ZIMBABWE
SCANLEN AND HOLDERNESS LEGAL PRACTITIONERS

FIRM INFORMATION

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ZIMBABWE I SCANLEN AND HOLDERNESS LEGAL PRACTITIONERS

TYPE OF GOVERNMENT

West Minister with an executive President

POLITICAL SYSTEM

Multiparty democracy

LEGAL SYSTEM

Roman Dutch Law with commercial law heavily influenced by English law.

TESTS FOR INSOLVENCY

What are the tests for insolvency and financial distress?

In terms of Section 3 of the recently enacted Insolvency Act, Chapter 6:07 (Act), a debtor shall be deemed to be insolvent if –

- a Court has given judgment against him and he fails, upon the demand of the officer whose duty it is to execute the judgment, to satisfy it or to indicate to that officer disposable property sufficient to satisfy it or if it appears from the return made by that officer that he has not found sufficient disposable property to satisfy the judgment; or
- the debtor's liabilities exceed the value of the debtor's assets after having been served a statutory demand by the creditor for payment of the amount which is due and payable, the debtor fails to make such payment or to give security to the reasonable satisfaction of the creditor for such amount, or to enter into a compromise therefor, and the debtor has for 21 days thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor.

In terms of Section 121 (f) of the Insolvency Act, a company is deemed to be "financially distressed" if:

- It appears to be reasonably unlikely that the company will be able to pay all of its debts as they become due and payable within the immediately ensuing six months; or
- It appears to be reasonably likely that the company will become insolvent within the immediately ensuing six months.

INSOLVENCY AND RESTRUCTURING PROCEDURES

Provisions relating to Compromise and Restructuring are contained in Part XXIII of the Insolvency Act under the general theme of Corporate Rescue Proceedings.

Power to Compromise with Creditors and Members

The board of a company, or the liquidator of such a company if it is being liquidated, may propose an arrangement or a compromise of its financial obligations to all of its creditors, or to all of the members of any class of its creditors, by delivering a copy of the proposal, and notice of meeting to consider the proposal, to—

- every creditor of the company, or every member of the relevant class of creditors whose name or address is known to, or can reasonably be obtained by, the company; and
- the Registrar of Companies.

A proposal contemplated in this section will have been adopted by the creditors of the company, or the members of a relevant class of creditors, if it is supported by a majority in number, representing at least 75 percent in value of the creditors or class, as the case may be, present and voting in person or by proxy, at a meeting called for that purpose.

If the above proposal is adopted:

- the company may apply to Court for an order approving the proposal; and
- the Court, on an application, may sanction the compromise as set out in the adopted proposal, if it considers it just and equitable to do so, having regard to— (i) the number of creditors of any affected class of creditors, who were present or represented at the meeting, and who voted in favour of the proposal; and (ii) in the case of a compromise in respect of a company being liquidated, the report of the Master.

An order made shall have no effect until a copy of the order certified by the Registrar of the Court, together with a copy of the deed of compromise or arrangement, as the case may be, has been delivered to the Registrar for registration and a copy of every such order shall be annexed to every copy of the Memorandum of the company issued after the order has been made.

LIQUIDATION

A company which satisfies the test of insolvency (explained above) in terms of Section 3 of the Insolvency Act can be liquidated. A company or private business corporation can also be liquidated in terms of section 5 if -

- the directors are deadlocked in the management of the company, and the members are unable to break the deadlock, and:
- irreparable injury to the company is resulting, or may result, from the deadlock; or
- the company's business cannot be conducted to the advantage of members generally, as a result of the deadlock; or
- the members are deadlocked in voting power, and have failed for a period that includes at least 2 financial years to elect successors to directors whose terms have expired; or
- the directors, members, prescribed officers or other persons in control of the company or private business corporation are acting in a manner that is fraudulent or otherwise illegal; or
- the company or private business corporation's assets are being misapplied or wasted; or
- it is otherwise just and equitable for the company or private business corporation to be liquidated;
- the company or private business corporation, its directors, members or prescribed officers or other persons in control of the company or private business corporation are acting or have acted in a manner that is fraudulent or otherwise illegal, as determined by an investigation conducted by the Registrar of Companies in terms of the Companies and Other Business Entities Act (Chapter 24:31);
- if default is made in lodging the statutory report or in holding the statutory meeting in terms of the Companies and Other Business Entities Act [Chapter 24:31];
- if the company or private business corporation does not commence its business within a year from its incorporation or suspends its business for a whole year;
- if the company or private business corporation ceases to have any members;
- if 75% of the paid -up share capital of the company has been lost or has become useless for the business of the company;
- a corporate rescue practitioner of a debtor appointed during corporate rescue proceedings applies for liquidation under the provisions of Part XXIII, on the grounds that there is no reasonable prospect of the company being rescued.

What is the aim of liquidation?

The aim of liquidation is to divest directors and shareholders of their control of the company and to vest it in a liquidator who will realise the assets and ensure that creditors are paid from the available assets of the company. Secured creditors are paid first and unsecured creditors receive a pro rata share from the residue of the assets of the company in liquidation.

Process required to commence a liquidation

The process of liquidation is commenced by a resolution to that effect by the company (voluntary liquidation of companies) or generally, when an application is made to Court for the liquidation of a debtor (either by the creditors of the debtor or by the debtor).

At what point does the liquidation process commence

In terms of section 12 of the Insolvency Act, the voluntary liquidation of a company shall be deemed to commence 4 weeks after the resolution for the company's voluntary liquidation was passed, and where the Minister has appointed a liquidator to investigate the company's affairs, 8 weeks after the liquidator's appointment, or upon the conclusion of any arbitral proceedings where there is a dispute between the company and its employees regarding benefits and any payments due to the employees. For compulsory liquidation, the process commences upon the granting of the first liquidation order by the Court, which order can either be a provisional liquidation order or final liquidation order. Usually, the Court grants a provisional liquidation order, which is either confirmed or discharged on the return date. If confirmed, it becomes a final order.

Extent of court involvement in the liquidation process

Only a Court can issue a liquidation order, be it the provisional liquidation order or the final liquidation order. In addition, the Court has the power to order any continuance of proceedings against the debtor prior to the commencement of the liquidation process and it can do anything that is just and equitable for the protection of the creditors and any other interested party during the liquidation process. The Master of the High Court accepts,where sufficient, or rejects security for the payment of all costs in respect of the application that might be awarded against the applicant and all costs of the liquidation of the estate that may be incurred until the appointment of a liquidator, appoints the liquidator, is consulted in relation to the time and place of the first creditors meeting, and can order a valuation of the debtor's assets and where there is no liquidator or the latter becomes incapacitated the Master of the High Court is the custodian of the debtor's estate. Consequently, the Court is very much involved in the liquidation process.

Management of the company whilst in liquidation

The directors are divested of their powers and responsibilities during the liquidation process. They however must be available to answer questions from the liquidator and they may be summoned to appear before a creditors' meeting for questioning. The company is managed by the liquidator in consultation with the creditors and contributories (if any) as well as the Master of the High Court. After the final order has been issued, a first meeting of creditors will be called at which creditors will have an opportunity of appointing a liquidator and proving claims. The liquidator will then produce a report on the affairs of the company. After the issue of the report, a second meeting of creditors will be called. To avoid a contribution towards the costs of liquidation, most creditors will prove their claims at the second creditors' meeting after examining the liquidator's report to see whether or not there is a danger of the liquidation costs exceeding the value of the assets of the company. This can cause a contribution by creditors who have proved their claims.

Filing of claims

A claim against an insolvent estate must be admitted at a meeting of creditors of the estate if it has been proved to the satisfaction of the presiding officer on the face of the claim form, documents in connection with the claim submitted by the creditor or another person, if any, and on the evidence, if any, by the creditor. Every claim must be proved on affidavit in a form corresponding substantially with the forms provided for in the First Schedule of the Act and, as a general rule, no oral evidence may be received in support of any claim. The affidavit contemplated above, and all documents submitted in support of the claim or a copy thereof must be lodged with the person who is to preside at the meeting of creditors before the time of day advertised for the commencement of the meeting on or before the second working day before the date of the meeting, failing which the claim may not be admitted at that meeting unless the presiding officer is of the opinion that the creditor had a reasonable excuse for his or her failure to lodge the claim timeously.

Factors which Influence the period of administration in liquidation:

- The size of the company and the extent of the assets to be realised
- Disputes over the validity or otherwise of claims
- Disputes over the appointment of the liquidator
- Disputes over assets and monies due to the company in liquidation
- Co-operation from former directors of the company in liquidation

Effect of liquidation on employees

In terms of section 40 of the Insolvency Act, the contracts of service of employees whose employer has been liquidated are terminated with effect from the date of liquidation. An employee whose contract of service has been terminated is entitled to claim compensation from the insolvent estate of his or her former employer for loss suffered by reason of the termination of a contract of service prior to its expiration or any other benefits accruing in terms of the Labour Act.

Effect of liquidation on contracts

In terms of section 39 of the Insolvency Act, a lease of movable or immovable property is not terminated by the liquidation of the estate of the lessee, but the liquidator of the insolvent estate may, without prior notice, terminate the lease by standard notice to the lessor with the approval of the Master or in terms of a resolution of creditors taken at a meeting of creditors of the insolvent estate. Supply agreements, instalment sale agreements and facility agreements are terminated unless the liquidator elects to continue with them.

Effect of liquidation on shareholders

Shareholders remain as shareholders. They make a contribution in respect of shares not paid for. They lose control of the company in liquidation. They receive a residue, if any, after creditors are paid.

Effect of liquidation on creditors

Creditors have to prove their claims. They are paid in accordance with an order of preference. Where the assets are insufficient, they are paid a pro rata portion of their claims. Where the assets are insufficient to meet the liquidation costs, creditors contribute towards the costs of liquidation on a pro rata basis.

Pending claims, litigation and arbitration

All civil proceedings are stayed when liquidation commences. However, the proceedings can continue with the leave of the Court or the liquidator. Any new proceedings thereafter, will require the approval of the Court. This is to the exclusion of legal proceedings instituted against the debtor (who is a natural person) by the liquidator, calling upon the debtor to appear at a hearing before a Magistrate to give evidence on, and supply proof of, all assets or income received by the debtor or his or her dependents from any source whatsoever, and his or her estimated expenses for his or her own support and that of his or her dependents.

VOIDABLE TRANSACTIONS

Dispositions without value

Dispositions without value, voidable preferences and collusive transactions are liable to be set aside by the Court in terms of sections 24, 26 and 27 of the Insolvency Act. Subject to the Act and in terms of section 24, every disposition of property not made for value may be set aside by the Court if –

- such disposition was made by the debtor within two years before the presentation of the application for liquidation of his or her estate to the Registrar, or
- within three years before the presentation of the application for liquidation to the registrar if the disposition was made in favour of an associate,

provided that if it is proved by someone opposing the setting aside of the disposition that the liabilities of the debtor at any time after the making of the disposition exceeded his or her assets by less than the value of the property disposed of, the disposition may be set aside only to the extent of such excess. Generally, a disposition of property not made for value, which has been set aside or which was not completed by the debtor does not give rise to any claim in competition with the creditors of the debtor's estate.

Voidable preferences

Every disposition made by a debtor which has the effect that any one of his or her creditors receives a benefit to which he or she would not have been entitled had the debtor's estate been under liquidation at the time of the making of the disposition may be set aside by the Court if:

- the debtor's liabilities exceeded the value of his or her assets immediately after the making of the disposition; and
- the disposition was made within six months before the presentation of the application for liquidation of the debtor's estate to the Registrar, or within 12 months before the said presentation in the case where the disposition was made to an associate of the debtor; unless the person for whose benefit the disposition was made proves that it was made in the ordinary course of business and that it was not intended thereby to prefer one creditor above the other, and if he or she is an associate of the debtor, also proves that he or she was not aware and had no reason to suspect that the debtor's liabilities would exceed the value of his or her assets immediately after the making of the disposition.

It is to be presumed, unless the contrary is proved, that a disposition was not made in the ordinary course of business if:

a) it was made by way of payment of a debt that was not due and payable or not legally enforceable;
b) it embodied payment in an unusual form or a form other than that originally agreed upon.

Any disposition of his or her property by a debtor at a time when his or her liabilities exceed his or her assets, made with the intention of preferring one of his or her creditors above another, may be set aside by the Court if the application for the liquidation of the estate of the debtor is presented to the Registrar within three years after the making of the disposition. For purposes of voidable preferences, a surety of a debtor, or a person by law in a position analogous to that of a surety, is deemed to be a creditor of the debtor.

Every disposition of property made under a power of attorney, whether revocable or irrevocable is, for the purposes of voidable preferences, deemed to have been made at the time at which the transfer or delivery or mortgage of such property took place.

Collusive dealings

Every transaction entered into by a debtor before liquidation in collusion with another, for the disposal of any property belonging to the debtor which had the effect of prejudicing its creditors or of preferring one creditor above another, may be set aside by a Court if the estate of the debtor is thereafter liquidated.

Any person who was a party to a collusive transaction shall:

- be liable to make good any loss caused to the insolvent estate in question and shall pay for the benefit of the estate a penalty as the Court may fix, not exceeding the amount by which it would have benefited by such dealing if it had not been set aside; and

- if it is a creditor, forfeit its claim against the estate.

How is the liquidation process terminated?

The liquidation process is terminated by Court order or by the final winding up of the company.

Director or officer liability

If at any time it appears that any business of a company was being carried on:

- recklessly; or
- with the intention to defraud creditors of the debtor or any other person; or
- for any fraudulent purpose

the court may, on the application of the Master of the High Court, the liquidator, any creditor, shareholder, member or contributory of the debtor, declare that any person who was knowingly a party to the carrying on of the business in the manner aforesaid, is responsible, without any limitation of liability, for such of the debts or other liabilities of the debtor as the Court may direct, irrespective of whether the debtor can pay the debts or other liabilities. If a debtor is liquidated the Court may, upon application, declare that any person responsible for the management of the debtor who caused or allowed the debtor to incur a debt at a time when he or she knew or had reasonable grounds to suspect that the debtor would not be able to pay such debt as well as its other debts as they fell due, is liable for such of the debts or other liabilities of the debtor as the Court may direct.

CORPORATE RESCUE

The new Insolvency Act provides for corporate rescue previously referred to as judicial management in the amended Companies Act (Chapter 24:03).

Commencement of corporate rescue

A company is placed under corporate rescue either by resolution of the directors or by a Court order following an application. Where it is placed under corporate rescue compulsorily by a Court order, creditors, employees or shareholders may apply for such an order. A Court order placing a company under corporate rescue should be notified to all affected persons. A Court can also make an order placing a company under supervision during the course of liquidation proceedings, when there is proof that corporate rescue proceedings are a better alternative to liquidation or for purposes of enforcing a security interest in terms of the Insolvency Act.

Commencement of corporate rescue

Compulsory corporate rescue commences when the corporate rescue application is filed with the Court whereas voluntary corporate rescue commences when the resolution to that effect is filed.

Corporate rescue practitioner

A corporate rescue practitioner takes control of the company. Directors are answerable to him or her and have a duty to assist the practitioner. All decisions made in connection with the affairs of the company require the approval of the corporate rescue practitioner to be valid.

Proof of claims

Creditors are expected to prove their claims at meeting of creditors. The first meeting of creditors is to take place within 15 days after the appointment of the practitioner.

Consequences of corporate rescue Corporate Rescue –

- gives rise to a general moratorium on rights of creditors to enforce their claims against the company or property of the company;
- the claims of the creditors are crystalized as at the date of commencement of corporate rescue;
- shareholders retain their rights in the company. There may be no change in the shareholding except in the ordinary course of business or in pursuance of the plan or a Court order.;
- contracts entered into by the company prior to corporate rescue remain valid although the corporate rescue practitioner has suspension rights in respect of obligations arising therefrom; and
- contracts of employment remain valid. Variation can only take place in the event of agreement. Labour laws continue to bind the company under corporate rescue.

Corporate rescue plan

The plan is at the centre of corporate rescue proceedings. It is divided into 3 parts as follows:

Part A: Background, which must include at least —

- a complete list of all the material assets of the company, as well as an indication as to which assets were held as security by creditors when the corporate rescue proceedings began;
- a complete list of the creditors of the company when the corporate rescue proceedings began, as well as an indication as to which creditors would qualify as secured, statutory preferent and concurrent in terms of the laws of insolvency, and an indication of which of the creditors have proved their claims;
- the probable dividend that would be received by creditors, in their specific classes, if the company were to be placed in liquidation;
- a complete list of the holders of the company's issued securities;
- a copy of the written agreement concerning the corporate 162 rescue practitioner's remuneration.; and
- a statement whether the corporate rescue plan includes a proposal made informally by a creditor of the company.

Part B: Proposals, which must include at least —

- the nature and duration of any moratorium for which the corporate rescue plan makes pro-vision;
- the extent to which the company is to be released from the payment of its debts, and the extent to which any debt is proposed to be converted to equity in the company, or another company;
- the ongoing role of the company, and the treatment of any existing agreements;
- the property of the company that is to be available to pay creditors' claims in terms of the corporate rescue plan;
- the order of preference in which the proceeds of property will be applied to pay creditors if the corporate rescue plan is adopted;
- the benefits of adopting the corporate rescue plan as opposed to the benefits that would be received by creditors if the company were to be placed in liquidation; and
- the effect that the corporate rescue plan will have on the holders of each class of the company's issued securities.

Part C: Assumptions and Conditions, which must include at least —

- A statement of the conditions that must be satisfied, if any, for the corporate rescue plan to - A. come into operation; and
- be fully implemented;
- the effect, if any, that the corporate rescue plan contemplates on the number of employees, and their terms and conditions of employment;
- The circumstances in which the corporate rescue plan will end;
- A projected;
  - balance sheet for the company; and
  - statement of income and expenses for the ensuing 3 years, prepared on the assumption that the proposed corporate plan is adopted.

The corporate rescue plan must be published by the company within 45 business days after the date on which the corporate rescue practitioner was appointed, or such longer time as may be allowed by the Court, on application by the company; or the holders of a majority of the creditors' voting interests. Within 10 business days after publishing a corporate rescue plan, the corporate rescue practitioner must convene and preside over a meeting of creditors and any other holders of a voting interest, called for the purpose of considering the plan.

The plan has to be voted on by creditors. Acceptance is by 75% in value of the creditors voting in favour of the plan and the votes in support of the proposed plan must include at least 50% of the independent creditors' voting interests, if any, that were voted.

Terminations

Section 125 of the Insolvency Act prescribes that corporate rescue proceedings end when:

(a) the Court:

- sets aside the resolution or order that began those proceedings; or
- has converted the proceedings to liquidation proceedings; or

(b) the corporate rescue practitioner has filed with the Master of the High Court a notice of the termination of corporate rescue proceedings; or

(c) a corporate rescue plan has been:

- proposed and rejected in terms of the Act and no affected person has acted to extend the proceedings as allowable in terms of the Act; or
- Adopted in terms of the Act, and the corporate rescue practitioner has subsequently filed a notice of substantial implementation of that plan.

Where the corporate rescue proceedings last for over 3 months, the practitioner can make an application for extension.

Liquidations in the event of failure

Where the corporate rescue fails or conditions precedent to the plan are not fulfilled, the company may be placed under liquidation.

SCHEME, ARRANGEMENT OR COMPROMISE

Process required to commence a scheme of arrangement or compromise

To commence a compromise the board of a company, or the liquidator of such a company if it is being liquidated, may propose an arrangement or a compromise of its financial obligations to all of its creditors, or to all of the members of any class of its creditors, by delivering a copy of the proposal, and notice of meeting to consider the proposal, to:

- every creditor of the company, or every member of the relevant class of creditors whose name or address is known to, or can reasonably be obtained by, the company; and
- the Registrar of Companies.

Thereafter, the proposal will have to be adopted by the creditors of the company, or the members of a relevant class of creditors, if it is supported by a majority in number, representing at least 75 percent in value of the creditors or class, as the case may be, present and voting in person or by proxy, at a meeting called for that purpose. An application must then be made to the Court for the approval of the compromise.

Duration of a scheme of arrangement

A scheme will last for the duration of the resolution creating it or until terminated by a Court order.

Extent of court involvement in the process

In a scheme, the role of the Court is limited to ensuring increased scrutiny of the meeting of shareholders or members as the case may be.

Filing of claims

Under a scheme a resolution of the creditors or a Court order, as the case may be, will determine whether the claims are acceptable or not.

Effect of corporate rescue and schemes of arrangement

Management of the Company whilst in Corporate Rescue or Subject to a Scheme of Arrangement

Under corporate rescue, the powers and authority of the directors are suspended. They are exercised by the practitioner. In a scheme, the powers, authority and responsibilities of the directors will be determined by the resolution of members or creditors as the case may be.

Factors which influence the period of corporate rescue judicial management or a scheme of arrangement

These include whether or not there are legal disputes, the extent of the company's problems and the nature of the solutions chosen by the creditors or the liquidator.

Funding of a company

In a scheme, the persons sponsoring the scheme will negotiate with the funders of the company to ensure continued funding. In a corporate rescue, the practitioner will do so. The principal source of relief in a scheme is the agreed measures and in corporate rescue proceedings it is the stay of execution against the company.

Effect of corporate rescue proceedings on employees

During a company's corporate rescue proceedings, employees of the company immediately before the beginning of those proceedings continue to be so employed on the same terms and conditions, except to the extent that—

- changes occur in the ordinary course of attrition; or
- the employees and the company, in accordance with applicable labour laws, agree different terms and conditions. Any retrenchment must be conducted in terms of the Labour Act (Chapter 28:01).

Effect of corporate rescue and scheme of arrangement on contracts

Contracts remain valid to the extent that the practitioner may find them beneficial.

Effect of a scheme of arrangement and corporate rescue on shareholders

During corporate rescue proceedings an alteration in the classification or status of any issued securities of a company, other than by way of a transfer of securities in the ordinary course of business, is invalid except to the extent:

- that the Court otherwise directs; or
- contemplated in an approved corporate rescue plan.

Furthermore, the board of the company will be deemed to be dissolved, and each director of the company: • may no longer exercise the functions of director; and

- may only exercise a management function within the company in accordance with the express instructions or direction of the corporate rescue practitioner, to the extent that it is reasonable to do so.

Each director of the company at the time the corporate rescue proceedings commenced must attend to the requests of the corporate rescue practitioner at all times, and provide the corporate rescue practitioner with any information about the company's affairs as may reasonably be required. If, during a company's corporate rescue proceedings, one or more directors of the company at the time the corporate rescue proceedings commenced purports to take any action on behalf of the company, that action is void unless approved by the corporate rescue practitioner.

Effect of a corporate rescue and scheme of arrangement on creditors

Creditors have to prove their claims at meetings convened by the Master of the High Court. During corporate rescue proceedings, each creditor is entitled to— (a) notice of each Court proceeding, decision, meeting or other relevant event concerning the corporate rescue proceedings; and (b) participate in any Court proceedings arising during the corporate rescue proceedings; and (c) formally participate in a company's corporate rescue proceedings; and (d) informally participate in those proceedings by making proposals for a corporate rescue plan to the corporate rescue practitioner.

Pending litigation, claims and arbitration

During corporate rescue proceedings, no legal proceedings, including enforcement action, against the company, or in relation to any property belonging to the company, or lawfully in its possession, may be commenced or proceeded with in any forum, except: with the written consent of the practitioner; or

- with the leave of the Court and in accordance with any terms the Court considers suitable; or
- as a set-off against any claim made by the company in any legal proceedings, irrespective of whether those proceedings commenced before or after the corporate rescue proceedings began; or
- criminal proceedings against the company or any of its directors or officers; or
- proceedings concerning any property or right over which the company exercises the powers of a trustee; or
- proceedings by a regulatory authority in the execution of its duties after written notification to the corporate rescue practitioner.

Effect of the moratorium

The moratorium is determined by the resolution in the scheme and in corporate rescue the moratorium provides for a stay of execution against the company that has been placed under corporate rescue.

Voidable transactions

Voidable transactions are dealt with in the same way as if the company is placed in liquidation.

The plan

The plan is implemented in terms of the scheme resolution and in corporate rescue proceedings, in terms of the corporate rescue plan.

Effect on suretyships

Suretyships are called up after exhausting all remedies against the 164 principal debtor unless they have agreed to be surety in solidum.

SECURITY

Types of security

Various forms of security are recognised by Zimbabwean law.

They include:

- mortgage bonds over immovable property;
- general notarial covering bonds over movables;
- cessions to secure a debt;
- pledges; and
- deeds of suretyships

Tokens of security

Mortgage bonds are registered at the Deeds Office.

Security trustees or special purpose vehicles

Security trustees or special purpose vehicles are recognised.

Most robust form of security

The most robust form of security is a mortgage bond over immovable property.

Registration of security

Only a registered conveyancer may act as an agent in registering security at the Deeds Office. Only mortgage bonds require registration.

Stamp duty

Stamp duty and conveyancer's costs for the registration of bonds are calculated as follows: Conveyancer's fee

- First US$250 000 of value - 3% = US$7500
- Second US$250 000 of value - 2% = US$5000
- Third US$500 000 of value - 1% = US$5000
- Over 1 million of value - 0.5%
- VAT on that @15.5%

Stamp duty

- At US$4 for every 1000 USD of value of bond;

- Plus US$50 registration fee; and

- Post and Petties roughly US$100 VAT US$15.5

Requirements for the assignment or transfer of security

The cession and assignment of rights and obligations under a mortgage bond requires registration at the Deeds Office.

Instances in which securities might be vulnerable to attack

Mortgage bonds are compromised by Government acquiring the land on which the bonds are registered. The only way in which other third parties may attack security is through the law relating to voidable preferences, undue preferences, dispositions without value and other impeachable transactions under the Insolvency Act.

Methods of enforcement of security

A creditor can call up a mortgage bond. In instances of insolvency, a creditor holding a bond enjoys preference. A creditor holding property in pledge is entitled to release same to the Sheriff or Deputy Sheriff or liquidator subject to a condition that on distribution in liquidation or after a sale in execution, he/she will enjoy the preference afforded by the security.

Problems experienced when enforcing security

The major problem experienced in enforcing security is changes in property values which affect the value of security. Another problem is the current liquidity crunch in the Zimbabwean economy. Only a limited number of people can afford to buy property. Obviously, that has a negative effect on the value of security.

RECOGNITION OF FOREIGN JUDGMENTS

Instances in which your court will recognize a foreign judgment

The Courts will recognise a foreign judgement, subject to the requirements below.

Requirements for the recognition of a foreign judgment

Under the common law, the general requirements for the recognition and enforcement of foreign judgments may be summarised as follows:

- the foreign Court must have the requisite international jurisdiction or competence according to our law;
- the judgment must be final and have the effect of res judicata according to the law of the forum in which it was pronounced;
- the judgment must not have been obtained by fraudulent means;
- it must not entail the enforcement of penal or revenue law of the foreign State;
- it must not be contrary to public policy in Zimbabwe; and
- the foreign Court must have observed the minimum procedural standards of justice in arriving at the judgment.

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

Upon recognition of foreign proceedings, the foreign representative may participate in proceedings regarding the debtor under the laws of the Zimbabwe relating to insolvency. Foreign proceedings are recognized upon an application being made to the High Court, which application must be made by the foreign representative and must be accompanied by (a) a certified copy of the decision commencing the foreign proceedings and appointing the foreign representative; or (b) a certificate from the foreign

Court affirming the existence of the foreign proceedings and of the appointment of the foreign representative; or (c) in the absence of evidence referred to in paragraphs (a) and (b), any other evidence acceptable to the Court of the existence of the foreign proceedings and of the appointment of the foreign representative. An application for recognition must also be accompanied by a statement identifying all foreign proceedings in respect of the debtor that are known to the foreign representative.

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