure that did not produce an attributive effect prior to the opening decision.

The time limits imposed on creditors under penalty of forfeiture, prescription or cancellation of their rights are consequently suspended for the duration of the suspension of proceedings.

The decision to open a judicial recovery procedure suspends any action against natural persons who are co-obligated or having granted a personal surety or having assigned or transferred an asset as security as of the said judgment and during the execution of the judicial recovery agreement.

However, creditors benefiting from these guarantees may take protective measures.

The decision to open the liquidation proceedings renders debts that have not yet fallen due payable only in the event of liquidation of assets, and only in respect of the debtor.

Voidable transactions

The Court has the power to set aside any transaction occurring within a period prior to the commencement of liquidation or any transaction that is unlawful[40].

In this case, the following transactions shall be unenforceable against the body of creditors 1) gratuitous transfer of deeds of personal and real property; 2) any commutative contract in which the obligations of the debtor exceed significantly those of the other party; 3) any payment, irrespective of the method, of debts not due, except it is a payment of a trade negotiable; 4) any payment of due debts, made otherwise than in cash, trade negotiables, transfer, levy, payment card or credit card or legal, judicial or conventional set-off of debts having a connection between them or any other ordinary payment method or commonly accepted in business exchanges in the sector of activity of the debtor; 5) any real conventional security pledged as a collateral security for a debt previously contracted, unless it replaces a prior security interest of a nature and extension at least equivalent or that it is granted in pursuance of a previous agreement in insolvency; 6) Any provisional registration of a court-ordered conservatory mortgage or conservatory pledge.

[38] Article 107 of the UACP
[39] Article 75 of the UACP
[40] Article 63.9 of the UACP (This article concerns the management of a company

How the liquidation process is terminated

A notice of termination of liquidation signed by the liquidator is published, at the instance of the liquidator, in the newspaper in which such liquidator's appointment was published or in an official Government publication.

In particular, at the end of the assets liquidation operations the following formalities must be completed: (i) the trustee, in the presence of debtor or after he has been duly summoned by the court registrar by hand-delivered letter against a receipt or by registered mail with acknowledgement of receipt or by any means in writing, shall submit his accounts to the receiver; (ii) the receiver shall draw minutes to record the end of the liquidation operations; (iii) the minutes shall be forwarded to the competent court which shall decree the end of the assets liquidation and, at the same time, settle disputes related to the accounts of the trustee filed by the debtor or the creditors; (iv) the court registrar shall immediately forward an extract of the decision to close the assets liquidation to the public prosecutor; (v) the decision to close the assets liquidation shall be published under the conditions set out as follows -

- the registry of the competent court shall make an entry of the decision of commencement of bankruptcy proceedings in the Registry of Commerce and Securities ("RCCM"), without delay;

- the decision to the end of liquidation proceedings shall be published, at the behest of the registrar of the competent court, in a newspaper authorized to publish legal notices distributed at the location of the registered office of the competent court. An additional publicity may also be carried out in all other media outlets;

- such publicity shall, in addition, feature in a newspaper authorized to publish legal notices at the location of each secondary establishment of the debtor if the newspaper empowered to publish legal listings is not distributed in the area the registered office is located;

- it shall contain the following information:(i) the name of the debtor; (ii)its domicile or registered office;(ii) its incorporation number in the RRCCM or number of activity statement; (iii) the date of the decision to open the proceedings and the type thereof; (iv) the name and address of the trustee with whom creditors must file their claims, the time limit for filing such claims and a full reproduction of Article 78 above; and

- a second publicity shall be carried out, under the same conditions, at the behest of the registrar of the competent court, as soon as within fifteen (15) days and no later than thirty (30) days from the date on which the first publicity formality was performed; and

- the trustee shall verify that the statements and publicity above described have been completed.

Liability of the director(s) or officer(s)

The directors or the managing director could be held to be jointly or severally liable to the company or to third parties either for contraventions of any laws and regulations applicable to public limited companies, the management of the company or any contravention of the Articles of Association of the company[41].

Civil Consequences

Where directors have mismanaged a company, they could be held liable for the debts of the company. In addition, they may be required to contribute to the assets of the company, disqualified from being involved in managing any companies in the future, and deprived of their right to stand for public office.

Criminal Consequences

Criminal sanctions arise in criminal bankruptcy cases when there has been a misuse of assets, falsification of information, and fraudulent behaviour. On conviction, one may receive imprisonment or a fine[42].

COLLECTIVE PROCESS

Process required to commence judicial reorganisation

At the commencement of the collective procedure, a 'Judge Administrator' ("juge-commissaire") will be nominated. The judge appoints one or more, but not more than 3 trustees[43]. The judge may also appoint one or more auditors (a maximum of 3) to be chosen by the creditor/s. The judge, placed under the authority of the Competent Court, oversees the proceedings and ensures that they are conducted in a speedy manner. They also gather all the information deemed necessary. They may hear the debtor, the officer of the corporation, their employees, creditors, or any other person and have the power to rule on requests, claims, and disputes within their jurisdiction. Controllers may assist the judge in the oversight of the conduct of the insolvency proceedings and ensure that the interests of creditors are protected[44]. The trustee is responsible for ensuring the diligent and successful conclusion of the proceedings[45]. The representative of the Public Ministry is informed of the progress of the proceedings by the judge. He may, at any time, request disclosure of all documents or books relating to the proceedings.

[41] See Article 3-1 and 232 of the UACP
[42] See Articles 234-239 of the UACP
[43] Article 35 of the UACP
[44] Article 49 of the UACP
[45] See Articles 43–46 of the UACP

The point at which collective proceedings commence

Business rescue proceedings commence when a company is unable to pay its debts with its available assets.

It depends on the type of collective proceedings -

(i) conciliation: before the payment failure, intended to shun the debtor company's payment failure in order to restructure, in whole or in part, its finances or operations so as to save it;

(ii) Preventive settlement: before the insolvency by the debtor, designed to avoid insolvency by the debtor company and to allow the discharge of its debts through an arrangement;

(iii) Reorganization: from the insolvency by the debtor, procedure for the rescue of the debtor company in insolvency, but which situation is not irremediably compromised, and whose debts settlement is performed through a composition; and

(iv) The assets liquidation: when situation is irremediably compromised and impossible to wipe off its debts, procedure for the realization of the assets of the insolvent debtor company.

Duration of collective proceedings

The duration depends on the types of insolvency proceedings initiated depending on the debtor's situation:

- conciliation: maximum 4 months (3 months from order of the president of competent court. This period may be extended by (1) one month);
- preventive settlement: 2 years and 5 months (5 months before the decision of the competent court confirming the arrangement shall terminate the mandate of the expert and the preventive settlement procedure and 2 years after the court order confirming the arrangement;
- reorganization: maximum 9 months; and[46]
- Assets Liquidation: maximum 23 months.

The extent of the court's involvement in collective proceedings

The judge, under the authority of the Competent Court, shall ensure the expeditious conduct of the proceedings in Court. The Court may hear the debtor or officer of the corporation, their employees, creditors or any other person. The judge shall report to the Competent court on all disputes arising from the rescue proceedings. The Competent Court may, at any time, replace the Judge-Administrator.

The management of the company whilst in collective

The President of the Competent Court may appoint a sitting judge or any person it deems qualified to gather information about the company and prepare and submit a report, within 1 month[47]. It may also be necessary to appoint an expert. If the views of such experts[48] are disputed, the Court may be approached for direction and order.

See more details above

Management of the company whilst in liquidation

Filing Claims

Within 3 days of the commencement of the procedure, the debtor must provide the trustee (syndic) with his books of account[49]. The trustee (syndic) prepares an inventory of all creditors and debtors of the company, and the creditors submit their claims and all documents necessary to support their claims.

Notwithstanding the other claims described above, the receiver shall collect the claims of the debtor or creditors who request the removal of the trustee and the appointment of his replacement. The receiver shall rule within eight (08) days from the date the request is filed. His order shall be accompanied by provisional enforcement. The receiver's decision may be objected within eight (8) days from the date thereof.

Factors which influence the period of collective

Litigation brought against or by the liquidators can be a factor that may delay the finalization of the business rescue process in the DRC.

Funding of the company whilst in collective

The law does not make any provision for the funding of a company in such a situation. The liquidation of assets shall put an end to the business activity of the debtor company.

However, several mechanisms have been set up in the judicial composition to maintain an economic activity, jobs relating thereto and to pay off debts as follows: (i) The total or partial assignment of assets may concern all or a number of tangible or intangible or movable or immovable property; (ii) The assignment of a company or institution

The effect of collective on employees

All contracts concluded by the company with employees prior to the commencement of business rescue continue to remain in force unless they are terminated on legal grounds.

[46] Article 33, 9, of the UACP
[47] Article 32 of the UACP
[48] Article 8 of the UACP
[49] Article 55 of the UACP

The effect of collective on contracts

All contracts concluded by the company prior to the commencement of business rescue continue and remain effective and in full force[50].

Only the trustee shall have the option to demand the execution of running contracts.

In addition, the decision to open reorganization or assets liquidation proceedings shall stop the accruing of legal and contractual interests, all interests and service charges for late payment of all claims whether they are secured or not. However, with regards to interests from loan agreements entered into for a duration equal to or longer than one (1) year or loan agreements with a deferred payment of one year or more, interest shall continue to accrue during the reorganization proceedings[51].

The effect of collective on shareholders

Shareholders are engaged throughout the process.
Commitments made by shareholders or partners or by new subscribers shall be subordinated in their execution to the confirmation of the judicial composition by the competent court.

Shareholders or partners who contribute to the share capital increase provided in the proposed judicial composition may be eligible for compensation up to the amount of their approved claims and within the limits of reductions to which they are subject to the proposed.

The effect of collective on creditors

Business rescue suspends or prohibits enforcing rights against the company.

Pending claims, litigation and arbitration

As far as the Preventive settlement: All judicial actions already instituted against the company remain in effect and of full force, with the exception of the individual lawsuits for the purpose of obtaining payment of claims contracted prior to the said decision for a maximum period of three (03) months and the enforcement proceedings and precautionary measures[52].

As far as Reorganization and assets liquidation: The decision to initiate reorganization or assets liquidation proceedings shall stay or prohibit individual lawsuits from all creditors who are part of the body that may: (i) order the debtor to pay sums of money; (ii) Terminate the contract due to a failure to pay a sum of money.

The current lawsuits shall be interrupted until the pursuing creditor has filed his claim. They shall then be recorded automatically but shall only determine the claims and fix their amount with the trustee being duly called upon.

The effect of a moratorium

In order to provide the company and its creditors with sufficient time to reach an agreement, a Court will grant a moratorium and request an insolvency practitioner to report to the Court, within 2 months of the date of the commencement, on the progress of the parties in reaching an agreement.

In addition, as far assets liquidation exceptionally, if the public interest or that of creditors so requires, the competent court may authorize, in the judgment ordering the liquidation of assets, a provisional continuation of the business for a maximum of sixty (60) days. It can renew that period once (01), for the same duration, at the request of the trustee and after receiving the opinion of the public prosecutor[53].

Voidable transactions

The Court has the power to set aside any transaction occurring within a period prior to the commencement of liquidation or in respect of any transaction that is unlawful.

As far as Preventive settlement, unless the president of the competent court grants a reasoned authorization, the decision to initiate the preventive settlement shall prohibit the debtor, on pain of becoming null and void: ((i)from paying, in whole or in part, claims incurred prior to the decision of opening; (ii) from undertaking something foreign to the normal operation of the company or to grant a security provision.

It shall also be prohibited to the debtor to pay off joint debtors and individuals who have granted personal security or assigned or transferred property as collateral when they paid claims incurred prior to the opening decision.

As far as the Reorganization, the following acts shall be unenforceable against the body of creditors: 1) gratuitous transfer of deeds of personal and real property; 2) any commutative contract in which the obligations of the debtor exceed significantly those of the other party; 3) any payment, irrespective of the method, of debts not due, except it is a payment of a trade negotiable; 4) any payment of due debts, made otherwise than in cash, trade negotiables, transfer, levy, payment card or credit card or legal, judicial or conventional set-off of debts having a connection between them or any other ordinary payment method or commonly accepted in business exchanges in the sector of activity of the debtor; 5) any real conventional security pledged as a collateral security for a debt previously contracted, unless it replaces a prior security interest of a nature and extension at least

[50] Article 107 of the UACP
[51] Article 77 of the UACP
[52] Article 9 of the UACP
[53] Article 113 of the UACP

equivalent or that it is granted in pursuance of a previous agreement in insolvency; 6) Any provisional registration of a court-ordered conservatory mortgage or conservatory pledge.

Collective process plan

A business rescue plan detailing the status of the company, the formalities that have been completed, the transactions that have been concluded, and the outcome if the company were to continue in business is compiled during proceedings. As far as Preventive settlement: The proposed arrangement shall stipulate measures envisioned for the restructuring of the company, including: 1) terms for continuing the company business such as the request for time extensions and debt reduction, partial assignment of assets with a specific indication of assets to be assigned; 2)assignment or lease-management of a branch of activity forming business assets; assignment or lease-management of part or the entire company, without these terms being restrictive and exclusive on each other; 3)the full names, titles and addresses of individuals mandated to execute the arrangement and all their undertakings for the restructuring of the company; 4) terms for maintaining and financing the company, settlement of claims contracted prior to the decision to open a preventive settlement as well as, where applicable, collateral securities provided to ensure execution; these undertakings and collateral securities may consist, inter alia, of subscriptions for an increase of share capital by new or former partners, debt-for-equity swaps, appropriations by banking or financial institutions or by any other person, including any new cash or service contributions under the conditions set forth in article 11-1 hereinafter as well as the amount of the contribution or the value of the goods or services; continuation of the execution of contracts entered into prior to the petition, provision of securities; 4) level and job prospects, as well as layoffs for economic reasons which should be exerted within the conditions set forth in the provisions of the Labor Law; 5) Replacement of top executives.

As far as the reorganization: The competent court shall ratify the proposed judicial composition only where: 1) the conditions of validity of the composition are met; 2) there is no ground to believe that the common interest or public policy will likely hinder the composition; 3) in case of reorganization of a legal entity, it shall no longer be managed by its top executives whose replacement is proposed in the proposed composition or by the trustee or against executives whom personal bankruptcy has been pronounced; 4) the composition shall offer substantial opportunities for the debtor company restructuring, debt settlement and adequate collateral securities for its execution; 5) The conditions set forth in article 33-1 above are met where individuals benefit from a privilege provided for in this Uniform act and secured amounts are expressly stated.

Voting on a plan

A business rescue plan will be passed if a majority in number, representing at least half of the total debt in value, supports the plan[54].

A copy of the proposed composition shall be sent to each creditor by registered mail with acknowledgement of receipt or by any means which leaves a written record.

Creditors with general privileges shall take part in the vote under the same conditions as unsecured creditors, but without losing the benefit of their liens[55].

A financial statement drawn up at the close of the last day of the elapsed month shall be appended to the report. The statement shall state the available or realizable assets, the unsecured debts and those guaranteed by a special secured debtor as a general lien.

As far as the preventive settlement, the competent court shall bring the matter to a vote after submission of the report of the trustee. Mail ballots and proxy voting shall be admitted.

Cramdown on creditors

A restructuring plan will be adopted and implemented if it receives the requisite votes from the creditors.

The trustee shall build upon such deadlines for filing and verifying claims to reconcile the positions of the debtor and creditors on the development of the proposed composition and to carry out the economic and social assessment. In this context, he shall transmit to the receiver, prior to convening the bankruptcy meeting, a report outlining, for each creditor, if he was actually contacted and on what date, whether he agrees with the proposed.

The proposed judicial composition shall be voted by the majority in number of creditors definitively or provisionally admitted representing, at least, half of the total number of claims.

The competent court shall prepare minutes of the deliberations and decisions taken during the meeting; the signature by the creditoror his representative, the ballot papers appended to the minutes shall be equivalent to the signature of the minutes.

Establishment by the competent court of the fulfillment of all the conditions provided for in Article 125 above shall be equivalent to ratification of the judicial composition. Otherwise, the decision shall record the rejection of the composition and shall convert the reorganization into assets liquidation without prejudice to the application of Article 33 and 119 above.

[54] 125, 6, of the UACP
[55] Article 121, 2, of the UACP

Regarding the preventive settlement, in case creditors reportedly refused to extend the deadlines and reduce the debt of the debtor, the president of the competent court shall lend his good offices to the creditors and the debtor. He shall hear their grounds for refusal and initiate negotiations between the parties to enable them to reach an agreement.

Where despite the good offices of the president, the parties fail to reach an agreement and in case the arrangement provides for only one time extension not exceeding two (02) years, the competent court may make this enforceable against creditors who refused any time extension.

Discharge of debt

The Judge Administrator shall, where applicable, order a distribution of funds among the creditors[56].

The total or partial asset assignment price shall be paid into the debtor's assets.

Proceeds from the sales of immovable property shall be distributed according to a ranking.

Where the proceeds are insufficient to fully pay off the creditors of any creditors have equal rank, the funds shall be distributed proportionately to their total debts.

The effect on suretyships

Where the creditor holder of commitments jointly and severally subscribed by the debtor and other joint debtors in a situation of reorganization or assets liquidation has received an advance on his claim before the decision to open the proceedings, he shall be included in the union of creditors only after deduction of such payment and shall retain, on the balance due to him, his rights against the joint debtor or guarantor[57].

A creditor with subscribed, confirmed or guaranteed commitments jointly and severally by two (2) or more joint debtors who have stopped payments may file claims in all the creditors' unions up to the full amount of his receivables and participate in distributions until full payment of his claim where he has not received any partial payment thereof before the opening of the bankruptcy proceedings of the debtor and his joint debtors.

Regarding the preventive settlement, Creditors with a general privilege, a special property lien, a pledge, a suretyship or a mortgage shall not lose their collateral securities. However, they may only realize them in case of annulment or cancellation of the composition to which they consented, or which has been imposed.

[56] Article 164 of the UACP
[57] Article 92 of the UACP

How the collective is terminated

The business rescue process will be terminated when the company is rescued and able to continue to trade following the implementation of the terms of the rescue plan. If the plan is not successfully implemented, the company will need to be placed in liquidation.

See more details above.

The status of the company after collective

Where an agreement is approved, the provisions of the agreement will be implemented with the assistance of the trustee, for an definite described above period or unless otherwise directed by a judge.

Liability of the director(s) and officer(s)

The director and officer liability as set out under the liquidation section above is applicable here[58].

Civil consequences

The civil consequences set out under the liquidation section above are applicable here.

Criminal consequences

The criminal consequences set out under the liquidation section above are applicable here.

SECURITY

Types of security

In the DRC, there are two types of securities, namely, personal securities and property securities. Personal securities relate to commitments given by one or more persons or entities on behalf of another and in favor of a third party (i.e., bonds or warranties and autonomous counter-guarantees). Property securities relate to liens and pledges.

Bond

A bond is an agreement in terms of which a guarantor undertakes to perform a present or future obligation incurred by the debtor if the debtor does not satisfy the debt. This agreement may be entered into without the consent of the debtor[59]. The bond may be lawful, judicial, or conventional. It is proved by a certificate bearing the signature of the guarantor and the creditor and the words written in the guarantor's handwriting in words and figures, of the maximum amount covering the principal, interest, and other accessory amounts. The guarantor may take action for

[58] See footnote 30
[59] Article 13 of the Uniform Act Organizing Securities dated 15 December 2010

payment against the principal or request the preservation of his rights in the assets of the debtor. The action may be taken even before paying the creditor, when the debtor is insolvent and/or where the debtor has not discharged the debt within the agreed time or when the debt is due in accordance with the terms of the agreement.

Warranty and autonomous counter-guarantee

An autonomous guarantee is a commitment in terms of which a guarantor undertakes to pay a specified amount to the beneficiary on the first request or as mutually agreed[60]. Natural persons may not underwrite a warranty and autonomous counter-guarantee. They create separate autonomous commitments, agreements, deeds and facts likely to constitute the basis of a claim. The warranty and autonomous counter-guarantee are not presumed, i.e., they must be recorded in writing, failing which they will be invalid.
Lien

A creditor who legitimately owns the movable property of the debtor may retain it until full payment of that which is due is paid, regardless of whether there is any other security securing the debt unless such property is the subject of a prior lien. The lien can only be exercised if the claim of the holder is certain, liquid, and due.

Withholding property or transferred as collateral

Ownership of movable property may be held as collateral until full payment of the obligation that it secures is satisfied. The retention of title must be recorded in writing no later than the date of the delivery of the goods, failing which it will be invalid. This security can regulate both present and future obligations between the parties.

Pledge of tangibles

This pledge arises pursuant to a contract in terms of which a grantor gives a creditor the right to be paid in preference to tangible personal property, or present or future tangible or movable property, owned by the company. The pledge agreement must be reduced to writing and must contain the name of the secured debt, the assets so pledged, and their species or nature, failing which it shall be invalid.

Mortgages

A mortgage is the assignment of a fixed or ascertainable building, constituting a guarantee of one or more present or future claims, provided they are certain or ascertainable. The assets that may be subject to a mortgage are movable or immovable property, their improvements, and additional structures related to such property or buildings. A mortgage can only exist if it is registered on the certificate of the immovable or real property right which it encumbers[61]. A mortgage must be registered according to the national laws of the place where the collateral is located, and the registration of such security must be regularly published.

What is the most robust form of security available to lenders?

A mortgage is the most robust form of security available to lenders.

Security trustees or special purpose vehicles

This is not used in the DRC.

Stamp duty

Stamp duties are not applicable in the DRC. Instead, Authentication or notarial service is necessary for the validity of certain guarantees.

Registration of securities

Securities must be registered with the 'Register of Commerce and Personal Property Credit Register' (RCCM) and with the land registry

Registration costs

The cost of registering a security is UD$300 (plus US$10 for banking charges).

Requirements for the assignment or transfer of security

The transfer or assignment of security is done by way of re-registration.

Instances in which securities might be vulnerable to attack by third parties

The law makes no provision for specific instances in which a security might be vulnerable to attack.

Methods of enforcement of securities

All securities or other guarantees for the performance of an obligation can be granted, registered, filed, managed and enforced by a national foreign financial institution or credit institution acting in its own name or for the benefit of secured creditors. The enforcement of securities arises from either a forced sale of the pledged assets at an auction, resulting in the satisfaction of the secured debt from the proceeds thereof (with any surplus being remitted to the pledger), or following a petition to the Court for the attribution of the assets to the pledgee, following an evaluation by an expert of the pledged assets. Any contractual clause authorizing either the sale or the attribution of the pledged asset in the absence of such formalities will be considered null and void.

[60] Article 39 of the Uniform Act Organizing Securities
[61] Article 264 of the law n° 73-021 of July 20, 1973 relating to the general regime of property, the regime of land and buildings and the regime of securities as modified and completed by the law n° 80-008 of July 18, 1980

Problems experienced when enforcing securities

The practical implementation of the new law in the DRC could cause problems. The delays experienced in obtaining Court orders for the attachment of assets and sales in execution ordinarily delays the enforcement of securities.

RECOGNITION OF FOREIGN JUDGMENTS

Instances in which your court will recognize a foreign judgment

If the foreign judgment is enforceable against a person or a company domiciled in the DRC, to be enforced, it must acquire the quality of an enforceable title after its exequatur by the Competent Courts. An exequatur is an authority from the Court to recognize and enforce the foreign judgment.

Requirements for the recognition of a foreign judgment

For a foreign judgment to be recognized, the following conditions must be fulfilled[62]:

- it must not be contrary to the Congolese public order;
- it must have acquired the force of res judicata under the law of the country where the decision was made;
- the documents recording the judgment must be authentic;
- the rights of the defendant must have been respected; and
- the foreign Court does not have jurisdiction solely on the basis of the nationality of the applicant.

An application would be brought to the High Court, supported by an authenticated original judgment, certified copies of the pleadings in respect of the matter, a certified translation of the judgment (if it is not written in French), and proof of payment of the Court fees, required by Congolese law.

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

This is not typically considered in the DRC. Nevertheless, it is worth noting that foreign representatives and foreign creditors can have access to the Competent Courts. The foreign representative may be authorized to communicate directly with a Court, and upon recognition of a foreign bankruptcy proceedings, the foreign representative shall be empowered to participate in any bankruptcy proceedings in relation to the debtor[63].

[62] Article 119 of the Law 13/001B dated April 11th, 2013
[63] Articles 256-8 et seq of the UAPC