MALI
SATIS PARTNERS

FIRM INFORMATION

Website address : **www.satispartners.com**
Languages spoken : **English, Bambara, Fulani and French**
Telephone : +223 44 23 11 22
Address : Hamdallaye ACI 2000.Rue 408, Porte 185, Bamako Mali
Contact : Mamadou Coulibaly
Email : m.coulibaly@satispartners.com

MALI I SATIS PARTNERS

TYPE OF GOVERNMENT

The governmental form of the country is a democracy.

POLITICAL SYSTEM

The Republic of Mali opted for a presidential regime, characterised by the separation of executive, legislative and judicial powers. It has also instituted multiparty politics since 1990.

LEGAL SYSTEM

Inspired by French law, the Malian judicial system groups first and second level courts, with the Courts of First Instance and Courts of Appeal. These fall under the control of the Supreme Court.

TESTS FOR INSOLVENCY

What are the tests for insolvency (ie liquidation)?

A company is insolvent when it ceases payments to creditors and the company has not presented an agreement to its creditors for the restructuring of its debt.

What are the tests for financial distress?

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

INSOLVENCY AND RESTRUCTURING PROCEDURES

Formal insolvency procedures

Friendly liquidation and judiciary liquidation (bankruptcy).

Formal restructuring procedure

Business rescue.

Informal Insolvency or Restructuring Procedures

Not applicable.

LIQUIDATION

What is the aim of liquidation?

Liquidation is a procedure aimed at realising the assets of the debtor in order to discharge its liabilities.

Process required to commence liquidation

A debtor who is insolvent must make a declaration for the purpose of opening the liquidation procedure, regardless of the nature of its debts. The declaration must be made by the debtor within 30 days following the cessation of payments, and it must be deposited at the registry of the Competent Court against proof of receipt. The liquidation may also be initiated at the request of a creditor, regardless of the nature of their claim, provided that it is certain, liquid and due. To this end, the creditor's application must specify the nature and amount of the claim and refer to the title on which it is based.

At what point does the liquidation process commence?

The liquidation process begins with the pronouncement of the opening procedure by the Competent Court. Duration of the liquidation process The Competent Court shall fix the period within which the closure of the proceedings shall be examined, which period shall not exceed more than 18 months after the initiation of the procedure. However, such Court may extend the term by 6 months once only, on the justification provided by the trustee (syndic) and by a specially reasoned decision.

Extent of court involvement in liquidation process

Other than to open the procedure, the Court is not involved in the liquidation process.

Management of the company whilst in liquidation

Once the Court orders the liquidation, the powers of the board of directors or the executive officers cease on that date. As for the liquidator, he represents the company and administers the liquidation. The liquidator is vested with extensive powers to realise assets. The Liquidator is entitled to pay creditors and to distribute surplus proceeds from the sale of assets among the partners.

Filing of claims

From the opening decision and within 60 days after the second insertion of a legal notice in a newspaper, creditors are required to file their claims with the trustee 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 date of the notification of the notice (which is to be personally given by the liquidator, the debt to be produced by a bearer's letter against a receipt, by registered letter with acknowledgment of receipt, or by any means leaving a written record). Known creditors must be notified by the trustee if they have not filed their claims within 15 days of the first insertion of the opening decision with a legal notice in a newspaper. The warning takes the form of a bearer's letter against a receipt, or a registered letter with acknowledgment of receipt or by any means that leaves 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, or the change in the mode of administration, which is henceforth entrusted to the trustee, may be factors influencing the period of administration of the business during the liquidation.

Effect of liquidation on:

- **Employees** - The claims resulting from employment or apprenticeship contracts enjoy preference as a super lien on wages. However, employees may be dismissed for economic reasons, when it is urgent and indispensable.

- **Contracts** - Contracts can be maintained or terminated according to the decision of the liquidator.

- **Shareholders** - Shareholders will be paid from any surplus proceeds from the sale of assets and after payment to the creditors.

- **Creditors** - From the opening decision, the creditors are gathered in a body of creditors represented by the trustee, who acts in the name and in the collective interest of the body of creditors. They 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 realised.

Pending claims, litigation and arbitration

The decision to open the liquidation order shall prohibit or preclude any enforcement proceedings by creditors in respect of movable and immovable property, as well as any distribution procedure which has not produced an attributive effect before the opening decision. Proceedings in process are interrupted until the creditor has filed its claim. They are then automatically taken over, the trustee duly summoned, but concern only the establishment of the claim and the fixing of the amount.

Voidable transactions

Several transactions made during the suspect period (beginning on the date of cessation of payments and ending on the date of the opening decision and for a maximum duration of 18 months) are unauthorized and unenforceable against the body of creditors. These transactions, which would be considered void, refer to donations, the payment of debts and securities.

How is the liquidation process terminated?

The liquidation ends following a decision of the Competent Court. The Competent Court may declare the closing of operations as a result of insufficient assets.

Director or officer liability

Directors and officers may be held liable civilly or criminally. If a director mismanages a company or misappropriates the company's assets, the company may hold the director civilly liable. The embezzlement of company assets constitutes a criminal offence for which a director may be held criminally liable.

Consequences of the Companies Act

The civil liability of directors and officers arises in circumstances where the asset shortfall of a company is due to the fault of the directors. The Court can 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 an extra-patrimonial sanction with personal bankruptcy. On the criminal side, managers can be guilty of bankruptcy and other offences affiliated to it..

BUSINESS RESCUE/ADMINISTRATION

Process required to commence a business rescue

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

At what point does business rescue commence?

First, the debtor has to propose an offer of fair composition within60 days after the declaration of insolvency. If the composition is accepted, the relevant Court must pronounce the opening of the procedure. The relevant Court pronounces the commencement of the business rescue process if it notes the insolvency and if it accepts that the debtor proposed a fair composition (detailing the measures for the recovery of the company, the payment plan of receivables and the guarantees of execution of the Concordat).

Duration of the business rescue process

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

Extent of court involvement in the business rescue process

The Court plays a role in the reorganization proceedings, by fixing the date of insolvency and pronouncing the opening of the procedure.

Management of the company whilst in business rescue.

The company is managed by the trustee during the business rescue process. The management continues to participate in the management of the business, unless the Competent Court decides otherwise.

Filing of claims

Information as set out under the liquidation section is applicable here.

Factors which influence business rescue

These factors are similar to those arising from the liquidation procedure.

Funding of the company whilst in business rescue

There is no provision which regulates funding during business rescue at law.

Effect of business rescue on:

- **Employees** - They may be dismissed for economic reasons.

- **Contracts** - Contracts remain in force and effect during the business rescue.

- **Shareholders** - Shareholders are engaged throughout the process.

- **Creditors** - 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, the resolution of a contract for non-payment, or enforcement proceedings relating to movable or immovable property.

Pending claims, litigation and arbitration and effects of the moratorium

All proceedings are suspended. The approval of the moratorium renders it binding on all the creditors, whatever the nature of the claims

Voidable transactions

Several transactions made during the period (beginning on the date of cessation of payments and ending on the date of the opening decision and for a maximum duration of 18 months) prior to the liquidation of the company are unauthorized and unenforceable against the body of creditors. Transactions that would be considered void include donations, the payment of debts and securities.

The business rescue (administration plan)

A rescue plan (concordat) will provide -

- The terms for the continuation of the business;
- The details about a partial or total transfer of assets;
- The persons required to execute the composition and all their obligations;
- The arrangements for maintaining and financing the business;
- The employment prospects and any necessary dismissals of employees for economic reasons; and
- The replacement of the managers.

Voting on the plan

The plan will be approved if the majority in number of creditors admitted permanently or provisionally representing at least half of the total amount of the receivables, support the plan. The plan may be voted on by correspondence or by way of proxy.

Cram down on creditors

The plan must be supported by a vote of creditors before it is adopted and implemented.

Implementation of the proposal

The plan will be implemented in accordance with its terms.

Discharge of debts

A distribution of funds between creditors can be determined by the Judge in order to discharge debts.

Effect of suretyships

In the event of business rescue, the decision to initiate the process suspends any enforcement proceedings by the body of creditors, including those with security interests. However, that decision has no suspensive effect on surety agreements.

How is the process terminated?

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

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

The company should revert to an optimal financial situation. Otherwise, it will be liquidated.

Director and officer liability (civil consequences and criminal consequences)

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

SECURITY

Types of security

- Personal guarantees: a guarantee and/or a letter of guarantee.
- Property guarantees: a right to hold the debtor's assets, lien, retained or transferred property as a guarantee and/or a pledge.
- Mortgages: either by agreement or by a Court order.
- Statutory Prescribed Forms of Security.

Taking of security

Save for personal guarantees, any other security is taken by agreement or by Court order.

Security trustees/special purpose vehicles

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

Most robust form of security

The mortgage over real estate property is the most robust form of security.

Registration of security

Registration of security must be done with the Trade and Credit Register, also known as RCCM (Registre du Commerce et du Crédit Mobilier).

Stamp duty

In the case of bankruptcy, the required process does not require stamp duty.

Registration Costs

The acts drawn up in execution of the laws relating to bankruptcies and judicial liquidations, namely, declarations regarding the cessation of payments, balance sheets, balance sheet filings, posters and certificates of insertion relating to the declaration of bankruptcy or to the summonses of creditors, deeds of filing of inventories, transactions and other deeds, minutes of meetings, statements, observations and deliberations of creditors, statements of presumed claims, deeds of proceeds; petitions addressed to the official receiver, orders and decisions of the magistrate, reports and accounts of the receivers; statements of distribution; minutes of verification and affirmation of debts, compositions or postponements shall be exempt from the formality of registration.

Requirements for the assignment / transfer of security

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

Instances in which securities might be vulnerable to attack

If the security is legally registered, there should be no concern with regard to its enforcement.

Methods of enforcement of security

The security may be sold on public auction where there is a failure to reach a friendly settlement on the enforcement of the security. The public auction is based on an enforceable judgement.

Problems experienced when enforcing security

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

Financial assistance requirements

Not applicable.

RECOGNITION OF FOREIGN JUDGMENTS

Instances in which your court will recognize a foreign judgment

A foreign judgment that is enforceable against a person or company domiciled in Mali may be recognized by the Malian Court.

Requirements for recognition of a foreign judgment

Several conditions should be present such as-

- The foreign Court must have 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 public order.

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

This is not generally considered.