SENEGAL
MAME ADAMA GUEYE & PARTNERS

FIRM INFORMATION

Website address : **www.magp.sn**
Languages spoken : **French, English**
Telephone : + 221 33 922 66 86
Address : Résidence Kër Diaba, Rue MZ 81 X Rue MZ 94, Mermoz Pyrotechnie Dakar, Senegal
Contact : Me Mame Adama Gueye
Email : magueye@magp.sn / mmbaye@magp.sn

SENEGAL I MAME ADAMA GUEYE & PARTNERS

COUNTRY INFORMATION

The Republic of Senegal is a constitutional democracy with a President who is elected every 5 years. The Government coordinates the nation's politics under the direction of the President since the abolition of the position of Prime Minister. However, on 10 December 2021, the National Assembly re-established the position of Prime Minister.

The Republic of Senegal is a multi-party presidential republic. The President of the Republic, who is the Head of State, holds most of the executive authority, while the Prime Minister, as Head of Government, is responsible for coordinating governmental action under the President's authority.

Legislative power is vested in the National Assembly, which is responsible for enacting laws and overseeing government action.

The judiciary is independent from both the executive and legislative branches, in accordance with the constitutional principle of separation of powers enshrined in the Constitution of Senegal.

POLITICAL SYSTEM

Multiparty Democracy.

LEGAL SYSTEM

Civil law system based on French law.

TESTS FOR INSOLVENCY

What are the tests for insolvency (ie liquidation)?

If the receiver cannot rescue the company, the activities of the company cease and liquidation will commence.

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

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) are regulated by the Uniform Act OHADA relating to Commercial Companies and Economic Interest Groups (AUSCGIE) and the Uniform Act on the Organization of Collective Procedures for the Discharge of Liabilities (AUPC), respectively.

Formal restructuring procedures

There are two kinds of rescue procedures in Senegalese law:

1. **Preventive settlement (règlement préventif):** This procedure is aimed at preventing the insolvency or cessation of payments (cessation de paiement) (the inability of the debtor to pay due debts with available assets of the company) and enabling the company to clear its debts. The Court will appoint an expert to audit the position of the debtor and to determine whether the debtor can continue to operate based on the settlement agreement it may have with any creditor. The commencement of this procedure prohibits all legal proceedings from being initiated against the debtor. Based on the report of the expert and acceptance of a payment plan proposed by the debtor, the debtor will be able to continue to operate its business. Should it fail to comply with the plan, anyone who has an interest can request that the debtor be placed under receivership or liquidation.

2. **Receivership:** The debtor can submit a petition to Court to be placed receivership. This procedure is aimed at ensuring the continuation of the company and the clearing of its debts. The court will appoint an administrator who will assist the debtor in the operation of the business and the insolvency judge (juge commissaire).

Informal insolvency or restructuring procedures

Not Applicable

LIQUIDATION

What is the aim of liquidation?

There are two types of liquidations: a friendly liquidation and a judicial liquidation in terms of AUSCGIE and AUPC. Both of them aim to realise the assets of the company in order to pay creditors.

Process required to commence a liquidation

Friendly liquidation: the process begins when the company takes a decision to wind itself by way of a resolution taken at a shareholders'december extraordinary meeting. The resolution will appoint one or more liquidators to proceed to liquidate the company.

Judicial liquidation (bankruptcy): the process commences with a petition for liquidation submitted to the Court by the debtor itself, the creditors, the public prosecutor, the Court itself or any person who may have an interest. The petition will result in a decision of the Court that will pronounce the liquidation, appoint the liquidators, the insolvency judge, and confirm the suspect period which cannot be more than 18 months prior to the cessation of payments.

At what point does the liquidation process commence?

The process commences with the submission of a petition for liquidation to the Court. But the debtor will be declared to be in liquidation only once a judgment pronouncing such liquidation is handed down by the Court.

Duration of the liquidation process

With a friendly liquidation, in terms of AUSCGIE, the duration of the liquidation process cannot exceed 3 years starting from the effective date of the winding up of the company. However, in practice, the 3-year period is often extended. For the judiciary liquidation in terms of AUPC, the duration of the process is 18 months which can be extended for 6 months but provided the aggregate period does not exceed 24 months.

Extent of court involvement in the liquidation process

In friendly liquidations, the Court is not involved in the process. Its involvement is limited to publishing the liquidation decision with the registry of commerce (which is held at the Court) and ensuring that the company complies with the 30 days' notice period wherein potential creditors are permitted to challenge the liquidation decision. If there is any objection to the friendly liquidation, the Court is tasked with attending to it. For judiciary liquidation, the Court's involvement includes the granting of the liquidation order and the appointment of liquidators to supervising judge and to deal with and settle any dispute related to the liquidation.

Management of the company whilst in liquidation

The role, responsibility and powers of the board of directors and the CEO/managing director shall terminate from the date that the Court grants an order for the liquidation of the company. From that date, the liquidator shall assume the role, responsibilities and powers related to the company. In general, the liquidator is limited to selling the company's assets, in order to pay the creditors and to distribute any outstanding balance to the shareholders.

Filing of claims

Two legal announcements informing creditors of the liquidation must be placed in a newspaper and in the Government Gazette (for secured creditors). All creditors, except creditors with maintenance claims, shall lodge their claims with the liquidator within 60 days of the date of the second publication of the liquidation decision in a newspaper, failing which, such claims will be rejected. The deadline is extended to 90 days for creditors resident outside of the jurisdiction. Known creditors (including those on the balance sheet) and secured creditors that have not submitted their claims, shall be notified in person by registered mail or by way of any other written notice.

Factors which influence the liquidation period

Judicial liquidation can be delayed by the requirement to consider rescuing the business. When an entity is in a cessation of payments, prior to judicial liquidation, rescue is considered first. This procedure may last 6 or 9 months before the process is converted to judicial liquidation. The decision to convert the business rescue into judicial liquidation may be subject to an appeal which may delay the liquidation period further.

Once the procedure is opened, judicial liquidation can also be delayed for the following reasons:

- a lack of diligence on the part of the receiver;
- recourse of creditors after filing the claims with the receiver;
- diligence of the insolvency judge in validating claims;
- creditors' appeals may affect the decision of the insolvency judge;
- the procedures to sell the assets;
- the procedure to recover assets from third parties; and
- failure to publish the opening of judicial liquidation in the newspaper and in the Trade and Personal Property Credit Register and in the land journal if the debtor owns real estate.

Effects of liquidation on employees

All employee contracts are terminated either by mutual agreement or through dismissal on the basis that the company will cease to trade. Employees must be paid their severance pay, allowances and any benefit due to them as at the date of termination.

Effects of liquidation on contracts

Unless their continuation of any contract is beneficial for the liquidation process, all contracts are to be terminated. Effect of liquidation on shareholders If available, shareholders will be paid from the proceeds derived from a sale of the assets once creditors have been paid.

Effect of liquidation on creditors

Creditors are classified as secured and unsecured creditors. Creditors are paid based on an order of preference. If there are sufficient assets to pay creditors, all creditors will be paid in full. If there are insufficient assets to pay all the creditors, creditors get paid in proportion to their debts.

Pending claims, litigation and arbitration

These proceedings are suspended

Voidable transactions

The judge usually determines the period in which transactions that caused the company's financial difficulties are to be declared void. These transactions include donations, the payment of debts and securities taken in respect of a debtor's assets. Further, if such transactions were prejudicial to the creditors, they will also be deemed to be void. For example - gratuitous transactions completed in the 6 months prior to insolvency or onerous transactions.

How is the liquidation process terminated?

The liquidation process terminates when the company pays off its liabilities and distributes all the remaining assets/proceeds realised from a sale of the assets to the shareholders. The insolvency judge records this termination.

DIRECTOR OR OFFICER LIABILITY

Civil consequences

A Court can pronounce the personal bankruptcy of the officers of a company who committed serious offenses. This may include officers who have not declared certain social liabilities within a period of 30 days from the liquidation of the company.

Criminal consequences

There are two types of bankruptcy: simple bankruptcy and fraudulent bankruptcy. Sentences for directors and officers might include 5 to 10 years jail sentence for fraudulent bankruptcy.

BUSINESS RESCUE / ADMINISTRATION

Preventive settlement

Process required to commence a business rescue

The company shall file a petition alone, or with one or several of its creditors, with the Competent Court.

At what point does business rescue commence?

The company is required to submit several documents, including a fair composition, to the Court. The fair composition sets out the measures planned for the restructuring of the company. Where the fair composition appears reasonable to the President of the Court, the preventative settlement procedure commences and an expert is appointed to facilitate the process

Duration of business rescue

AUPC provides that the fair composition will be approved by the Court if the measures put in place to rescue the company do not exceed 3 years for all creditors and 1 year for salaried creditors.

Extent of court involvement in the business rescue

The Court is very involved in the process. It is responsible for declaring the procedure, designating a judge or any qualified person to obtain all the information on the financial position of the company and the composition and for appointing an insolvency judge or receiver (responsible for ensuring the expediency of the procedure) and/or one or more receivers (to represent the creditors).

Management of the company whilst in business rescue

The debtor remains in charge of the management of the company.

Filing of claims

The law is silent about the way claims should be filed in a preventive settlement. Furthermore, the preventive settlement is initiated by the debtor who refers to the claims of the creditors in the petition. The debtor or the expert can produce the claims. The production of receivables may be made ex officio by the debtor.

Factors which influence the period of business rescue

The preventive settlement can be delayed by the finalisation by the expert of his/her work and report, the acceptance of the plan by the creditors and a judgment of homologation of the composition.

Funding of the company whilst in business rescue

During the preventive settlement process, the company may be funded through a capital raise, a debt for equity swap or through loans advanced by banking or financial institutions or individuals. Legal and natural persons who loan (in terms of the composition agreement) new money to the company with a view to ensuring the continuation of the company, receive preferential repayment. Legal and natural persons who supply, under the same conditions, new goods or service with a view to ensuring the continuation of the company also receive preferential treatment. This does not apply to contributions made as part of an increase in the debtor's share capital.

Effect of business rescue on employees

The commencement of the proceedings does not terminate the contracts of employees. However, redundancies for economic reasons can occur.

Effect of business rescue on contracts

The fair composition must provide the continuation of contracts entered into prior to the petition.

Effect of business rescue on creditors

The commencement of a preventive settlement suspends all procedures aimed at obtaining the payment of claims for a maximum period of 3 months, which may be extended by 1 month (save for claims for wages or maintenance). This does not, however, apply to actions for the recognition of disputed rights or claims, or legal actions against the signatories of bills of exchange other than the beneficiary of the suspension of individual lawsuits.

Pending claims, litigation and arbitration

All procedures are suspended

Effects of the moratorium

The approval of the fair composition shall be binding on all creditors, whether their claims are unsecured or secured. The moratorium shall also apply to persons who are co-obligated or who have granted personal guarantees or assigned property as security when they have paid the debtor's debts.

Voidable transactions

Unless the President of the Competent Court provides otherwise, the decision to initiate the preventive settlement shall prohibit the debtor, on penalty of becoming null and void (i) from paying, in whole or in part, claims incurred prior to the decision of operating; (ii) from doing anything which is out of the ordinary course of the business of the company or granting security. It shall also be prohibited from settling joint debtors and individuals who have granted personal security, or who assigned or transferred property as collateral, when they paid claims incurred prior to the opening decision.

Voting on the plan

No voting takes place. Instead, the receiver in the preventive settlement engages with the debtor and the creditors and facilitates negotiations between them so as to reach an agreement, based on the fair composition proposed by the debtor. The receiver will prepare a report in which he records whether each creditor has been contacted and on which date; has consented to a debt reduction or extension of time for payment and, where applicable, how much or how long; and has declined to grant time for the extension of a payment and debt reduction and the reasons thereof.

Cram down on creditors

After approval, the plan is binding on all creditors.

Implementation of the plan

The plan will be implemented in accordance with its terms.

Discharge of claims

Claims may be discharged in accordance with the terms of the approved composition plan.

Effect on suretyships

Except for natural persons, sureties cannot benefit from the deadlines and discounts provided for in the plan (concordat).

How is the process terminated?

The process terminates when the fair composition is approved by the judge.

What is the status of the company after business rescue?

There are 2 possible outcomes: the company may revert to an optimal financial position or if the process fails, it will be placed either in receivership or judiciary liquidation.

DIRECTOR AND OFFICER LIABILITY

Civil Consequences

A Court can pronounce the personal bankruptcy of the officers that committed serious offenses.

Criminal consequences

There are two types of bankruptcies: simple bankruptcy and fraudulent bankruptcy. Sentences for directors and officers might include 5 to 10 years jail sentence for fraudulent bankruptcy.

RECEIVERSHIP

Process required to commence a business rescue

The company must be insolvent. 30 days after the declaration of insolvency, a declaration must be filed with the Court together with documents supporting the financial position of the company (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's assets).

At what point does business rescue commence?

The debtor must propose an offer of fair composition 60 days after the declaration of insolvency. If the composition is accepted, the Court must pronounce the opening of the procedure within 30 days. The Court will pronounce the commencement of the process if it confirms that the company is or will be insolvent (18 months after the pronouncement of the decision of opening) and if it accepts that the debtor has proposed a fair composition (detailing the measures for the recovery of the company).

Duration of business rescue?

Receivership should take 6 months, but this can be extended for 3 additional months.

Extent of court involvement in the business rescue

The Court fixes the date of insolvency and pronounces the opening of the procedure. The Court can designate a judge or any qualified person to obtain all the information on the financial position of the debtor and its composition. The Court will appoint an insolvency judge or receiver (responsible for ensuring the expediency of the procedure) and/or one or more receivers (who represent the creditors).

Management of the company whilst in business rescue

The management continues to manage the company with the assistance of the receiver.

Filing of claims

Two legal announcements informing creditors of the receivership must be published in a newspaper and in the Government Gazette (for secured creditors). Within 60 days of the second publication of the decision in a newspaper, all creditors in the group, except creditors for maintenance claims, shall lodge their claims, failing this, claims will be rejected. The deadline is 90 days for creditors living outside of the jurisdiction. Known creditors (including those on the balance sheet) and secured creditors who have not submitted their claims, shall be notified in person by registered mail or by way of any other written notice.

Factors which influence the period of business rescue

Delays may arise from the company acting under the supervision of the receiver and insolvency judge in all matters, save for conservatory acts. Actions taken by the company without the assistance of the receiver are unenforceable.

Funding of the company whilst in business rescue

There is no restriction concerning the funding of the company in business rescue, save for loan agreements which must be declared to the insolvency judge. The creditors may also grant funding to the company. Creditors who agreed in the plan (concordat) to provide the company with new financial resources have preference with regard to repayment. They are privileged creditors.

Effect of business rescue on employees

The contracts of employees remain intact. However, redundancies for economic reasons can occur.

Effect of business rescue on contracts

Contracts remain in force during receivership and are not automatically terminated with the commencement of the process.

Effect of business rescue on shareholders

Following the opening of the process, all stocks, shares and securities owned by shareholders are blocked. They can only be transferred with the approval of the insolvency judge and are recorded with the Register of Commerce.

Effect of receivership on creditors

All proceedings are suspended for all creditors (whether secured or unsecured). Further, any action against natural persons who are joint debtors or who have granted personal security or who have assigned or ceded an asset as collateral security, are suspended. However, creditors benefiting from such collateral securities may take conservatory measures. Legal and contractual interest as well as all interest and service charges for the late payment of all claims whether they are secured or not is suspended except for interest arising from loan agreements entered into for a duration equal to or longer than 1 year or loan agreements with a deferred payment of 1 year or more. Creditors, whether or not they have a security interest and whether or not they are domiciled in the national territory, must lodge their claims with the receiver within a limited period of time.

Pending claims, litigation and arbitration

All proceedings are suspended.

Effects of the moratorium

The approval of the moratorium renders it binding on all the creditors. Creditors with secured claims and employees are entitled to object to extensions for repayment exceeding 2 years.

Voidable transactions

The judge usually determines the period in which transactions that caused the company's financial difficulties are to be declared void. These transactions include donations, the payment of debts and securities taken in respect of a debtor's assets. Further, if such transactions were prejudicial to the creditors, they will also be deemed to be void. For example - gratuitous transactions completed in the 6 months prior to insolvency or onerous transactions.

The business rescue

The fair composition is set out in a plan (Concordat) and contains (i) terms for the continuation of the company's business; (ii) precise indication of which assets are to be sold; (iii) persons entitled to execute the composition and all subscribed commitments necessary for the business rescue; (iv) terms of maintenance, financing and settlement of liabilities that existed prior to the decision of opening; (v) employee redundancies that must be attended to; and (vi) replacement of the directors.

Voting on the plan

The insolvency judge must approve the fair composition plan, which he will do if he believes that its terms are realisable. The receiver presents a report concerning the process and the assets and liabilities of the company and provides his opinion about the composition. After submission of the report, creditors are afforded an opportunity to vote on the plan. Voting by correspondence and proxy are accepted.

Cram down on creditors

The Court can enforce the plan on the creditors.

Discharge of claims

Claims may be discharged in accordance with the terms of the approved composition plan.

Effect on suretyships

A composition will have no effect on suretyships, which remain unchanged and of full force and effect.

How is the process terminated?

The process terminates when the recovery of the company becomes effective, failing which the procedure is converted to liquidation.

What is the status of the company after business rescue?

There are 2 possible outcomes: the company may revert to an optimal financial position or if the receivership fails, the company will be placed in liquidation.

DIRECTOR AND OFFICER LIABILITY

Civil Consequences

The same consequences with liquidations are applicable here.

SECURITY

Types of security

1. Personal securities: personal guarantees and first demand guarantees (garantie autonome).
2. Securities over movable property - possessory liens, assets held or transferred as security, pledges over tangible assets, intangible assets (which include receivables, bank accounts, transferable securities, stock, intellectual property rights, business property (fond de commerce) and the preferential rights of the vendor of business property.
3. Securities over immovable property: Mortgages

Taking of security

In general, securities are acquired through agreement or by way of an order of Court. In addition, a creditor who has a claim may ask the Court for authorization to carry out a precautionary seizure on the debtor's assets - movable property or claims held by third parties on behalf of the debtor.

Security receivers or special purpose vehicles

The security receiver is an agent responsible for the constitution, registration and enforcement of one or more securities or guarantees held in respect of the execution of an obligation. The security receiver has the power to represent and defend the interests of creditors.

Most robust form of security available to lenders

The most robust form of security available to lenders is a mortgage over real estate property/immovable property.

Registration of security

Judicial security:

No registration is required for security granted by order of Court.

Conventional security:

The registration of the agreement is mandatory with the Trade and Personal Property Credit Register in order to be enforceable against third parties. The agreement is subject to the payment of registration fees.

Pledge of bank account/receivable:

These pledges are commonly used and both require notification to all relevant parties including creditors and financial institutions.

Stamp duty

The stamp duty of 2000 FCFA per page is then payable to the tax administration.

REGISTRATION FEES	SUBSCRIPTION FEES
PLEDGE OF BANK ACCOUNTS	
- Fixed fees:5000 FCFA - Stamp duty: 2000 FCFA per paper - Schedule (after signature page): 5000 FCFA.	- 5 to 500 000 000 F CFA: 1 % - 500 000 000 to 1 000 000 000 FCFA: 0,5 % - More than one billion FCFA: 0,25 %
PLEDGE OF RECEIVABLES	
- Fixed fees: 5000 FCFA. - Stamp duty: 2000 FCFA per paper - Schedule (after signature page): 5000 FCFA.	- 5 to 500 000 000 F CFA: 1 % - 500 000 000 to 1 000 000 000 FCFA: 0,5 % - More than one billion FCFA: 0,25 %
PLEDGE OF SHARES	
- Fixed fees: 5000 FCFA. - Stamp duty: 2000 FCFA per paper - Schedule (after signature page): 5000 FCFA	- 5 to 500 000 000 F CFA: 1 % - 500 000 000 to 1 000 000 000 FCFA: 0,5 % - More than one billion FCFA: 0,25 %
PLEDGE OF BUSINESS ASSETS	
- Fixed fees: 5000 FCFA. - Stamp duty: 2000 FCFA per paper - Schedule (after signature page): 5000 FCFA.	- 5 to 500 000 000 F CFA: 1 % - 500 000 000 to 1 000 000 000 FCFA: 0,5 % - More than one billion FCFA: 0,25 %
INVENTORY PLEDGE	
- Fixed fees: 5000 FCFA. - Stamp duty: 2000 FCFA per page. - Schedule (after signature page): 5000 FCFA.	No fees.
MORTGAGE	
- Fixed fees: 5000 FCFA. - Stamp duty: 2000 FCFA per page. - Schedule (after signature page): 5000 FCFA.	No fees.

Registration costs

The calculation of the cost payable depends on many factors, such as the amount of the secured obligation. The amount of the registration cost is capped to 50.000.000 FCFA. The fees are normally payable by the debtor in the case of a security agreement and by the creditor in the event of security given under a Court order.

The costs are different depending on securities they are as follows:

Requirements for the assignment or transfer of security

The transfer is subject to the drafting of a deed of assignment. This must be published/registered with the authorities as the initial security.

Instances in which Securities might be Vulnerable to Attack

If the security is legally registered, there should be no concern regarding its enforcement.

Methods of enforcement of security
Following receipt of a Court order p
ermitting a sale, and failing a private sale, security may be sold at a public auction.

Problems experienced when enforcing security

Objections can be raised either by the debtor, the guarantor or a third party who may have an interest in preventing the enforcement of the security.

Financial assistance requirements

Not applicable.

RECOGNITION OF FOREIGN JUDGMENTS

Instances in which your court will recognize a foreign judgment

Subject to exequatur, any final judgment for a specific sum, including an award of damages, given by a foreign Court, may be enforced in Senegal.

Requirements for recognition of a foreign judgment

A foreign judgment would be recognised and accepted by the Courts of Senegal without re-trial or examination of the merits of the case, unless it is shown that (i) the foreign Court did not have jurisdiction in accordance with its jurisdiction rules, (ii) the party against whom the judgment of such foreign Court was obtained had no notice of the proceedings, or (iii) the judgment was obtained through collusion or fraud or was based on a clear mistake of law or fact, or (iv) the judgment was contrary to public policy applicable in Sénégal.