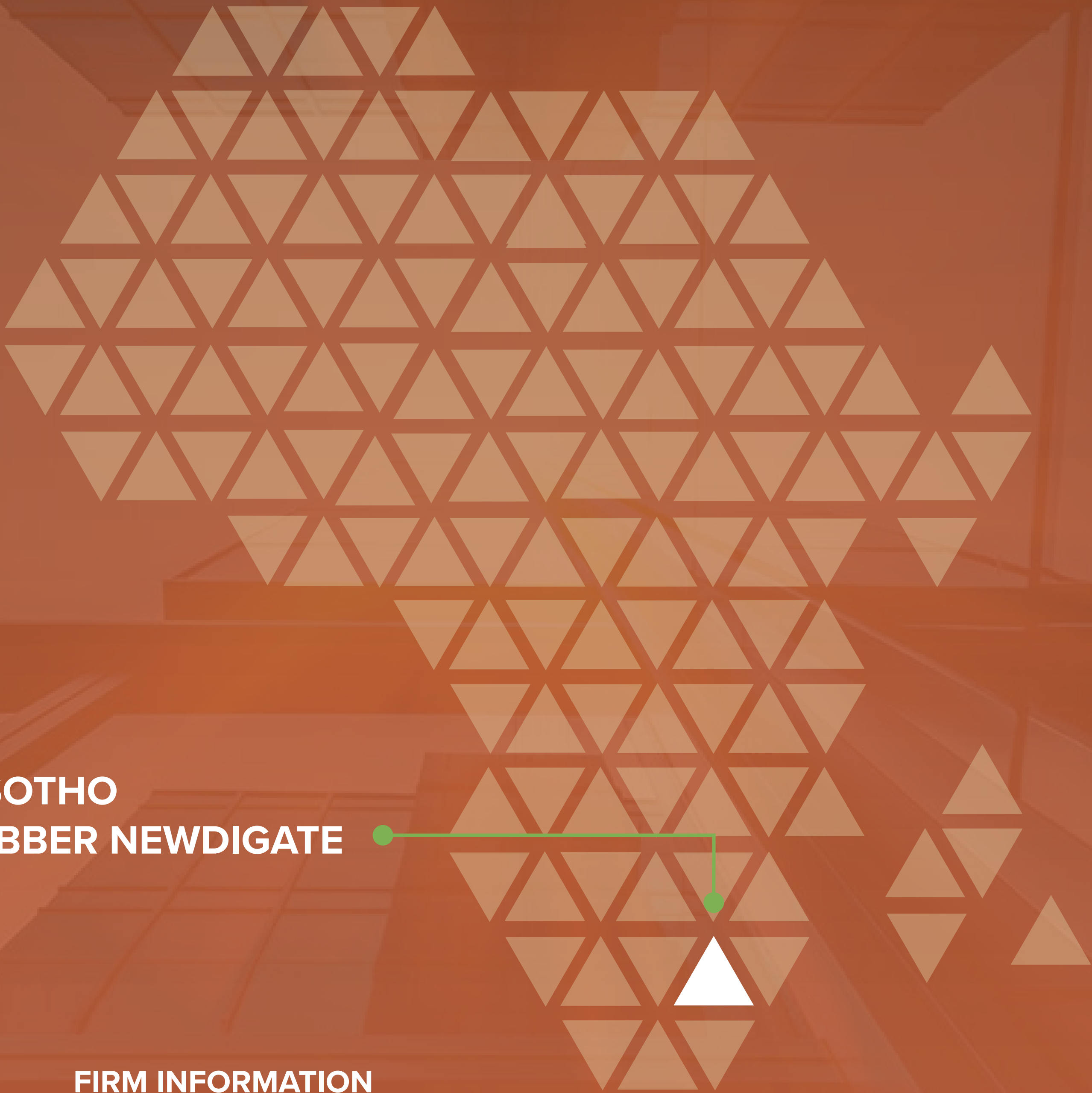

LESOTHO
WEBBER NEWDIGATE

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LESOTHO | WEBBER NEWDIGATE

TYPE OF GOVERNMENT

Democracy / Kingdom.

POLITICAL SYSTEM

Parliamentary constitutional system influenced by the Westminster model.

LEGAL SYSTEM

Roman Dutch Law.

TESTS FOR INSOLVENCY

What are the tests for insolvency (ie liquidation)?

In terms of section 5 of the Insolvency Act, 2022 (Act No. 9 of 2022), a debtor (including a company) is insolvent if—

- it is unable to pay its debts as they fall due; or
- its liabilities exceed the value of its assets.

Section 5(2) further creates a statutory presumption of insolvency where a debtor fails to satisfy a written demand for payment of at least M15,000 within 21 days.

What are the tests for financial distress (ie business rescue or administration)?

Lesotho now has a formal corporate rescue regime introduced under the Insolvency Act, 2022.
Part VIII of the Act provides for Corporate Rescue proceedings aimed at rehabilitating financially distressed companies where there is a reasonable prospect of rescue.
Judicial management under the Companies Act, 2011 has been superseded in substance by the corporate rescue framework.

INSOLVENCY AND RESTRUCTURING PROCEDURES

Formal insolvency procedures

The Insolvency Act, 2022 which came into force by publication of a Government Gazzet in 2024, provides for liquidation as the primary formal insolvency procedure for companies, initiated by application to the High Court or in accordance with the Act. Importantly, part 8 of the Act did not come into force. Part 8 deals with the Insolvency Regulator. No regulations were passed as yet either. This non- liquet leaves great uncertainty where the Regulator does not exist yet in law.

- It is uncertain how functions or appointments that Part 8 assigns to the Regulator can be exercised, until commencement of part 8 and/or insolvency regulations being passed to deal with the lacuna.

Formal restructuring procedures

The Insolvency Act, 2022 introduces Corporate Rescue as a formal restructuring mechanism.
Corporate Rescue proceedings are conducted under the supervision of a Corporate Rescue Practitioner appointed in accordance with Part VIII of the Act.

Statutory constraint:

If liquidation proceedings have already been commenced, corporate rescue may be unavailable unless permitted by the Court under section 151 of the Act. This creates a timing-critical limitation not present under the prior regime.

Informal insolvency and restructuring procedures
Informal creditor compromises remain possible by agreement but, the Insolvency Act, 2022 now also provides for formal compositions (see below)

LIQUIDATION

What is the aim of liquidation?

It is a process used to close a business and sell what it owns in order to pay its debts for the benefit of its creditors.

Process required to commence a liquidation

Liquidation is initiated in accordance with the Insolvency Act, 2022, by application to the High Court by a creditor, the debtor company, a director, shareholder, or other qualifying party as defined in the Act.

At what point does the liquidation process commence?

Liquidation commences upon the granting of a liquidation order by the Court, or as otherwise provided for under the Insolvency Act, 2022

Duration of the liquidation process

The duration of the liquidation process depends on the magnitude of the company and usually takes about a year to complete, from start to finish. Ultimately, it is fact-dependent.

Extent of court involvement in the liquidation process

The Insolvency Act, 2022 introduces enhanced regulatory oversight, including the appointment of an Insolvency Regulator responsible for licensing and supervising insolvency practitioners.

Management of the company whilst in liquidation

Substantively unchanged, subject to practitioner regulation under Part VIII of the Insolvency Act, 2022.

Filing of claims

Claims are submitted and adjudicated in accordance with the procedures set out in the Insolvency Act, 2022 and directives issued by the Insolvency Regulator.

Factors influencing duration

The magnitude of the company, coupled with any litigation brought against or by the liquidators, are factors that may delay the finalization of the liquidation process.

Effect of liquidation on employees

Employee preference rights are governed by the Insolvency Act, 2022. The statutory cap applicable to preferential employee claims has been revised, but the precise monetary threshold must be confirmed from the Act and regulations.

Effect of Liquidation on contracts

The liquidator may decide to either terminate or maintain certain contracts. It is within the liquidator's discretion. The liquidator should consider if it is in the best interests of creditors to terminate or maintain contracts.

Effect of liquidation on shareholders

Shareholders may vote at the creditors' meetings and may make proposals at meetings of creditors and shareholders. Shareholders can make proposals on any matter.

Effect of liquidation on creditors

Creditors may vote at the creditors' meetings and may make proposals at meetings of creditors and shareholders. The creditors may make proposals in respect of the distribution of the proceeds of the estate.

Pending claims, litigation and arbitration

The liquidator may elect to proceed, settle or withdraw any pending litigation or arbitration proceedings that were initiated at the instance of the company. The same applies to pending proceedings brought against the company.

Voidable Transactions

Voidable transactions are regulated under the Insolvency Act, 2022, which retains avoidance provisions relating to dispositions without value, preferences, and transactions concluded while insolvent.

How is the liquidation process terminated?

Liquidation is terminated in accordance with the Insolvency Act, 2022 upon final distribution and deregistration or by Court order.

Director or officer liability

Director and officer liability is preserved and expanded under the Insolvency Act, 2022, including civil liability for reckless or fraudulent trading and criminal sanctions for misconduct.

COMPOSITIONS AND COMPROMISES

The Insolvency Act, 2022 introduces statutory compositions:
- Pre-liquidation compositions (section 136)
- Post-liquidation compositions (section 142)

These mechanisms permit structured compromises with creditors subject to statutory approval thresholds and Court oversight.

JUDICIAL MANAGEMENT

Judicial management under the Companies Act, 2011 has effectively been replaced by Corporate Rescue under the Insolvency Act, 2022.References to judicial management should be read as historical only and replaced with Corporate Rescue where applicable.

SECURITY

This section remains substantially accurate.

- SIMPA 2020 remains in force and effective;
- Security types unchanged; and
- Enforcement principles unchanged.

No substantive amendment required.

RECOGNITION OF FOREIGN JUDGMENTS

For a foreign judgment to be recognized, an application would need to be brought to the High Court. Certified copies of the pleadings in respect of the matter and a certified copy of the judgment would need to be attached to the application to Court. A judgment of any Court of competent jurisdiction whether domestic of foreign may be sued on in the Lesotho High Court.

provided that the judgment is final, the foreign judgment must not be repugnant to Lesotho law and the foreign Court must be a Court of competent jurisdiction according to Lesotho law.

RECOGNITION OF FOREIGN INSOLVENCY PRACTITIONERS

The recognition of foreign insolvency practitioners remains subject to High Court approval, now read together with the practitioner regulation framework under Part VIII of the Insolvency Act, 2022.


INSOLVENCY