CÔTE D'IVOIRE
FDKA

FIRM INFORMATION

Website address : **www.fdka.net**
Languages spoken : **French and English**
Telephone : +226 25 40 88 44, **Mobile:** +225 20 21 20 31
Address : Résidence les Harmonies-Rue du Docteur Jamot, 01 BP 2297 Abidjan, Côte d'Ivoire
Contact : Colette Kacoutie
Email : c.kacoutie@fdka.ci

CÔTE D'IVOIRE | FDKA ASSOCIATION D'AVOCATS

TYPE OF GOVERNMENT

The Government of the country is a democracy.

POLITICAL SYSTEM

Côte d'Ivoire opted for a presidential regime, characterized by the separation of executive, legislative and judicial powers. Multiparty politics have also been introduced into the system since 1990.

LEGAL SYSTEM

Inspired by French law, the Ivorian judicial system is organized by the Constitution.

The judicial system groups first and second level Courts with the Courts of First Instance and Courts of Appeal. These jurisdictions are under the control of the Supreme Court that covers the Court of Cassation and the Council of State. There are also the Court of Accounts, the Council of State, and the Constitutional Council. To these Courts is added the Cour Commune de Justice et d'Arbitrage, a common higher court that controls the application of the OHADA Uniform Acts (including the Uniform Act governing the organization of collective insolvency proceedings) by the Ivorian first and second level Courts.

TESTS FOR INSOLVENCY

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

Insolvency is the state of cessation of payments by a company. It is defined as the inability of a company to honour its liabilities with its available assets.

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

Business rescue is applicable when the situation of the company, despite its state of cessation of payments, is not irremediably compromised, and the company proposes a plausible plan to pay its liabilities.

INSOLVENCY AND RESTRUCTURING PROCEDURES

Formal insolvency procedures

The friendly liquidation and judicial liquidation are the formal procedures available. There is also a simplified judicial liquidation, which provides for simple mechanisms adapted to small companies.

Formal restructuring procedures

These are the legal restructuring and the simplified legal restructuring (the latter procedure adapted to small companies).

Informal insolvency or restructuring procedures

Not applicable.

LIQUIDATION

What is the aim of liquidation?

The purpose of liquidation is to discharge the debts of the company from the proceeds derived from a sale of the company's assets.

Process required to commence a liquidation

The debtor (who is in a state of cessation of payments) must make a declaration for the purpose of opening the liquidation procedure within 30 days following the cessation of payments. The declaration must be lodged at the registry of the Competent Court.

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

The liquidation may be initiated by a creditor, regardless of the nature of his/its claim, provided that it is certain, liquid and due.

The Competent Court may initiate proceedings ex officio, and in particular on the basis of information provided by a representative of the Public Prosecutor's Office, by the auditors of legal persons governed by private law, by the members of such legal persons or from institutions representing the personnel.

At what point does the liquidation process commence?

The liquidation process begins when the Competent Court pronounces the opening of the liquidation procedure.

Duration of the liquidation process

The Competent Court shall fix the period within which the closure of the proceedings shall be examined, provided that such period is no more than 18 months after the initiation of the procedure.

Extent of court involvement in the liquidation process

The Court plays an active role in the liquidation procedure in the sense that its participation starts from the opening of the procedure to the decision regarding its closure, and it ensures the efficiency of the proceedings. In addition, the Competent Court designates the various bodies responsible for ensuring the smooth running of the procedure and its involvement promotes the speedy progress of the liquidation at the various stages.

Management of the company whilst in liquidation

The powers of the board of directors or the executive officers end when the Court makes its decision for the liquidation of the company. A liquidator will represent the company and is vested with extensive powers to realize assets and is mandated to pay the creditors and to distribute among the partners, the available assets.

Filing of claims

From the moment a decision is made to open a liquidation, and within 60 days of the date on which a second legal notice is published, creditors are required to file their claims with the liquidator under penalty of foreclosure. The deadline is extended to 90 days for creditors domiciled outside the country. In the case of secured creditors, the time limit for the filing of claims runs from the notification of the notice that is personally given by the liquidator, by registered letter with acknowledgment of receipt, or by any means with proof of a written record.
Known creditors must be notified without notice by the liquidator if they have not filed their claims within 15 days of the first insertion of the opening decision in a legal notice newspaper. The warning takes the form of a bearer's letter against a receipt or a registered letter with acknowledgment of receipt or any means that provides proof by way of a written record.

Factors Which Influence the Period of the Administration in a Liquidation

The administrative difficulties associated with litigation brought by or against the business, and the change in the mode of administration by the replacement of the directors of the company, by the liquidator, are factors which may influence the period of administration of the business during the liquidation process.

Effect of liquidation on employees

Claims arising from employment or apprenticeship contracts enjoy the status of super privilege.

Effect of Liquidation on contracts

Contracts can be maintained or terminated at the discretion of the liquidator.

Effect of liquidation on shareholders

The shareholders will be paid from any available proceeds after payment to creditors.

Effect of liquidation on creditors

Once liquidation commences, the body of creditors is represented by the liquidator, who acts in the name, and in the collective interest, of the general body of creditors. Creditors may submit their claims to the liquidator and are classified as secured and unsecured. They will be paid in full or in part, depending on the assets realized.

Pending claims, litigation and arbitration

Once a decision is granted to open the liquidation process, all enforcement proceedings brought by creditors in respect of the movable and immovable property of the company, as well as any distribution procedure which did not prove beneficial before the opening decision, is prohibited and precluded. Proceedings which are in process are interrupted until the creditor has filed its claim. They are then automatically taken over, with the liquidator duly summoned, but concern only the establishment of a claim and the fixing of its amount.

Voidable Transactions

Several transactions made during the suspect period are unauthorized and unenforceable against the body of creditors. These transactions, would be considered void and would include donations, the payment of debts and securities taken in respect of a debtor's goods. The suspect period starts from the date of cessation of payments and ends on the date of the decision to open the judicial reorganisation or the liquidation of assets. Transactions that resulted in prejudice to the creditors are also void.

How is the liquidation process terminated?

When the company has paid its liabilities, and the remaining assets have been distributed to the shareholders, the liquidation process is deemed to be terminated. The Competent Court pronounces the end of the liquidation process. It may also pronounce the liquidation:

- when the liquidation operations are well completed;
- when there are insufficient assets to undertake the liquidation process; and
- when there are no more pending liabilities, the Competent Court may pronounce the closure based on the extinction of liabilities as evidenced by the report of the official receiver.

Director or officer liability

Liability may be incurred civilly and criminally. A director convicted by a civil judge, may be prosecuted before a correctional judge for fraudulent bankruptcy.

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

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

BUSINESS RESCUE/ADMINISTRATION

Process required to commence judicial reorganisation

The debtor in a state of cessation of payments must make a declaration within 30 days of the cessation and lodge it at the registry of the Competent Court against a receipt, for the purpose of obtaining the opening of a judicial reorganization procedure. Within less than 30 days, the debtor must lodge the documents relating to the debtor's activity, the financial statements, the security rights, the inventory of the debtor's property, details of the employees and employee representatives, the partners, people wishing to consent to new contributions, and if necessary, a draft concordat (or restructuring agreement).

At what point does judicial reorganisation commence?

The process is triggered by the opening decision from a Competent Court. The Court pronounces the opening of the judicial recovery if it appears that the debtor has proposed a plausible concordat (or restructuring agreement) or can demonstrate that a concordat can be achieved or that a global assignment of the assets is possible.

Duration of the judicial reorganisation process

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

Extent of court involvement in the judicial reorganisation process

The Court plays an active role in the reorganization proceedings, by fixing the date of insolvency and pronouncing the opening of the procedure. Like in the liquidation procedure, the role of the Court starts as soon as the decision to open the judicial restructuring is pronounced, until the financial situation of the company returns to normal. Consequently, the Competent Court appoints the bankruptcy judge who is responsible for ensuring that the procedure is carried out expeditiously, that the deadlines are met and that the malpractices of the bodies involved are punished. The Court may appoint a judge or any relevant individual in order to be provided with information about the debtor's financial situation.

Management of the company whilst in judicial reorganisation

From the date of the decision of the judicial reorganization until the homologation of the concordat for the judicial reorganization of assets, all acts concerning the administration and disposal of the assets of the directors are subject to compulsory assistance, on pain of the unenforceability of these acts. However, the debtor may carry out, alone, the consultative acts and those of current management which are part of the usual activities of the company, in accordance with the practices of the profession, provided that it reports them to the receiver.

Filing of claims

From the moment a decision is made to open a judicial reorganisation, and within 60 days of the date on which a second legal notice is published, creditors are required to file their claims with the liquidator under penalty of foreclosure. The deadline is extended to 90 days for creditors domiciled outside the country. In the case of secured creditors, the time limit for the filing of claims runs from the notification of the notice that is personally given by the liquidator, by registered letter with acknowledgment of receipt, or by any means with proof of a written record. Known creditors must be notified without notice by the liquidator if they have not filed their claims within 15 days of the first insertion of the opening decision in a legal notice newspaper. The warning takes the form of a bearer's letter against a receipt or a registered letter with acknowledgment of receipt or any means that provides proof by way of a written record.

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

Litigation brought against or by the company coupled with the fact that the decisions of directors are subject to the approval of the liquidator.

Funding of the Company Whilst in Judicial Reorganisation

There are no restrictions on this, save for the fact that loan agreements must be approved by the official receiver.

Effect of Judicial Reorganisation on Employees

Employees may be dismissed for economic reasons. As in liquidation, claims arising from employment or apprenticeship contracts are secured by the employees' super privilege.

Effect of Judicial Reorganisation on Contracts

These contracts continue during business rescue.

Effect of Judicial Reorganisation on Shareholders

The shareholders are limited in the exercise of their functions.

Effect of Judicial Reorganisationt on Creditors

Current proceedings are interrupted until the creditor has filed its claim. They are then automatically taken over, with the receiver duly summoned, but concern only the establishment of a claim and the fixing of the amount. The costs of legal and contractual interest, interest and the late payment of all claims secured by security or not, are also fixed.

Pending claims, litigation, arbitration

The decision to open the company's business rescue prohibits or interrupts any legal action by the creditors to enforce any claim they may have against the debtor to pay a sum of money or in relation to enforcement proceedings relating to movable or immovable property.

Effects of the moratorium

Any time limit imposed for creditors to proceed with legal proceedings is suspended for the duration of the proceedings.

Voidable Transactions

Several transactions made during the period prior to the opening of the process of the company are unauthorized and unenforceable against the body of creditors. These transactions include donations, the payment of debts and securities.

The concordat plan

The manner in which a company will be rescued is contained in the plan, the concordat, which provides -

- the terms of the continuation of the business,
- a partial or total transfer of assets with a precise indication of which assets need to be sold,
- the persons required to execute the composition and all subscribed commitments necessary for the business rescue,
- the arrangements for maintaining and financing the enterprise,
- the employment prospects and any necessary dismissal of employees for economic reasons, and
- the replacement of managers.

Voting on the concordat

The report of the receiver on the status of the process is submitted to the vote. For approval, it must be supported by the majority in number of creditors admitted permanently or provisionally representing at least half of the total amount of the receivables. The plan may be voted on by correspondence or through a proxy.

Cram down on creditors

The Court may declare that the plan is binding on all creditors.

Implementation of the plan

The plan will be implemented in accordance with its terms.

Discharge of debt

The discharge of claims is not provided for by law but may be contained in the plan.

How is the process terminated?

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

Director and officer liability

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

SECURITY

Types of security

These are -

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

Taking of security

Securities are taken by way of an agreement or by Court order.

Security trustees and special purpose vehicles

Any security for the performance of an obligation may be created, registered, managed, and carried out by a national or foreign financial institution or credit institution acting on its behalf and acting as a security agent for the benefit of the creditors of the secured obligation (or obligations) to designate it for that purpose. The security trustee is an agent responsible for the constitution, the inscription and the realization of one or more securities or any other guarantee in respect of the execution of an obligation. The security trustee has the power to represent the creditors and defend their interests.

Most robust form of security available to lenders

This is the mortgage.

Registration of security

Registration must be done in the Trade and Credit Register, also known as RCCM (Registre de commerce et de crédit mobilier).

Stamp Duty

Stamp duty is levied on all papers intended for civil and judicial acts and writings that can be produced in Court as authentic. There are no exceptions other than those specifically mentioned in the General Tax Code or in another law.

Registration Costs

The costs depend on certain factors, including the value of the security recorded.

Requirements for the assignment / transfer of the registered security

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

Instances in which securities might be vulnerable to attack

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

Methods of enforcement of security

The security may be sold on public auction where the debtor and the creditor are unable to reach agreement for the realization of the security. The sale by a public auction rises following the grant of an enforceable judgement.

Problems experienced when enforcing security

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

RECOGNITION OF FOREIGN JUDGMENTS

Instances in which your court will recognize a foreign judgment

According to applicable exequatur rules, a foreign judgment that is enforceable against a person or company domiciled in Côte d'Ivoire may be recognized by the Ivorian court.

Requirements for recognition of a foreign judgment

Several conditions should be present such as -

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

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

There is no Ivorian law provision on this issue.