Africa Roundtable
12-13 October 2015

Restoring Financial Sector Stability and Promoting Growth:
The role of insolvency regimes

Radisson Blu Waterfront Hotel
Cape Town, South Africa
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OUR HORIZONS ARE AS BROAD AS YOUR BUSINESS VISION.

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Background to the initiative

There are currently fewer insolvency reforms across Africa than in any other region of the world. In many African countries the insolvency laws are antiquated and restructuring law does not exist. Doing Business 2015 data demonstrates that recovery in Sub-Saharan Africa averages 24.1 cents on the dollar, compared to 71.9 cents on the dollar in OECD countries.1 Clearly, there are many different issues facing countries in the region and the solutions are complex. There are inadequate mechanisms to prevent the stripping of assets of companies in financial difficulty heading towards insolvency, which means that a business rescue culture is minimal. Many directors lack accountability. The insolvency profession is neither institutionalised nor regulated. Delays in finalising cases by courts negatively affect the efficiency of the system. Non-court based methods are underdeveloped and out-of-court restructuring is not prevalent. The skills of stakeholders including the judiciary and insolvency practitioners need to be developed, and countries need to focus on both institutional and infrastructural reforms that will seek to preserve value in financially distressed businesses.

It is important that countries recognise that with there being a direct correlation between insolvency and the business environment, a sound insolvency system has a direct impact on economic performance. Consequently, insolvency reform should be seen as being part of a wider reform programme to include the little touched credit environment where the system is, in many countries, under-developed. Across Africa, access to credit can be low and the cost high with, in the main, commercial banks being the principal source of credit. There may be a lack of effective competition in the credit system and, in many instances the personal guarantee of promoters being required to obtain credit. Therefore, reforms of personal insolvency law also assume importance.

INSOL International has a significant membership base in Africa. INSOL members, Regulators, law-makers, insolvency practitioners, judges and other stakeholders from the region participating in INSOL activities have demonstrated keen interest in learning from the experience of other countries. INSOL and other international bodies have received requests for assistance to work towards the improvement of the insolvency systems in the various countries in the region. The World Bank and the International Finance Corporation (“The World Bank Group”) have been assisting countries in Africa to reform their insolvency regimes for more than 15 years. As the global standard setter for insolvency and creditor rights (including secured transactions over moveable collateral), together with UNCITRAL, the World Bank Group are well placed to assist countries in Africa with reforms in this area.

Africa is a vast region with diverse legal systems and practices. Some multilateral bodies are already engaged in insolvency reforms in some countries and others carry a keen interest in working for the benefit of the insolvency industry in the region. The knowledge, experience and resources available within these global institutions and bodies can be optimised by way of a coordinated regional effort, aimed at addressing the needs of the insolvency industry. The Forum for Asian Insolvency Reforms and the Forum for Insolvency Reforms in MENA are two inspiring models of cooperation by international and regional organisations. It was for these reasons that INSOL established the Africa Roundtable: to provide a platform for international bodies, regional institutions, policymakers and stakeholders from the continent, as well as experts in the field from

1 http://www.doingbusiness.org/data/exploretopics/resolving-insolvency
SHOULDER TO SHOULDER.

We value the partnerships we’ve established in the communities around the world where we live and work. Whether we’re sponsoring the arts, sports, children and family programs, education or health care initiatives – or anything in between – we’re proud to join forces with those who share our commitment to making a difference.

DLA Piper is proud to sponsor the African Roundtable hosted by INSOL International and World Bank Group.
other, and sometimes more mature jurisdictions, to come together and adopt a coordinated approach towards reforms and capacity building in the region.

The Africa Roundtable initiative was established at a meeting organised by INSOL International and the World Bank Group in Dubai, February 2010. The objectives of the Africa Roundtable were threefold:

- to have a high level dialogue with both private practitioners and public policymakers regarding insolvency reform in Africa, thereby encouraging reform experiences to be shared and challenges to be discussed in an open and frank forum;

- to elevate insolvency reform on the African policy agenda; and,

- to encourage insolvency policymakers and professionals to establish an annual forum to stimulate discourse and learning across the region.

The first meeting was convened on September 30, 2010 in Abuja, Nigeria. Since then, annual ARTs have been held in Cape Town, South Africa (2011); Nairobi, Kenya (2012), Lusaka, Zambia (2013) and Kampala, Uganda (2014). Delegates have been drawn from government, the judiciary and the private sector from over 16 African Anglophone and Francophone countries. A growing number of international experts have also been present, including international organizations such as UNCITRAL. The themes of the ARTs have been varied, ranging from the importance of insolvency regimes in strengthening creditor rights to the impact of insolvency regimes on economic growth and job creation. The focus however remains on developing professional ties with the goal of improving insolvency and restructuring regimes across the African continent.

2015 Africa Roundtable theme is Restoring Financial Sector Stability and Promoting Growth: The role of insolvency regimes. This year's roundtable will focus on the systemic importance of insolvency regimes in maintaining stability in the financial system, including through the effective resolution of Non-Performing Loans, while also focusing on the role that insolvency plays in promoting access to credit – and therefore growth – for firms.

This year the format will be slightly different than in past years. The first day, Monday 12th October will be by invitation only, with places strictly limited to enable real discussion between policy makers, judges, regulators, practitioners and lenders on insolvency reform across Africa.

The second day will be opened up to all those interested in and affected by insolvency reform in Africa. This is to enable a greater forum for all stakeholders to engage in discussion and to learn from international best practice.

A full report of the past roundtable events can be found on the INSOL web site www.insol.org.

When a crisis strikes, there’s no time to lose. Our restructuring and insolvency experts can support you by assessing the situation, rebuilding stakeholder trust and consensus, determining options for the business and defusing highly stressed corporate situations.

Our Africa Business Recovery Services team is ready to mobilise for rapid intervention. Give us a call.

Stefan Smyth  
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Rajeev Basgeet  
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Agenda

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Monday 12th October 2015

8.00-8.45 am  Registration  Welcome Coffee and Tea

8.45-9.00 am  Welcome and introduction to the Africa Roundtable initiative  Adam Harris, Vice-President INSOL International, Bowman Gilfillan  Mahesh Uttamchandani, World Bank Group

9.00-9.30 am  Key Note Address: Promoting Financial Sector Stability and Growth in Africa and the Importance of Effective Insolvency Regimes  John Jeffery, MP, Deputy Minister of Justice and Constitutional Development, South Africa

9.30-10.30 am  Peer to Peer Discussion  Moderators: Adam Harris, Vice-President INSOL International, Bowman Gilfillan  Mahesh Uttamchandani, World Bank Group

A regional overview of insolvency law reforms and trends in Africa Including the new OHADA legislation (with reforming countries presenting to other delegates).

10.30-10.50 am  Coffee Break
10.50 am-12.15 pm  Lessons from the Financial Crisis: how do insolvency regimes impact financial sector stability
Moderator: Mahesh Uttamchandani, World Bank Group
Hamish Anderson, Norton Rose Fulbright LLP, UK
Rick Chesley, DLA Piper LLP (US)
Kathleen Wong, Allen & Overy, South Africa

Sound insolvency and creditor/debtor regimes are fundamental to robust and diverse modes of financial intermediation, responsible access to finance, and financial stability. This session will take case studies from around the globe to illustrate the importance of robust insolvency regimes in times of financial crisis, particularly in the corporate sector. In particular, it will examine the following:
(1) The impact of bank insolvency and insurance company insolvency on corporate insolvency (and vice versa);
(2) The role of insolvency regimes in dealing with distressed corporates during a financial crisis;
(3) The range of different debt restructuring tools that can potentially be used for distressed corporates.

12.15-1.30 pm  Lunch

1.30-3.00 pm  Managing Non Performing Loans (NPLs) Through Asset Management Companies (AMCs)
Moderator: David Burdette, World Bank Group/Nottingham Trent University, UK
Muyiwa Balogun, Olaniwun Ajayi LP, Nigeria
Enrique Martin Barragan, SAREB, Spain
Anthony Idigbe, Fellow, INSOL International, Punuka Solicitors
David White, KPMG, UK

In many African jurisdictions, NPLs are growing at an accelerated rate, and Central Banks need to employ innovative ways to manage these bad debts. This session will provide an overview of AMCs including the legal framework and the importance of debt workout frameworks, including those that were employed (with differing levels of success) during the Asia Crisis and the more recent global financial crisis. Some of the structures of new AMCs, such as Nigeria, will also be examined in more detail.

3.00-3.15 pm  Coffee Break
3.15-5.15 pm **Mediation Workshop**  
Moderator: John Brand, Bowman Gilfillan, South Africa

Increasingly, jurisdictions are looking to incorporate informal dispute resolution tools into their legal frameworks as an alternative to formal court-processes, which can be lengthy and costly. In particular, commercial mediation is increasingly being used in insolvency proceedings, for instance, to resolve inter-creditor disputes. This session will be a practical, hands-on mock mediation with the goal of teaching basic negotiation and mediation skills to participants and providing a deeper understanding of the benefits of alternative dispute resolution.

5.15 pm **Close**

6.00-10.00pm **Cocktails on the Boardwalk followed by dinner hosted by Bowman Gilfillan Africa Group**
Tuesday 13 October 2015

8.30-9.00 am  Open Day Forum Registration and Welcome Coffee & Tea

9.00-9.10 am  Welcome & Opening Remarks
Adam Harris, Vice-President INSOL International, Bowman Gilfillan
Mahesh Uttamchandani, World Bank Group

9.10-10.40 am  The Importance of Secured Lending Over Movable in Strengthening a Country’s Credit Environment
Moderator: André Boraine, University of Pretoria, South Africa
Alejandro Alvarez de la Campa, World Bank Group
Rajeev Basgeet, PwC, Mauritius
Martin Baumgartner, The Standard Bank of South Africa Ltd

One of the pillars of a modern and stable credit economy is the ability to own and freely transfer ownership interests in immovable and movable assets. In many African countries, there are still significant limitations on creating, recognizing and enforcing security interests over movable assets. This session will explore the link between secured lending and access to finance; the allowance of security interests in all types of movable assets; methods of notice and registration; and both judicial and extra-judicial enforcement. Examples from African countries that have adopted new secured lending laws will be discussed.

10.40-11.00 am  Coffee Break sponsored by Centre for Advanced Corporate and Insolvency Law, University of Pretoria

11.00 am–12.15 pm  Bank Insolvency
Moderator: Mazen Bouri, World Bank Group
Lynn Harrison 3rd, Fellow, INSOL International, Curtis Mallet-Prevost, Colt & Mosle LLP
Lyndon Norley, Bowman Gilfillan, South Africa
Stefan Smyth, PwC, South Africa

A number of jurisdictions in Africa are currently experiencing failing banks and financial institutions, and given their unique status, such failures can disrupt financial sector stability on a wide scale and cause systemic risk. Challenges include having a specialized regime in place to deal expeditiously with depositors, as well as recourse to deposit protection insurance and a Central Bank that can act as Lender of Last Resort. This session will explore some of the key elements relating to bank insolvency and crisis management.

12.15-12.45 pm  Africa in the 21st century: new opportunities, new risks
Goolam Ballim, Chief Economist, The Standard Bank Group

12.45-1.45 pm  Lunch

1.45-3.15 pm  Insolvency and Judicial Capacity
Moderator: Mr Justice Alastair Norris, Royal Courts of Justice
Mr Justice Ashley Binns-Ward, The High Court of South Africa  
Mr Justice Lebohang Aaron Molete, Commercial Court, Lesotho  
Mr Justice Mohammed Idris, Federal Court of Nigeria

This session will assess the challenges that African courts are facing in handling insolvency cases, namely judicial training, organization, transparency and effective decision-making. In particular, this session will focus on how the courts can deal more expeditiously with debt enforcement and insolvency cases in a way that maximizes creditor recovery. The session will discuss some of the technological and administrative reforms around the region that are aimed at improving transparency, judicial accountability, and judicial performance.

3.15-3.35 pm  
Coffee break sponsored by Centre for Advanced Corporate and Insolvency Law, University of Pretoria

3.35-4.50pm  
The importance of practitioner standards and skills in restructurings and liquidations  
Moderator: David Burdette, World Bank Group/ Nottingham Trent University  
Juanitta Calitz, University of Johannesburg, South Africa  
Prabha Chinien, Registrar of Companies, Mauritius  
Muniu Thoithi, PwC, Kenya

This session will analyse the necessary skills required by effective practitioners in restructurings and liquidations, and how to attain those skills, for instance, entry qualifications, continuing professional education, apprenticeships, etc. Consideration will also be given as to how existing practitioners should be dealt with when the regulatory framework changes and new rules are introduced.

4.50-5.00 pm  
Closing Remarks
INSOL Africa Roundtable 2015 - Main Organising Committee

Adam Harris, Vice-President INSOL International, Bowman Gilfillan, South Africa (Chair)
David Burdette, Nottingham Trent University/World Bank Group, South Africa
Prabha Chinien, Registrar of Companies, Mauritius
Anthony Idigbe, Fellow, INSOL International, Punuka Attorneys & Solicitors, Nigeria
Antonia Menezes, Fellow, INSOL International, World Bank Group
Nitesh Patel, Zambia
Muniu Thoithi, PwC, Kenya
Mahesh Uttamchandani, World Bank Group

Africa Roundtable Curriculum Vitae – Moderators/speakers

Hamish Anderson, Norton Rose Fulbright LLP, UK
Hamish Anderson is an insolvency lawyer based in the London office of Norton Rose Fulbright LLP where he usually acts for insolvency practitioners, banks and other creditors, but he also advises and acts for governments and regulators.

Since qualifying in 1973, Hamish Anderson has had extensive experience of both corporate and personal insolvency issues in the UK covering a wide range of sectors. His work has included dealing with bank and investment bank insolvency (including acting as UK counsel to the Trustee of Lehman Brothers Inc), insurance insolvency, infrastructure projects, transport (including aviation shipping and rail), construction and technology. He has worked on state-owned and privatised enterprises and he specialises in cross-border cases.

Amongst many other appointments, Hamish is a past president of the Insolvency Lawyers’ Association, the current Chairman of the City of London Law Society’s Insolvency Committee and a Visiting Professor at Nottingham Trent University.

Alejandro Alvarez de la Campa, World Bank Group
Alejandro is the Global Product Leader for the World Bank Group’s Global Secured Transactions and Collateral Registries advisory product. Before this position, he held other positions in IFC, in the Small and Medium Enterprise Department and in the Foreign Investment Advisory Service (FIAS), where he worked on access to finance for SMEs and business environment issues in different regions, including Africa, East Asia, Latin America and the Caribbean and Southeast Europe. He has worked worldwide on business environment and private sector policy issues related to access to financial services, foreign direct investment, business legal and regulatory issues, investment promotion, corporate social responsibility and business associations. Alejandro has also worked in the past as an adjunct Professor of Law at American University in Washington D.C. He obtained his Juris Doctor, from the University of Seville (Spain). A Spanish national, prior to joining IFC, he worked in the private sector in Spain (financial consulting services).
Goolam Ballim, Chief Economist and Head of Standard Bank Research
Standard Bank Group, South Africa
Goolam is the chief economist and head of research for the Standard Bank Group, having served in this role since May 2004.

The bank’s commercial emphasis is on Africa and the research function supports this endeavor.

Standard Bank Research comprises 53 analysts and 10 support staff, variously located in Johannesburg, Nairobi, Lagos, London and Beijing.

Goolam and his team consistently earns accolades for macroeconomic research on Africa as well as numerous sectoral, industry and financial markets honors.

Goolam’s interest spans politics, the real economy and financial markets. He pilots Standard Bank’s views in these areas and has a particular interest in public policy. Goolam has served as an advisor to various public officials, regularly engages in public dialogue on national and continental issues, and routinely addresses audiences across the globe.

Muyiwa Balogun, Olaniwun Ajayi LP, Nigeria
Muyiwa Balogun, LL.B, BL. LLM International Finance and Banking Law (Liverpool) is the partner in charge of the Government Business Practice at Olaniwun Ajayi LP a tier 1 commercial law firm in Nigeria. With almost 20 years experience acting as counsel and adviser of choice on a rich range of matters, Muyiwa has an insider’s understanding of the internal workings of the Nigerian public sector, having completed a four year secondment to the Budget Office of the Federation as a legal aide to the Presidential Adviser on budget and Director General, Budget Office of the Federation; advising on the legal aspects of public expenditure management. Muyiwa has immensely contributed to the shaping of the fiscal aspect of public policy in Nigeria, having contributed significantly to the widely admired Fiscal Responsibility Act and the various Bills seeking to reform the tax system in Nigeria.

In particular, Muyiwa is passionate about troubled assets resolution through innovative mechanisms and is familiar with the workings of Asset Management Corporations around the globe, having been instrumental to the drafting of the Asset Management Corporation of Nigeria (AMCON) Act as the head of the legal workgroup on the drafting of the Asset Management Corporation of Nigeria Act 2010. As adviser of choice to AMCON, he also advised and guided the process that led to the passage of the AMCON Amendment Act.

Muyiwa is also passionate about corporate finance, governance and public expenditure management.

Enrique Martin Barragan, SAREB, Spain
Enrique Martín holds a degree in Economics from the Autonomous University of Madrid (UAM), and has worked for more than 20 years in providing consultancy services to financial and insurance companies, particularly in risk management and corporate planning and operations. He worked for a large part of his professional career at Analistas Financieros Internacionales, where he actively took part in the restructuring process of the financial sector as Partner of Banking and Insurance, a position he held up until 2012. He also founded Antares Consulting in 1998, which was acquired in 2003 by Soluziona. Prior to joining Sareb as Director of Credit Risks he was involved in the creation and launch of Copernicus, a servicing company, where he held an advisory role. He has also taught at
both the Applied Finance School (Escuela de Finanzas Aplicadas) and at the Universidad Pontificia de Comillas - ICADE.

He is currently Head of Products and Services, and is responsible for the portfolio analysis and the definition of management strategies and segmented initiatives for both REOs and loans.

**Rajeev Basgeet, PwC, Mauritius**
Rajeev is an associate member of the Institute of Chartered Accountants in England and Wales. Rajeev is a PwC Partner based in Mauritius. Rajeev has been with PwC for the last 14 years out of which he spent 8.5 years with PwC UK.

Rajeev has over 10 years of banking sector experience mainly in advisory services to the leading banking institutions and its distressed clients in the UK and Mauritius. Rajeev contributes regularly to press articles in national newspapers, and to PwC’s thought leadership documents.

**Martin Baumgartner, Global Head, Business Support & Recovery, Corporate and Investment Banking, Standard Bank Group, South Africa**
Martin leads a team of credit restructuring and debt recovery professionals within the Corporate and Investment Banking Division of Standard Bank Group, covering the group’s operations across sub Saharan Africa. Prior to this, Martin has held various positions within the Standard Bank Group, notably including Head of Credit for Stanbic Tanzania and Head of Corporate Banking for Stanbic Uganda. Martin’s education includes a master’s degree (with distinction) in Business Administration (University of the Witwatersrand) and a diploma (with distinction) in Insolvency Law and Practice (AIPSA / Rand Afrikaans University).

**Mr Justice Ashley Binns-Ward, High Court of South Africa**
Mr Justice Binns-Ward was appointed to the High Court bench in 2009, having previously served periodically as an acting judge since 2001. He sits in the Western Cape Division at Cape Town. His reported judgments include a number in the areas of insolvency and company law. Prior to his elevation to the bench, Judge Binns-Ward practised as a senior counsel at the Cape Bar, where he specialised in public law and constitutional matters. He served as Chairman of the Cape Bar Counsel in 2007/8 and also as an executive member of the General Council of the Bar of South Africa in 2008/9. Judge Binns-Ward has been involved in the development of a system of judicial case management in South Africa for some years and currently sits on a national committee of judges charged with drafting amendments to the Uniform Rules of Court directed at formalising and facilitating the case management system. He also participates regularly in training workshops organised by the Bar for advocates and aspirant judges.

**André Boraine, University of Pretoria, South Africa**
André Boraine is the Dean of the Faculty of Law at the University of Pretoria (UP). He is still on the roll of practising attorneys and he is an honorary member of the South African Rescue and Insolvency Practitioners Association (SARIPA). He also serves as co-director of the Centre for Advanced Corporate and Insolvency Law, based at UP. He is a member of the INSOL Global Fellowship Programme committee and a member of the INSOL Academics Forum. Over the years he has taught a variety of law subjects at both the undergraduate and postgraduate levels; and he has involved himself with practical legal training of candidate attorneys as well as insolvency practitioners. He was the INSOL Scholar for the 2008-2009 cycle. His current research interests include insolvency law, the law of civil procedure, aspects of property law and consumer law. He has published widely and is a co-author of a leading South African insolvency textbook, i.e. *Meskin Insolvency*
Law. He regularly presents papers at local and international conferences and is also a NRF rated researcher.

Mazen Bouri, World Bank Group
Mazen Bouri is the Senior Financial Sector Development Specialist with the Finance and Markets Practice Africa Unit of the World Bank; he oversees the World Bank’s private and financial sector development portfolio in Mozambique, Angola, and Sao Tome e Principe, including lending projects, technical assistance, and policy advice. Since joining the World Bank in 2005, Mr. Bouri has conducted assignments in Malawi, Madagascar, Burundi, Niger, Mali, Mauritania, Burkina Faso, Jordan, Kuwait as well as Mozambique, Angola, and Sao Tome covering topics such as financial sector development strategies and reforms, microfinance and SME finance, corporate governance for banks and state-owned companies, and privatization. Before joining the World Bank, Mr. Bouri worked for ten years in Small and Medium Enterprise Development Projects funded by the Canadian International Development Agency, covering the Middle East Region and was based in Egypt through much of that period. Mr. Bouri holds a Master of Business Administration (MBA) from McGill University and is a Certified Management Accountant from Ontario, Canada.

John Brand, Bowman Gilfillan, South Africa
John Brand is a consultant and ADR specialist at Bowman Gilfillan. He is also a director of Conflict Dynamics cc. He is a member of the advisory board of the African Centre for Dispute Settlement at Stellenbosch University and is on the executive committee of the National Dispute Settlement Practitioners Council. John is an International Mediation Institute ("IMI") certified mediator and also serves as a member on the IMI’s Independent Standards Commission. He specialises in dispute resolution and the training of negotiators, mediators and arbitrators and is a Centre for Effective Dispute Resolution (CEDR UK) accredited mediator.

He has written extensively in journals and other publications and recently co-authored “Commercial Mediation – a User’s Guide” and the Second Edition of “Labour Dispute Resolution” both published by Juta.

Over the past 20 years, he has arbitrated and mediated many large commercial and employment disputes and he regularly facilitates negotiation, strategic planning and transformation processes.

He was a member of the International Labour Organisation’s team of international experts appointed to design mediation training for developing countries and he regularly trains mediators from countries in Africa, Asia, Eastern Europe and South America. The International Labour Organisation has also commissioned John to design training material and to train parties and trainers from countries across the world in mutual gain negotiation. This training material has been translated into French, Portuguese and Arabic and is used extensively throughout the world.

Some areas of practice include dispute systems design; drafting dispute resolution clauses and agreements; mediation; arbitration and the training of negotiators, mediators and arbitrators.
David Burdette, World Bank Group
Nottingham Law School, Nottingham Trent University, UK

David Burdette is a graduate of the University of South Africa (BJuris, LLB) and the University of Pretoria (LLD), South Africa. He joined Nottingham Trent University in Nottingham, England, in September 2007 as a Professor of Insolvency Law from the Faculty of Law at the University of Pretoria, and is currently the Director of the Centre for Business and Insolvency Law at Nottingham Law School. He is co-author of the leading insolvency text book in South Africa, *Meskin, Insolvency Law and its operation in winding-up* (LexisNexisButterworths, loose-leaf edition) and contributor to the first issue of *Henochsberg on the Companies Act 71 of 2008* in South Africa (LexisNexisButterworths, loose-leaf edition). The proposals made in his LLD thesis have been included in draft legislation for the introduction of a unified Insolvency Act in South Africa. In 2007/2008 he was appointed to the King III Committee on Corporate Governance (South Africa) as convener of the subcommittee on corporate rescue. David is a Senior Consultant for the World Bank (Debt Resolution and Business Exit), and was the INSOL Scholar for the Europe, Middle East and Africa region for the 2006 / 2007 academic year. David also holds an appointment as Extraordinary Professor in the Department of Mercantile Law, Faculty of Law at the University of Pretoria.

Juanitta Calitz, University of Johannesburg, South Africa

Juanitta Calitz is an Associate Professor of Law at the University of Johannesburg. She specialises in insolvency law and presents undergraduate and postgraduate courses in corporate insolvency law and corporate rescue. She is currently the Head of Department of Public Law and is also a member of the Board of Trustees of The South African Institute for Advanced Constitutional, Public, Human Rights and International Law (SAIFAC). She is a member of the Academic Steering Committee of INSOL International; serves on the Editorial Board of INSOL World and also serves as a national councillor and honorary member of SARIPA (the South African Restructuring and Insolvency Practitioners Association). Juanitta graduated from the University of Pretoria with a LLD degree in 2009 and the objective of her LLD thesis, “A Reformatory Approach to State Regulation of Insolvency Law in South Africa”, had been to investigate certain aspects of state regulation with the view ultimately to propose a framework within which the legislator could pursue legal reform based on comprehensive policy objectives in this field of law.

Richard Chesley, DLA Piper LLP (US)

Rick Chesley practices in the areas of corporate restructuring, with an emphasis on bankruptcy transactions both in the United States and internationally.

He has served as restructuring counsel in a number of chapter 11 proceedings, including the recently completed chapter 11 cases of Orchard Supply Hardware Stores, Velti plc, PJ Finance, Inc. and Trident Microsystems, Inc. and its subsidiaries in Asia and Europe. He has served as debtors' counsel in a number of other chapter 11 proceedings, including Kaiser Aluminum Corporation, National Century Financial Enterprises, Federated Department Stores, Elder-Beerman Stores, Montgomery Ward, Purina Mills, The Loewen Group, PFF Bankcorp, Contech LLC, Morton Industrial Group, Vermillion, Inc, Fairfield Residential and its subsidiaries and East West Resort Development. Rick also led a number of out-of-court restructurings, including Norwood Promotional Products, Examination Management Services Inc. and Educational Media Publishing Group.

Chambers USA has repeatedly recognized Rick as a top Bankruptcy and Restructuring lawyer. "He is commended for his ability to defuse tense situations: 'Throughout heated negotiations and tricky lender discussions he ensured that both sides understood the issues,' reveals a source." Rick has been named to the BTI Client Service All-Star Team for Law Firm, repeatedly recommended in *The Legal 500 United States* for
his Corporate Restructuring practice and recognized as an Illinois Super Lawyer. American Jewish Committee honored Rick with the Judge Learned Hand Human Relations Award in 2014.

**Prabha Chinien, Registrar of Companies/Director of the Insolvency Service, Mauritius**

Mrs. Prabha D. Chinien is a graduate in Law. She holds a B.A. (Hons) in Law from the U.K. She is a Barrister-at-law from the Middle Temple, London, UK. She is also a Fellow of the Institute of Chartered Secretaries and Administrators of UK.

She was appointed Registrar of Companies in 1989. Since 2006 she is also the Registrar of Businesses and the Director of Insolvency Service as from the 1 June 2009 following the Insolvency Act 2009. She is a member of the Listing Executive Committee of the Stock Exchange Limited and of the Financial Reporting Council. She has been involved in the drafting of various laws. Mrs. Chinien has been a part time lecturer in Company Law and Insolvency Act at the University of Mauritius for a number of years.

She currently forms part of the Executive Committee of the International Association of Insolvency Regulators (IAIR).

**Adam Harris, Vice-President INSOL International, Bowman Gilfillan, South Africa**

Adam Harris is a Director of Bowman Gilfillan and specialises in insolvency, business restructuring and related fields. He is the Vice-President of INSOL International and a member of the INSOL Executive Committee.

Adam represents lenders and creditors and other institutions such as professional indemnity insurers, as well as business rescue and insolvency practitioners in various aspects relating to the winding-up and restructuring of companies and the administration of insolvent estates. Adam has attended to some of the leading cases on different aspects of winding-up, insolvency and business restructuring such as the constitutionality of interrogations, impeachable transactions, procedural aspects of liquidation applications, the interpretation of the Business Rescue legislation and insolvency practitioners' remuneration. He is one of the co-authors of Mars “Law of Insolvency” (9th Ed), a leading insolvency text in South Africa.

**Lynn Harrison 3rd, Fellow, INSOL International, Curtis Mallet-Prevost, Colt & Mosle LLP, USA**

Mr. Harrison is co-chair of Curtis' Restructuring & Insolvency Group. He has extensive experience in insolvency related matters, including workouts, reorganizations, and liquidations on behalf of debtors, creditors, liquidators and trustees.

Highlights of Mr. Harrison's practice include his role in Curtis' international representation of the Italian Extraordinary Administrator of Parmalat Finanziaria S.p.A. et al. in the United States and Latin America.

Mr. Harrison also counselled the foreign representative of Gruppo Covarra S.A. de C.V., in the first successful ancillary proceeding initiated by a "sindico" in the United States since the enactment of the Ley de Concurso Mercantiles. Among Mr. Harrison's domestic insolvency matters, he is currently leading the insolvency aspects of the firm's representation of Lehman Brothers Holdings Inc.

Mr. Harrison is a frequent lecturer and writer on insolvency issues throughout the United States, Europe, Latin America and the Far East. Mr. Harrison has been a featured commentator for Forbes Magazine in the United States and Phoenix TV InfoNews Channel in China.
Mr. Harrison is a Fellow of INSOL International. He is also Vice Chair of the Inter-Pacific Bar Association Insolvency Committee and is a member of the International Insolvency Institute. He is cited as a top lawyer in the Corporate Restructuring category in Legal 500 USA; in Best Lawyers, U.S. News & World Report; and in Chambers USA.

Anthony Idigbe, Fellow, INSOL International, Punuka Attorneys & Solicitors, Nigeria
Anthony Idigbe is a Senior Advocate of Nigeria and Senior Partner at PUNUKA Attorneys & Solicitors, one of the leading full service law firms in Nigeria.

A seasoned lawyer with expertise in insolvency and business restructuring, Anthony has acted as Receiver/Manager, Liquidator and Legal Adviser/Consultant to many companies and other insolvency practitioners. He has extensive experience in insolvency litigation and has acted for several institutions, including multinational companies and state enterprises, creditors and debtors alike. His involvement includes engagement in most of the litigation, both civil and criminal, arising from the 2008-2009 bank crisis in Nigeria. He was appointed in 2013 as the National Coordinator for Nigeria, World Bank Global Forum of Law, Justice and Development Project on Treatment of Shareholders’ Rights in Insolvency of Companies (2013-2014).

Anthony is a fellow of Business Recovery and Insolvency Practitioners Association of Nigeria (BRIPAN), of which he was President from 2011 to 2013, and INSOL International. He is a Chartered Arbitrator and seasoned negotiator; a member of International Chamber of Commerce, Nigeria (ICCN) and International Insolvency Institute (III), amongst others. In addition to prolific practice, he is also a respected scholar and author. He has published various papers and articles on insolvency and business restructuring available in established electronic publishing platforms, including critique on AMCON Act. He regularly speaks or acts as a facilitator at local and international insolvency and business restructuring fora.

Hon. Justice Mohammed Baba Idris, Federal High Court, Nigeria
Mohammed Baba Idris is a Judge of the Federal High Court in Nigeria, and an associate member of the Chartered Institute of Arbitrators (UK). He is a Fellow of the Chartered Institute of Arbitrators (Nigeria). He was counsel in leading law firms in Nigeria including Chief Rotimi Williams Chambers and Fidelis Oditah & Co., and served as Head of the Legal and Chartering departments of Oando Supply & Trading Company Limited, the leading oil trading company in Nigeria. His practice specialties included maritime law, oil and gas law, international trade law and commercial litigation.

He earned his LLB in Common and Islamic Laws from the Usmanu Danfodio University Sokoto, Nigeria, the Barrister at Law certificate from the Nigerian Law School in Lagos, LLM from the University of Lagos and PhD from the European-American University. He is married with children.
John Jeffery, MP, Deputy Minister of Justice and Constitutional Development, South Africa

John Jeffery, MP is South Africa’s Deputy Minister of Justice and Constitutional Development. Mr Jeffery is an admitted attorney and holds BA and LLB degrees, as well as a postgraduate diploma in environmental law from the University of Natal. He is a member of the ruling party, the African National Congress. He describes growing up as a white South African in the late 1970s and seeing the injustices and human rights violations under the previous regime as being the driving force in him joining the liberation struggle and becoming actively engaged in politics at university.

After South Africa’s transition to a constitutional democracy in 1994, Mr Jeffery became a member of the KwaZulu-Natal Provincial Legislature where he chaired the Environment and Conservation Portfolio Committee. Mr Jeffery has been a member of the National Assembly of Parliament since 1999. He is a former member of the Justice and Constitutional Development Portfolio Committee where he was instrumental in shaping a number of pieces of legislation, such as the Child Justice Act, the Prevention and Combating of Trafficking in Persons Act, the Protection from Harassment Act, the Superior Courts Act, the Protection of Personal Information Act and the Legal Practice Act. He served as Parliamentary Counsellor to the President and the Deputy President from 1999 – July 2013.

Mr Jeffery was appointed as the Deputy Minister of Justice and Constitutional Development in July 2013. His constituency is in Kwazulu-Natal.

Mr Justice Lebohang Aaron Molete, Commercial Court, Lesotho

Judge Molete attained the BA (Law) and LLB degrees from the National University of Lesotho from 1976 to 1980.

Prior to his appointment as a Judge, Justice L.A. Molete was a partner in the firm Webber Newdigate of Maseru for a period of twenty years.

As a partner of Webber Newdigate he represented the firm in the first and formative meeting of Lex Africa, and also participated in the World Bank Project: Doing business as one of the contributors on the Lesotho Economy and Legal Structure.

He was appointed to the Commercial Division of the High Court of Lesotho in December 2010, and attended various of courses and workshops in commercial and other aspects of law in a number of countries in Africa and abroad since his appointment.

Lyndon Norley, Bowman Gilfillan, South Africa

Lyndon has more than 20 years experience as a restructuring adviser, both as a lawyer and also as an investment banker.

Lyndon began his career at a major international English law firm before becoming a partner and head of European restructuring at more than one international US law firm. Most recently Lyndon was an investment banker where he was head of European restructuring.

Lyndon has advised on many of the largest European/ international restructurings over the past 20 years. Lyndon has advised on all restructuring and insolvency processes, to the full range of restructuring stakeholders, including private equity sponsors and other shareholders, debtor corporates, senior and junior bank debt and bondholders.

Lyndon specialises in complex high value multi jurisdictional transactions.
Lyndon has lectured extensively on restructuring matters and is an acknowledged restructuring adviser.

**Mr Justice Alastair Norris, Royal Courts of Justice, UK**

After reading law at St John’s College Cambridge Alastair was called to the Bar by Lincoln’s Inn (of which he is now a Bencher). He practised as a Chancery barrister (being appointed a QC in 1997) specialising in property, trusts and professional negligence. He was appointed the Specialist Chancery judge at Birmingham in 2001 where he dealt with a full range of insolvency matters, particularly those relating to the motor industry. He was appointed a High Court judge in 2007 and now sits at the Royal Courts of Justice in London dealing, amongst other matters, with cross-border insolveney work. In 2013 he was appointed Vice-Chancellor of the County Palatine, and supervises the Chancery Courts in the North of England. He has previously supported INSOL and World Bank events and addressed conferences at Abuja, Delhi, Singapore, BVI, Cape Town, Montreal, The Hague, San Francisco and Dubai. He is currently Chairman of the Advisory Board of The Centre for Business and Insolvency Law at Nottingham Law School.

**Stefan Smyth, PwC, South Africa**

Stefan Smyth is a Partner at PwC South Africa and is the territory leader of Business Recovery Services (BRS) in Southern Africa. This unit specialises in providing restructuring solutions to businesses in distress, working with Banks and Stakeholders to enable a better understanding of the financial and commercial position of the business, its viability and the restructuring options available.

Stefan started the South African BRS practice 6 years ago and since then has advised lenders and companies across sub Saharan Africa on a range of complex restructuring and re-organisation matters across all industry sectors. He is a registered Business Rescue practitioner, taking statutory Chapter 6 appointments.

Most recently he has managed the executive team involved in the Curatorship of African Bank Limited which has ranged from restructuring the domestic and international bonds, operational assessment and stabilisation of the bank and also included distressed M&A negotiations on various subsidiary asset realisations. Prior to this he was involved as lead advisor to lenders on the restructuring of a large diversified agricultural holding group which resulted in an 18 month process of stabilisation and divestment.

Stefan is originally from the UK and has a Financial Services background where he led the re-organisation and financial improvement of underperforming large scale service centres throughout the UK.

**Muniu Thoithi, PwC, Kenya**

Muniu is a Partner and the Leader of the Business Recoveries Services and Forensics practice in Kenya and the region. He has over 10 years professional experience, with over 7 years’ experience in insolvency, restructuring and business turn-around work.

Muniu has led and project managed numerous insolvency, restructuring and business review assignments in the region in many jurisdictions including Kenya, Uganda, Tanzania, Zambia, Uganda, Rwanda and Mauritius.

He is a member of the Institute of Certified Public Accountants of Kenya (ICPAK), and active participant and presenter during the Insolvency Africa Round Table (INSOL-ART).

Muniu holds an Economics degree from the University of Nairobi and is CPA qualified.
**Mahesh Uttamchandani, Global Lead – Credit Infrastructure, World Bank Group**

Mahesh Uttamchandani is the World Bank Group’s Global Lead for Credit Infrastructure (Insolvency & Creditor Rights, Secured Transactions & Moveable Collateral and Credit Information), advising governments around the world on the development of insolvency, collateral, credit information and debt recovery systems. Prior to joining the World Bank, Mahesh was Insolvency Counsel to the European Bank for Reconstruction and Development (EBRD), where he led the reform of insolvency systems throughout Eastern Europe and central Asia.

Mahesh is a Canadian lawyer who practised for several years exclusively in the area of insolvency and creditors’ rights at a leading Canadian law firm and has published and lectured extensively in North America, Europe and Asia. He is a board member of the insolvency related legal journal, *International Corporate Rescue*, as well as an Adjunct Professor of Law in the St. John’s University Law School LL.M in Insolvency; an Honorary Professor of Law at Nottingham Law School and a Board Director of INSOL International.

**David White, KPMG, UK**

David was based in Asia between 1998 and 2015 and has worked in over 23 countries.

Prior to joining KPMG, David worked for the Commonwealth Bank, Australia where amongst other things he was responsible for managing distressed and non-performing accounts.

He then joined PwC as a Director for 11 years based out of Thailand. He joined KPMG in 2010 in Thailand, in 2013 transferred to the Hong Kong Office subsequently transferring to the London Office in June 2015.

**Some Experiences**

David project managed the implementation of AMCON and more recently advised a Malaysian Bank with regards the design of a loan work out unit.

He has also advised the Debt Trading Asset Company in Vietnam on initiatives designed to improve performance and efficiencies. In 2015 he worked with the KPMG Vietnam Office to advise a Vietnamese Bank about the design and structure of an internal Loan Workout Unit.

During the Asian financial crisis David advised a number of Thai Banks on NPL management including portfolio sales as well as advising several Govt’s about national AMCs.

He managed the sale of Euro 7.3 billion loans on behalf of Irish Bank Resolution Corporation. He is currently working on several loan sales projects in Europe.

**Kathleen Wong, Allen & Overy, South Africa**

Kathleen is a Director at Allen & Overy. Since the financial crisis, she has advised on a variety of complex cross-border restructurings of corporations and financial institutions in Europe, Asia and Africa. She recently moved to Johannesburg from London to offer on-the-ground English law and international banking and finance experience in Sub-Saharan Africa. She has also worked in Singapore and Shanghai.

Kathleen is ranked as an international expert in Chambers Global Directory 2015 and cited as a rising star in Expert Guides 2015. She is fluent in French and English and operates in three dialects of Chinese, including Mandarin, Cantonese and Hoisanese.
Allen & Overy is an international law firm with 44 offices in 31 countries, including Morocco and South Africa. The team in South Africa includes restructuring experts who are fully integrated into the Allen & Overy global restructuring and insolvency team, which includes over 150 restructuring lawyers across the network.
INSOL International Mission Statement

INSOL International is a world-wide association of national associations of accountants and lawyers who specialise in turnaround and insolvency. There are currently over 40 Member Associations with approximately 10,000 professionals participating as members of INSOL International. Individuals who are not members of a member association join as individual members.

INSOL also has ancillary groups that represent the judiciary, regulators, lenders and academics. These groups play an invaluable role within INSOL and provide valuable forums for discussions of mutual problems.

INSOL was formed in 1982 and has grown in stature to become the leading insolvency association in the world. It is a valuable source of professional knowledge, which is being put to use around the world on diverse projects to the benefit of the business and financial communities.

INSOL’S Mission

*INSOL with its Member Associations will take the leadership role in international turnaround, insolvency and related credit issues; facilitate the exchange of information and ideas; encourage greater international co-operation and communication amongst the insolvency profession, credit community and related constituencies.*

Our Goals:

- To work with and involve our Member Associations in our activities
- To implement research into international and comparative turnaround and insolvency issues
- To participate in Government, NGO and intergovernmental advisory groups and to liaise with these institutions on relevant issues
- To assist in developing cross-border insolvency policies, international codes and best practice guidelines
- To provide a leadership role in international educational matters relating to turnaround and insolvency topics
- To facilitate the exchange of knowledge amongst our Member Associations through our conferences and publications

For further information on INSOL International please contact:

Jelena Sisko, Membership Manager, 6-7 Queen Street, London, EC4N 1SP Tel: (+44) (0) 20 7248 3333 Fax: (+44) (0) 20 7248 3384  
E-mail: Jelena@insol.ision.co.uk
The Group of Thirty-Six features some of the most prominent and influential firms within the insolvency and turnaround profession. The aim of the Group of Thirty-Six is to work with INSOL to develop best practice guidelines and develop legislation to enhance the ability of practitioners globally to save businesses throughout the world.

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Instituto Brasileiro de Gestão e Turnaround
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International Association of Insurance Receivers
International Women’s Insolvency and Restructuring Confederation
Japanese Federation of Insolvency Professionals
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Law Council of Australia (Business Law Section)
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Nepalese Insolvency Practitioners Association
National Association of Federal Equity Receivers
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“Mercury” (NP SOAM Mercury)
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REFor – The Insolvency Practitioners Register of the National Council of Spanish Schools of Economics
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Russian Union of Self-Regulated Organizations of Arbitration Managers
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Monday 12th October 2015

Peer to Peer Workshop
We asked those jurisdictions participating in Africa Roundtable to answer three questions in respect to their insolvency legislation. The following country summaries have been submitted.

Ethiopia

How old is your current legislation?

The Ethiopian law of “Bankruptcy and Schemes of Arrangement” is one of the five major books incorporated in the 1960’s Commercial Code of the country. Although it is regarded by many as a modern law for its time, it is now a more than half a century old law. As old as it is, the law has parts that deal with the recovery of the bankrupted estate by putting forward provisions of “composition” and “schemes of arrangement”. However there are many provisions that should be redrafted in order to make the law go with the demands of current business operations and financial markets.

Do you have recent reform initiatives?

With the aim of modernizing its commercial laws, the government of the Federal Democratic Republic of Ethiopia has taken few steps to amend the books/provisions of this 54 years old Commercial Code. The book of Bankruptcy and Schemes of Arrangement, which is one of the five books of the Code, is subject to amendment like all others. The technique committee tasked with the preparation of the policy paper that will be used as a guideline for the amendment of the Commercial Code has finished and submitted its final drafting instruction. The steering committee which is composed of the Ministers of relevant Ministries of the country including the Ministry of Justice and the Ministry of Trade has revised the policy produced document. The next step that is expected to take place in 2015/16 is the drafting process of the law. This process is awaiting the formation of the new cabinet in the country following the national election held a few months ago.

What is the reform agenda going forward?

The aforementioned technique committee, during the preparation of the policy document (drafting instruction) regarding the book of Bankruptcy and Schemes of Arrangement, has done its best to give the policy document the shape of a modern insolvency law. Inter alia, the committee have tried to see the experiences of other countries and has also used UNCITRAL’s Model Insolvency Law and Legislative Guide on Insolvency Law as a reference point. However I personally believe that there are areas that need further study, areas like bank bankruptcy law and the exit strategy of the insolvent, before getting into the drafting process. These two areas are barely regulated by the current law and hardly got attention by the steering committee.

Ghana

How old is your current legislation?

1. Insolvency Act, 2006 (Act 708) – Nine (9) years

2. Bodies Corporate (Official Liquidation) Act, 1963 (Act 180) - Fifty-two (52) years

Do you have recent reform initiatives?
Yes, the draft Corporate Insolvency Bill is currently before Cabinet and should hopefully be laid before Parliament before year end i.e. December 2015.

**What is the reform agenda going forward?**

1. To provide a rescue culture framework—provision of a framework for negotiating and approving binding reorganization plans before and after commencement of Insolvency

2. To provide an avenue for creditor participation in insolvency proceedings—creditors will be given considerable powers either directly or through the Creditors committee to ensure the protection of their interests.

3. Regulation of insolvency practitioners to ensure that there is appropriate oversight of private insolvency practitioners for the proper administration of insolvency proceedings, accountability and efficiency. The Bill seeks to introduce the establishment of an Insolvency Services Division within the Office of the Registrar of Companies and also the maintenance of a Register of Insolvency Practitioners.

**Kenya**

**How old is your current legislation?**

- A new Insolvency Act (Insolvency Act 2015) has been enacted into law with effect from September 2015.
- It is the country’s first stand-alone Insolvency Act which now consolidates the law relating to the insolvency of natural persons and incorporated and unincorporated bodies. Previously, insolvency legislation for corporations in Kenya has been part of the Companies Act while that for individuals was part of a separate Bankruptcy Act.
- The new insolvency legislation has shifted the focus from mere recovery for creditor who commences the insolvency proceedings to a culture of rescuing the business in the interest of all stakeholders.

**Do you have recent reform initiatives or amendments to share?**

Key reforms have been introduced by the new Insolvency Act 2015. These include;

- **Insolvency practitioners: requirements and regulation** - In a welcome departure from previous legislation, the new Insolvency Act introduces restrictions on those who can act as insolvency practitioners with the view of introducing regulation to the insolvency profession;

- **Introduction of Company Voluntary Arrangements** – the new law introduces the concept that directors of a Company can make a CVA proposal to a company’s creditors. CVAs can be made whether the company is in administration or in liquidation or neither.

- **Introduction of Administrations** - the new Insolvency Act 2015 also introduces the Administration route of insolvency. In keeping with the spirit of a rescue culture, the stated objectives of an Administration (in order of priority) are as follows:

  1. To maintain the company as a going concern;
  2. To achieve a better outcome for the company’s creditors as a whole than if the company were liquidated;
  3. To realise the property of the company in order to make distributions to one or more secured or preferential creditors.
• **Cross-border insolvency** – the new law includes provisions of the Model Law on Cross-Border Insolvency adopted by the United Nations Commission on International Trade Law. Some of the provisions have been adapted to the Kenyan context but in general, the legislation aims at clarifying the provisions for cross-border insolvency where a Kenyan company is concerned in order to facilitate trade and investment and clarify the route cross-border insolvency proceedings should take.

What is the reform agenda going forward?

• Major reform agenda is in relation to state corporations. A government Owned Entities Bill is being debated which will formulate the legislative framework for the restructuring of state corporations.

**Malawi**

Insolvency law in Malawi is governed under two statutes. For personal insolvency, there is the Bankruptcy Act that was enacted in 1928 and still remains in force. Corporate Insolvency provisions are in the Companies Act, 1984. There has been a new Companies Act passed in 2013. This new Companies Act does not contain any insolvency provisions as these will now be dealt with under a new Insolvency Act that is now before Parliament. Common law provisions also do apply to some aspects of insolvency, for example, the recognition and enforcement of foreign insolvency judgments and orders. The main reform in Malawi is the Insolvency Bill which is before Parliament.

The Bill in the main is based on the Mauritius Insolvency Act 2010 subject to modifications highlighted below. The choice of Mauritius is because firstly it is generally regarded as best practice and secondly because the Companies Act 2013 in Malawi is based on the Mauritius Companies Act which represents the modern company law approach from New Zealand.

This Bill seeks to consolidate the written laws relating to insolvency and winding-up of companies and bodies corporate, the written laws relating to the insolvency and bankruptcy of individuals, and other written laws bearing on those two subject matters. The existing insolvency regime is outdated and governed by multiple statutes, making it difficult to have transparent, cost-effective and streamlined insolvency procedures. To address these weaknesses, this Bill introduces a unified statute that brings all the relevant insolvency provisions under one piece of legislation, replacing the various Acts that currently regulate insolvency in Malawi, and introduces a number of new concepts into Malawian insolvency law.

One of the innovations in the Bill deals with administration and the institutional structures needed to ensure the smooth functioning of the new legislation. Apart from retaining existing administrative resources through the office of the Official Receiver, the Bill establishes a new office, the Director of the Insolvency, who will act as the regulator of insolvencies in Malawi. It is not anticipated that this new office will be an expensive endeavour as efforts are being made to locate the office within the office of the Registrar of Companies and keep it, at least initially, to a small scale.

Secondly, the Bill introduces a corporate rescue mechanism modelled on the United Kingdom's administration procedure. Under current Malawian insolvency law, there is no effective corporate rescue mechanism that can be used as an alternative to the immediate liquidation of the company. However, unlike the position in England and Wales where the company itself or the holder of a qualifying charge (security interest) may appoint an administrator, a company reorganisation order in Malawi will only be able to be granted by the High Court. This will help
ensure that corporate reorganisation mechanisms are only used in appropriate cases and are not open to abuse.

This new corporate rescue mechanism has been termed ‘company reorganisation’ and allows for an administrator to be appointed in order to attempt to save a financially viable company that is in distress. The administrator replaces the board and assumes control of the company. There are various options open to the administrator in order to achieve the objective of saving the company or its business, for example, by selling the business of a company as a going concern. If the administrator cannot achieve the objective of saving the company or its business, the affairs of the company must be wound up in such a way as to ensure that the best possible result for the creditors will be obtained.

The Bill retains receiverships. Receivership is not a new concept in Malawi, although the provisions in the Bill are modified versions of what currently appears in the current Companies Act. The main changes to the receivership provisions relate to the removal of the concept of fixed and floating charges from Malawian law.

Secured creditors with a security interest in a company's property will be able to appoint a receiver where the instrument creating the security interest confers such a right. The High Court may also appoint a receiver in certain circumstances. Persons who are not at arms’ length from the company may not be appointed as receiver, and all persons who wish to be appointed as receiver are required to be registered insolvency practitioners. The powers and duties of a receiver are set out in general terms in the Bill, although a receiver will also obtain a large portion of his powers through the instrument by which he is appointed. The High Court may also give directions to a receiver upon application by a variety of interested parties, including the receiver himself.

The traditional approach to winding-up in Malawi has for the most part been retained. A company may still be wound up by the High Court or voluntarily, and the voluntary procedure still makes provision for a distinction between the winding-up of solvent and insolvent companies. While the traditional approach to winding-up has for the most part been retained, the provisions themselves have been modernised and streamlined and also include a number of new provisions.

The Bill also provides for bankruptcy and alternatives to bankruptcy. The bankruptcy provisions have been streamlined and modernised, resulting in a large reduction in the number of provisions regulating this aspect of Malawian insolvency law. These provisions will replace the current provisions contained in the Bankruptcy Act. In addition to natural persons, the bankruptcy provisions will also apply to common law partnerships, sole proprietorships and other entities which cannot be wound up under the winding-up provisions.

In line with modern trends in most industrialised nations, an alternative to bankruptcy has been included in the Bill. The alternative in question is known as an individual voluntary arrangement, and has been modelled on a procedure by the same name in the United Kingdom where it has been known to alleviate the plight of a large number of debtors. In terms of these provisions, a debtor enters into an arrangement with his creditors on a voluntary basis, thereby avoiding the disadvantages of being declared formally bankrupt. The procedure is quick and inexpensive and, considering the procedure’s inherent simplicity, has a very good chance of succeeding in Malawi. The provisions dealing with individual voluntary arrangement also contain a provision allowing for a fast-tracked individual voluntary arrangement which is an abbreviated version of the full individual voluntary arrangement and can only be used in specifically defined circumstances.

The Bill introduces insolvency practitioners qualifications. Currently, there is no regulated insolvency profession in Malawi. Considering the level of knowledge required to be an insolvency practitioner, a regulatory regime for insolvency practitioners has been included in the Bill.
In order to make the regulatory regime a sustainable one, a system has been adopted whereby established professions such as legal practitioners and accountants can be recognised for the purposes of regulating the profession instead of creating a new body. Considering the complex nature of insolvency law, provisions have been included whereby persons who wish to act as insolvency practitioners will have to obtain additional qualifications specifically relevant to the insolvency profession. While the provisions relating to insolvency practitioners have been modelled on those that apply in the United Kingdom, they have been designed to apply in the Malawian context.

Finally, the Bill deals with cross-border insolvency. In line with modern trends elsewhere in the world, the Bill contains detailed provisions that can be used to deal with international insolvencies. These provisions have been modelled on the UNCITRAL Model Law on Cross-Border Insolvency which has recently been adopted by a whole host of developed countries, for example, the United States of America, the United Kingdom, Australia and Canada, and developing countries such as South Africa and Mauritius. Although the provisions have been modelled on the UNCITRAL Model Law, the provisions themselves have been modified to align with Malawian concepts and terminology.

The provisions contained in this Part are extremely detailed and are designed to promote harmony between the different insolvency systems that may apply to a multinational debtor. They are also designed to ensure the fair treatment of creditors in all jurisdictions in which there may be an insolvency proceeding relating to the debtor in question. It is important to note that this Part is not applicable in cases where special provisions apply to the insolvency of specific types of debtor, for example, banks or insurance companies.

Main lesson, it is very important to review secured transactions law simultaneously with insolvency law.

**Mauritius**

**How old is your current legislation?**

The insolvency Act was passed in 2009 which repealed the –

- Bankruptcy Ordinance of 1888
- The Insolvency Act of 1982
- Certain provisions of 1984 relating to winding up.

Apart from the main legislation, regulations have been prescribed for the form and content of the statutory forms and for the qualifications of Insolvency Practitioners, the Code of Conduct and the Out Court Workouts.

**Do you have recent reform initiatives or amendments to share?**

The amendments recently brought to the law are in relation to the ranking of claims for the Revenue Department on distribution in case of winding up and certain minor procedural issues. Following the collapse of a big group involving a bank and an insurance company, there have been amendments to the Insurance Act which indirectly impact on the insolvency legislation. The amendments concern the appointment of a Special Administrator who has the same duties as an Insolvency Practitioner.

**What is the reform agenda going forward?**

The review to the Insolvency Act is an ongoing process. The main focus is now on capacity building and marketing strategy to vulgarise the law and its implications.
Mozambique

How old is your current legislation?

The New Insolvency and Recuperation of Commercial Agents was approved by Decree-Law 1/2013, of 4 July. Until 2013, Mozambique insolvency regime was governed by its Civil Procedure Code which had been in force since 1967, which was outdated and did not respond to the current economic needs of the country.

The new legislation has a chapter dedicated to recuperation and encourages recuperation over insolvency. The focus is to protect the interests of creditors and the interests of workers through the maintenance of jobs and it applies not only to commercial entrepreneurs, but also, with the necessary adaptations, to associations and foundations, civil societies, cooperatives and individuals.

The classification of credits has the following descending order of preference: credits derived from labour legislation, secured creditors, tax creditors, ordinary creditors, fines of any nature and subordinated creditors.

For the banking and financial institution there is a specific regime for the administrative liquidation approved by the Law 30/2007, of 18 December. The Central Bank of Mozambique plays a key role in this process.

Do you have recent reform initiatives or amendments to share?

No.

What is the reform agenda going forward?

No reform is needed since we are implementing the new regime.

Since the adoption of the insolvency law went into court about eight processes. None of these cases ended. Thus, it is not possible to know the average time duration of these processes.

The main difficulty in the implementation of the law is the appointment of administrators, since there are no professionalized insolvency administrators. The indication of the insolvency manager is follows the law seeking the criteria. The insolvency administrator must be preferably a lawyer, economist, business manager or accountant with at least 5 years working experience.

Usually we have appointed lawyers who do not give due attention to the processes. Taking into account the important role assigned to administrators by the new law we believe it is important to have insolvency administrators committed to the process.

Proper training of judges and prosecutors must be a priority. The law brought a very different philosophy and terminology which leads to a very wide interpretation of effort. The law itself contains many contradictions and inaccuracies that hinder decision-making.

The insolvency administrator manager association has the role of managing the insolvent estate, maximize proceeds, reduce the debt and balance the interests of the debtor and creditors.

The awareness on insolvency regime and the training for the judicial operators are the main challenge.
Namibia

How old is your current legislation?

- Insolvency Act, 1936 (Act No. 24 of 1936):
- Principal insolvency legislation in Namibia
- In operation before independence when Namibia declared a Protectorate of the Union of South Africa and the Law of the Cape of Good Hope introduced into the Territory of South West Africa by the Administration of Justice Proclamation, 1919 (Proclamation No. 21 of 1919)
- After independence, the Act is retained by Article 140(2) of the Namibian Constitution.

Other Statutes dealing with the winding-up of Companies/Close Corporations:

- Companies Act, 2004 (Act No. 28 of 2004)
- These statutes provide for business rescue options such as – judicial management & statutory compromises.
- The Companies Act, 2004 came into force on 10 November 2010.

Do you have recent reform initiatives or amendments to share?

Amendments:
- The Insolvency Amendment Act, 2005 (Act No. 12 of 2005).

Reform Initiatives:
- The review of the Insolvency process began in July 2013 when the Commission, in conjunction with the World Bank organized consultative stakeholder meetings.
- Commission compiled a Discussion Paper setting out the key issues identified in respect of the Insolvency Act, 1936 which was distributed earlier this year on 13 March 2015.

What is the reform agenda going forward?

- The Commission is in the process of drafting proposals to the issues identified from the Discussion Paper and as part of its consultative process will organize a workshop to discuss these proposals.
- We are learning from the various options available and appreciate the opportunity to hear feedback about insolvency reform initiatives across Africa.

Nigeria

How old is your current legislation?

Overview of general insolvency statutory framework

Personal insolvency in Nigeria is regulated by the Bankruptcy Act, 1979 which has not witnessed any amendment since 1992. The law is liquidation oriented and consequently is not debtor friendly. Not surprisingly there has hardly been any voluntary use of the law and even creditors find the requirements of the law burdensome.

Our current general corporate insolvency legislation is contained in the Companies and Allied Matters Act (CAMA). The Act was first promulgated in 1968 as the Companies Act 1968 and...
upgraded in 1990 after a stakeholders’ workshop that reviewed the new draft. The 1990 Act was consolidated in the 2004 Laws of the Federation of Nigeria.

CAMA has actually been the subject of a substantial review of the law as well as its operational guidelines recently. However, the review by the Committee set up to that effect is yet to be approved by the Governing Board of the Corporate Affairs Commission which has the responsibility of administration of CAMA. The Companies Winding-Up Rules were made pursuant to CAMA 1990.

Another law that affects insolvency is the Investment and Securities Act 2007 which has provisions on mergers and acquisitions.

Overview of the special banking insolvency and reforms will be provided below.

**Do you have recent reform initiatives or amendments to share?**

The BRIPAN inspired draft Insolvency Bill which was exposed to stakeholders a few years ago went through a process of review and was championed by the Federal Ministry of Industry, Trade & Investments (FMITI) and is awaiting Federal Executive Council consideration and adoption as an “Executive Bill”. The Final Draft of the Bill which was reviewed by a Technical Committee under the Jonathan Administration, was vetted by the Ministry of Justice just before the general presidential election in Nigeria and was awaiting presentation to the Chairman of the economic team headed by the then Vice President.

The Committee of the FMITI on Reform of Investment Laws & Policies recently resolved at its meeting of 15 September, 2015 to handover same Bill to such substantive new Minister appointed for the FMITI by the current administration, so that it can be forwarded to the Federal Executive Council for approval and transmission to the National Assembly.

However in contrast with the pace of reform in general insolvency, the banking sector has witnessed recent initiatives and amendments of its insolvency regime.

**Overview of banking insolvency regime**

A significant turning point in enthroning a culture of business rescue in the banking sector in Nigeria was the introduction of the Asset Management Corporation of Nigeria (AMCON) Act in 2010 even though prior to that Act, there was some existing mechanism for rescue under the Nigeria Deposit and Insurance Corporation (NDIC) Act, 2006.

Prior to that Act, under some of the banking and finance laws, but particularly the NDIC Act 2006 aforementioned and Part VIII thereof, the NDIC was empowered to either intervene financially and/or take over temporarily management of failing banks/financial institutions. The Corporation could also induce regulatory corporate restructuring such as M&A with another financial institution or float bridge banks to assume/acquire deposits & liabilities of the bank.

By 2010, the AMCON Act provided an olive branch for resolution of insolvency in the banking sector by the creation of an Asset Management Corporation (AMC) called AMCON which purchases eligible toxic assets from banks, thereby assisting them to achieve a healthier balance sheet and liquidity and focusing on the viable portion of their business. AMCON is subrogated to the rights of the previous bank owner of the eligible asset to exercise all its remedial options as a secured creditor but with enhanced powers such as power of sale which by law is not subject to impediments relating to requirements of perfection. Other enhanced powers include enhanced receivership powers, appointment of special judges and fast tracking of cases pertaining to AMCON matters through the issuance of the AMCON Practice Direction, 2013 by the Chief Judge of the Federal High Court.
It was thought that the enactment of the Act and the Practice Direction would provide for quick resolution of debt recovery cases for AMCON against corporate debtors whose businesses had completely failed or who were by conduct characterized as delinquent and recalcitrant debtors. It was also thought that the draconian provisions contained in the Act and the avowed business rescue approach of AMCON would yield improvement on the general business rescue culture. But the recent CBN mandatory guidelines issued to banks on April 22, 2015 enjoining them to commence quarterly publication of list of delinquent debtors that remain non-performing in at least three national daily newspapers effective May 1, 2015 except there are pending litigation (see additional circular of July 22, 2015) proves otherwise. Also, there has been many litigations bogging down the operations of AMCON and the effectiveness of the Act based on constitutional concerns regarding some of its provisions. There has also been some clamour against the risk of insider dealing in view of the corporate governance structure of the corporation, raising the perennial question of who or what regulates the regulator? AMCON was conceived as a one intervention and was to be wound up after about 7 (seven) years when the bank industry was supposed to have stabilised. But this was not to be so and the current contemplation is that the AMC arrangement should be more than a periodic intervention of the Government but sustainable with greater buy in from the banks as opposed to simply being a dumping ground of NPLs by the banks. Finally, there is little empirical evidence that business rescue has been promoted.

By reason of some of the issues above, some amendments have been proposed to the Act leading to the passing of AMCON (Amendment) Act in May 2015 which provides expressly for a pro-business rescue lifeline for managing banking insolvency and indeed indirectly hopefully for general corporate insolvency.

Specifically, Sections 2(3), 16(5), 34(1), 34 (2), 35, 46(2), 48, 60, 61 and 62 of the Act have been amended.

Section 16(5) of the Amended Act states that “a member of the Board or any employee of the Corporation shall not either directly or indirectly be involved in the purchase of the asset acquired by the Corporation as part of, or in pursuant of, the acquisition of an eligible bank asset or enforcement or realisation of any right relating to an eligible bank asset acquired by the Corporation.”

Section 34(1) provides for the acquisition of eligible bank assets by AMCON free from the contractual obligations existing in the original underlying contract between the bank and the borrower, which the borrower may apparently only pursue against the bank.

Section 35 provides for purposes of limitation laws that any cause of action accruable to AMCON shall begin to run only from the date of purchase of eligible bank asset without prejudice to the right of AMCON to either continue prosecution of an existing action in its name or in the name of a third party or simply commence a new action in respect of same subject matter.

Section 48 of the Act is amended to extend Receiver's powers to cover all assets of a Debtor Company, irrespective of secured credits (mortgage, charges or pledges), though, without prejudice to the existing rights of the secured creditors or third parties to such assets. It mandates the receiver to elect either to pursue liquidation or a business rescue procedure. Where he elects the latter, he would need to publish a notice to that effect and the period such a procedure shall be conducted (a minimum of one year) and present a detailed and comprehensive rehabilitation plan for the debtor company within 30 days of publication of notice. Realization of assets and distribution is to be guided by conventional rule of priority of (preferential) payment stated in CAMA in the event of a winding up procedure.
The above therefore potentially creates a business rescue environment for general insolvency practice in Nigeria albeit limited to corporate insolvency initiated under AMCON related matters: it is to be remarked that AMCON matters usually involved corporate entities or businesses who may well be considered too big to fail.

Amended Section 60 then creates a business rescue framework for AMCON itself with respect to redemption of debts securities issued by the Corporation in exchange for the assets acquired. This section effectively creates a sinking fund described as a Resolution Cost Fund. This institutionalizes some of the efforts made by the Government to get the banks involved in rescuing the sector beyond a bail out arrangement based on tax payers’ monies. By 2011, a Memorandum of Understanding (MoU) had already been signed between all the Deposit Money Bank (DMBs) and Central Bank of Nigeria resulting in the establishment of a Banking Sector Resolution Cost Fund.

The amendment codifies the Industry Agreement: the DMBs will be required to make contributions of 50 basis point of their total assets to the fund based on their audited financial statements and N50 billion from the CBN annually for 10 years. As at 31st December, 2013, total contribution to the fund stood at N293.41billion.

What is the reform agenda going forward?

BRIPAN is still pursuing agitation for reform of the Nigerian insolvency framework and promotion of business rescue through stakeholders’ participation and capacity building. BRIPAN’s General Secretary C. V. C. Ihekweazu is a member of the FMITI Committee on FMITI on Reform of Investment Laws & Policies. BRIPAN Leadership is trying also to get the Committee to consider a viable Securities Law that would extend to security over mobile assets, as a complementary law to the general Insolvency Bill. BRIPAN also generally is participating and or exploring with relevant regulators such as Corporate Affairs Commission (CAC) on ways to collaborate to make the Nigerian investment environment more conducive for business development and sustenance.

OHADA

How old is your current legislation?

- the OHADA Uniform Act organizing collective proceedings for wiping off debts is dated 10 April 1998
- the OHADA Uniform Act organizing simplified recovery procedures and measures of execution is dated 10 April 1988

Do you have recent reform initiatives or amendments to share?

Adoption of the new uniform act organizing collective proceedings for wiping off debts (UACP)

The UACP that was adopted on 10 April 1998 and published in the OHADA gazette No. 7 dated 1st July 1998 was updated following the meeting of the 40th OHADA council of Ministers on the 9th, 10th and 11th September 2015 in Grand Bassam (Ivory Coast) at NSA Hotel.

The revised law will apply to all 17 OHADA member states and complements the previously adopted UACP. The number of articles in the UACP went from 258 articles (1998 UACP) to 378 articles (revised UACP), i.e.: 120 new articles.

The revised uniform act takes into account the precepts of the legal economic analysis and the best international legal practices. Its key innovations include:

- The definition of key concepts to facilitate the implementation and interpretation of the new uniform act;
• Widening the scope of implementation of the new uniform act;
• The establishment of a conciliation procedure to safeguard companies facing difficulties;
• The establishment of simplified procedures for preventive settlement, legal redress and liquidation of assets that are suitable to small business entities;
• The definition of deadlines, the observance of which is sanctioned so as to reduce the implementation timeframe of collective proceedings and help achieve the stated objectives;
• The definition of a legal framework for the activities of legal representatives, namely bankruptcy administrators and experts in a bid to ensure competence, ethics and guide their remuneration;
• The establishment of a "new cash" privilege for those who make new loans to company facing difficulties so as to facilitate their consolidation and recovery;
• The Clarification of preference rights of creditors;
• The establishment of a new cross-border insolvency regime based on the Model Law of UNCITRAL.

The revised UACP abrogates the UACP dated 10 April 1998. It has been published in the Official Gazette of the OHADA on September 25, 2015. It will enter into force 90 days from the date of its publication in the Official Gazette of the OHADA pursuant to Article 9 of the OHADA Treaty.

What is the reform agenda going forward?

We are not aware of any new reform in perspective.

Rwanda

How old is your country’s current law?

Rwanda’s current insolvency law (Law No. 12/2009 of 26/5/2009 Relating to Commercial Recovery and Settling of Issues Arising from Insolvency) was enacted in 2009 and is now 7 years old.

Do you have recent reform initiatives or amendments to share?

Yes. Rwanda is at the forefront of reforming insolvency laws amongst African states. In the last two years, and based on stakeholders experiences and interactions with the existing law, several Articles in the insolvency law have either been amended or modified to align the country's insolvency law with those of other jurisdictions considered as advanced in insolvency practices. The changes effected are especially to facilitate resolutions of insolvency issues in a more faster and orderly manner. More importantly, the changes are intended to enable the Rwandan insolvency law and system shift emphasis and focus from liquidating insolvent companies and businesses to rescuing them as going concerns where that is possible.

Also, before now, applications for commencement of insolvency proceedings against corporates that are insolvent used to take very long before they could be heard by the commercial courts. However, given the recent impetus in insolvency and, based on the memorandum of understanding made between the Office of the Registrar General and both the Commercial and High Commercial Courts, insolvency cases and insolvency-related applications are no longer being treated as orthodox commercial cases and applications. Rwanda’s Commercial Courts now attain to all insolvency related cases cum applications with the speed and urgency required to dispense with such matters.

Rwanda is currently working hard to properly regulate its insolvency practitioners as well as equipping them with necessary skills they need to carry out their work and functions. To this end therefore, trainings on insolvency law and practice and turnaround management have been
conducted for the Insolvency Administrators (Rwanda’s title of choice for IPs) and more are being planned for next year.

We are also working on plans to train and certify Rwanda’s insolvency practitioners and to affiliate Rwanda Insolvency Administrators’ Board (RIAB) – the premiere and umbrella association/organisation for insolvency administrators in Rwanda with other international organisations.

What is the reform agenda going forward?

Rwanda is currently drafting a completely new insolvency law which will take care of all the defects noticed in the existing law and further strengthen the country’s position as a doing business friendly country not just in Africa, but globally. The new law is expected to address once and for all the issues not addressed by the existing law and will incorporate best practices on insolvency as well as strengthening creditors’ rights. The new law is designed to be a rescue friendly insolvency law and one that strikes a balance between the interests of stakeholders in insolvency.

South Africa

South African Insolvency and Business Rescue Law and Developments

Introduction

South African restructuring and insolvency law is regulated by three principal pieces of legislation, namely the Companies Act 71 of 2008 (“New Act”), the Companies Act 61 of 1973 (“Old Act”) and the Insolvency Act 24 of 1936 (“Insolvency Act”). Whilst the New Act came into force on 1 May 2011, the Old Act remains applicable to certain insolvency procedures not yet catered for by the New Act. The most recent legislation in the insolvency and business rescue space is the New Act which was promulgated in 2008 and became operative in our law in 2011.

Business Rescue

How old is your current legislation?

The legislation regulating business rescue proceedings is contained in Chapter 6 of the New Act. On the basis that the New Act became operative in South African law on 1 May 2011, business rescue legislation in South Africa is still in its infancy having been around for just over 4 years.

Do you have recent reform initiatives or amendments and what is the reform agenda going forward?

There are no formal amendments that have been proposed to the business rescue provisions of the New Act. The Companies and Intellectual Property Commission (“CIPC”), being the statutory entity responsible for the administration of business rescues in South Africa, has commissioned a team to review the current business rescue landscape, consider the pitfalls in the legislation and propose reforms which may become necessary following the outcome of the research. One such area in which the CIPC has previously advised that they are paying attention, is to the appointment of business rescue practitioners and the manner in which the equivalent persons are appointed in foreign jurisdictions, in order to determine the most effective manner in which to appoint business rescue practitioners. Furthermore, there have been approximately 60 judgments, of which we are aware, handed down by the South African courts to date in respect of business rescue and these judgments have been informative in paving the way for the efficient application of the business rescue provisions in our law. None have yet resulted in formal amendments to the law but may in the future.
**Insolvency**

**How old is your current legislation?**

The Insolvency Act regulates the sequestration of natural persons. The Insolvency Act became operative on 1 July 1936, and it is therefore 79 years old.

The winding-up of solvent companies are regulated by the New Act, and by the Old Act to the extent necessary to give full effect to the provisions of the New Act.

On the other hand, in terms of item 9 of schedule 5 of the New Act, the winding-up of insolvent companies are regulated by the Old Act. The Old Act in turn provides that the Insolvency Act will be applicable to insolvent companies in relation to matters for which the Old Act itself makes no provision.

The Old Act became effective on 1 January 1974, making it 41 years old. The 4 year old New Act became effective on 1 May 2011.

Mention must also be made of the Cross-Border Insolvency Act 42 of 2000, which became operational on 28 November 2003. This Act is, however, not effective as the Minister of Justice has not designated any foreign states in respect to which this Act may apply. That is, cross-border insolvency is regulated by our common law and the statutes mentioned above.

**Do you have recent reform initiatives or amendments and what is the reform agenda going forward?**

South African Law Commission and the Standing Advisory Committee on Company Law made proposals to the Department of Justice and Constitutional Development for uniform legislation that deals with all corporate and individual insolvencies.

As a consequence, during the consultation process surrounding the enactment of the New Act, the Department of Trade and Industry was made aware of proposals within the Department of Justice and Constitutional Development to develop uniform insolvency legislation which would possibly overlap and could conflict with the regime set out in the Old Act for dealing with and winding-up insolvent companies. As a consequence, the New Act provides for transitional arrangements that retains Chapter 14 of the Old Act, on an interim basis until such time as any new uniform insolvency law may be enacted and brought into operation.

**Tanzania**

**How old is your current legislation?**

The companies Act No. 12 of 2002 was made in 2002 but came into force on 1st March in 2006 through G.N. 23 of 2006. It retained the revised edition Chapter 212 of the former Companies Ordinance/Act. So our current legislation is 14 years old from the date it was drafted and 9 years from the date it was put in force. Nevertheless the legislation has been amended from time to time.

**Do you have recent reform initiatives or amendments to share?**

In 2012 the Companies Act was amended by the Business Laws (Miscellaneous Amendments) Act No. 3 of 2012, to includes or introduce companies which can be formed by Single shareholder but its regulations are still underway and hence its not operational yet.

**What is the reform agenda going forward?**
The Companies Act is undergoing some amendment currently and there is also a move for consolidating it with the Bankruptcy Act to make one Insolvency Law this has also been done and awaits other relevant authorities to endorse. Further the Banking Institutions are making reforms that will deal with Banks that are failing.

**Uganda**

**How old is our current legislation?**

The Insolvency Act, 2011 was enacted on 23rd September, 2011 and came to force on the 1st day of July 2013.

Insolvency regulations made thereunder - the Insolvency Regulations, No. 36 of 2013 were made on 13th June, 2013.

The draft Insolvency Practitioners Regulations giving effect to Part VIII of the Insolvency Act are still under review with the First Parliamentary Counsel of Ministry of Justice. The Cross-Border Insolvency Regulations giving effect to part IX are also before the Chief Justice Rules Committee for passing.

**Are there recent reform initiatives or amendments to share?**

The position has not changed much since 2014 in regard to the Insolvency Reforms, see below.

“2014 - No, the Act is still new and is just being implemented/ tested. There are no reform initiatives or proposed amendments at the moment. There is however a proposal from practitioners for setting up a specialised Insolvency Court. This proposal came up during a Judges’ colloquium on Cross Border Insolvency Regulations held on 18th September, 2014.”

**What is the reform agenda going forward?**

The Official Receiver office/liquidation unit of Uganda Registration Services Bureau is committed to creating awareness of the changing landscape of insolvency in the country. We have engaged the services of a skilled consultant to advise on the effective operationalisation of the Act, review the existing new law to identify any loopholes and advise accordingly. This is all geared to establishing a strong insolvency Regime.

In June this year, a delegation from Uganda was hosted by the Insolvency office of Mauritius for a benchmarking visit. The Director, Ms Prabha Chinien with her team diligently shared success stories of the Insolvency Systems of Mauritius which knowledge has helped among others in the automation of services in the Liquidation Unit.

**Zambia**

**How old is your current legislation?**

- Insolvency provisions are contained within the Companies Act.
- The Act is cited as the Companies Act (Amended) Act, 2000
- The Act is deemed to have come into operation on 1 February 2000

**Do you have recent reform initiatives or amendments to share?**

- Key government stakeholders, i.e. Ministry of Justice, Ministry of Commerce and Patents and Companies Registry Agency etc, are currently at a workshop finalizing the
Insolvency Bill. They are mainly looking at the drafting style of the Bill – no further substantive changes to its provisions are envisaged.

- In principal, the Zambian Cabinet have approved the Bill but it will be submitted for formal approval after the workshop.
- The Bill may be tabled in Parliament in the current session (ending Dec 2015) or at the latest in the next session (commencing Jan/Feb 2016). It is expected that the Bill will be enacted during 2016.
- Key areas of reform in the Bill include:
  - Introduction of Business Rescue – drawn from UK Enterprise Act, US Chapter 11 Bankruptcy Act and Insolvency Act of New Zealand
  - Regulation of insolvency practitioners
  - Brings bankruptcy and insolvency laws for individuals and companies under one Insolvency Act

What is the reform agenda going forward?

- The agenda going forward is to bring all manner of insolvency under the one Insolvency Act. The plan is to repeal insolvency provisions in legislation such as:
  - Banking and Financial Services Act
  - Insurance Act
  - Pensions Act
  - Cooperative Societies Act

Zimbabwe

How old is your current legislation?

Our insolvency legislation is provided for largely in the Companies Act [Chapter 24:03] and the Insolvency Act [Chapter 6:04]. The Companies Act was enacted in 1951 whilst the Insolvency Act dates back to 1973.

Do you have recent reform initiatives or amendments to share?

The last amendments to insolvency provisions were enacted in 1998 and concerned such matters as the ranking of claims in an insolvent estate.

What is the reform agenda going forward?

Currently work is underway to reform the insolvency framework in order to strengthen Zimbabwe’s credit environment through, (i) the enactment of a unified Act that addresses insolvency issues which will require that the provisions of the Companies Act regulating insolvency be moved to the unified Act (ii) improvement of the regulation of insolvency practitioners who are presently under the oversight of two different agencies (iii) removing legal barriers to out-of-court workouts with a view to preserving viable businesses (iv) working within SADC, consideration is also being given to address cross-border insolvency issues.
With support from the World Bank Group, 17 African countries, members of the Organization for the Harmonization of Business Law in Africa (OHADA), adopted a Uniform Insolvency Act on September 10, 2015 in Côte d’Ivoire.

This new law replaces the previous 1998 law which was widely believed to be lacking key features of a modern insolvency regime, particularly as regards reorganization proceedings and the treatment of creditors.

The World Bank and the International Finance Corporation (IFC) worked with OHADA to provide technical assistance with respect to the Act. World Bank and IFC teams have worked closely with OHADA governments since 2011 to provide in-depth analysis on country experiences from around the world in insolvency and debt enforcement. The assistance also involved working closely with the OHADA legislative drafting team to assist them in their deliberations on key technical issues.

The new law will apply to all 17 OHADA member states and complements the previously adopted revised Uniform Act on Secured Transactions to provide a more modern credit infrastructure in OHADA.

These two laws will form the backbone of the legal framework for access to credit for businesses in OHADA.
and can be expected to play a crucial role in mitigating investor and creditor risk, reducing the instability that could be caused by high levels of non-performing loans. This, in turn, lowers the cost of credit.

The possibility of using reputational, traditional and non-traditional collateral helps individuals and MSMEs gain access to finance as well as more favorable and competitive financing options.

At the same time, the predictability of a sound insolvency system provides lenders with a higher degree of confidence that when a business is unable to pay its debts, appropriate procedures will be followed to maximize the value of the business.

Key features of the new OHADA legislation include:

- A conciliation procedure to encourage saving viable companies.
- Simplified regulations for small enterprises.
- A new cross-border insolvency regime based on the UNCITRAL Model Law.
- Clarified order of priority of creditors.
- Incentives for creditors who provide fresh money to troubled companies to facilitate their restructuring and recovery.
- A common legal framework to oversee the activities of insolvency practitioners as well as trustees.

The simplified regulations for small businesses are particularly noteworthy as they were developed in recognition of the fact that the most businesses in OHADA are SMEs. Procedures for SMEs would need to be streamlined and related costs reduced for this new credit infrastructure environment to benefit all levels of the market.

The adoption of the UNCITRAL Model Law on cross-border insolvency by so many states that are highly linked through trade relationships promises a more efficient and streamlined process for dealing with business failures that cross borders within OHADA and beyond.

The new law leaves implementing regulations to be resolved at the local level by each national government. These will be crucial to ensuring that all of the benefits of the new legal framework can be maximized.

The World Bank Group offers structured, holistic and multifaceted credit infrastructure services (secured transactions, insolvency and credit reporting) to client countries around the world. The Bank’s Credit Infrastructure services includes advice on credit reporting; secured transactions & collateral registries; and insolvency, creditor rights & debt resolution.

For more information, please contact Mahesh Uttamchandani, World Bank Group Global Lead for Credit Infrastructure at muttamchandani@worldbank.org.
Access to credit for individuals and businesses is severely constrained in much of the developing world. Weak legal and regulatory frameworks for lending, combined with the lack of predictability for lenders, inability to leverage productive assets, and the absence of credit information, creates a lending environment that is unfriendly to MSMEs and individuals. Credit infrastructure is the set of laws and institutions that enables efficient and effective access to finance, stability, and socially responsible economic growth. Credit reporting; secured transactions & collateral registries; as well as creditor/debtor rights, insolvency and debt resolution are the main elements of the World Bank Group’s (WBG) Credit Infrastructure services.

The World Bank Group offers structured, holistic, and multifaceted credit infrastructure interventions using the following global business and delivery model:

- Reforming credit infrastructure legal and regulatory frameworks,
- Creating and/or strengthening credit infrastructure institutions,
- Raising awareness and building capacity,
- Monitoring impact, and
- Setting international standards and promoting global knowledge and expertise.

In addition, the WBG is also the global standard setter, designated by the Financial Stability Board, in the area of insolvency and creditor/debtor rights. It has developed the World Bank Principles for Effective Insolvency & Creditor Rights Systems which, together with the UNCITRAL Legislative Guide, form the global standard for insolvency. Countries can seek assistance from the WBG in being benchmarked against these standards through the Report on the Observance of Standards and Codes (ROSC) program.

Non-existent or poor credit infrastructure poses considerable risks and constrains financial institutions’ ability to expand their financial products and services. However, the availability of credit information sharing, secured lending, and rules that govern distressed businesses and bankruptcy, significantly increases their willingness to support the underserved and unserved individuals and micro, small, and medium enterprises (MSMEs). Besides boosting access to finance, credit infrastructure plays a crucial role in mitigating investor and creditor risk, reducing the instability that could be caused by high levels of non-performing loans. This, in turn, lowers the cost of credit. The possibility of using reputational, traditional, and non-traditional collateral helps individuals and MSMEs gain access to finance as well as more favorable and competitive financing options. The WBG helps its clients and the global community establish and/or strengthen credit reporting, secured transactions, and insolvency as well as...
In countries where limited financial inclusion and weak insolvency systems remain a severe constraint to individuals and MSMEs.

**RESULTS**

Highlights of successful WBG-supported credit infrastructure reforms:

- **CREDIT REPORTING:** Supported the establishment of credit reporting systems (CRS) in Cambodia as well as China and helped with integration of microfinance institutions into the existing CRS in India.
  
  **Cambodia:** As of December 2014, the Credit Bureau of Cambodia (operational since 2012) covered 4.18 million consumers and received 6.29 million inquiries cumulatively, which is estimated to have facilitated over $2.45 billion in financing.

  **China:** The Credit Reference Center (operational since 2006), is the largest repository globally, covering over 850 million individuals and 19.4 million legal entities at the end of 2014. Major legislation to enable private-sector solutions and consumer protection, namely the Regulation on Credit Reporting Industry, was issued by the People's Bank of China in 2013 and there is ongoing assistance to deepen credit reporting systems by including MSMEs.

  **India:** Since 2011, 44 million incremental inquiries have been made by lenders and 299 incremental microfinance institutions have been providing data to two credit bureaus (High Mark and Equifax), which combined have 100 million micro-client records, the largest repository of such data in the world.

- **SECURED TRANSACTIONS:** Supported legal and regulatory reforms and helped establish modern and centralized electronic registries in Ghana, China, and Mexico.

  **Ghana:** Around 60,000 loans registered for a value of $14 billion and more than 8,000 SMEs and 30,000 microenterprises have received loans, which has created hundreds of new jobs.

  **China:** In 2014, the number of registrations in China’s Collateral Registry reached 417,170 and the value of financing facilitated was $2.4 trillion (for receivables finance and lease only).

  **Colombia:** More loans registered in the first six months of the launch (March 2014) than in the last 30 years, i.e. around 58,000 loans registered for a value of more than $10 billion.

- **INSOLVENCY AND CREDITOR/DEBTOR RIGHTS:** Supported the reform and implementation of modern insolvency regimes in Latvia, Mauritius, and Moldova.

  **Latvia:** Introduced a voluntary out-of-court debt-restructuring mechanism. Recovery rates by creditors from insolvent firms increased 71% within five years post-reform.

  **Mauritius:** Introduced and helped implement a regulatory framework for insolvency practitioners. Recovery rates by creditors from insolvent firms increased 17% within two years post-reform.

  **Moldova:** Introduced a new legal framework for insolvency. Recovery rates by creditors from insolvent firms increased 10% within three years post-reform.

**WHO WE WORK WITH**

- Credit Infrastructure clients typically include public and private constituents such as Central Banks; Ministries of Finance, Economy, Justice, and Trade; Commercial Banks; Chambers of Commerce; Courts; Business Associations; Credit Reporting Service Providers; and Independent Alternative Dispute Resolution Centers.

- As of 2015, the Credit Infrastructure portfolio includes around 100 active projects and 30 projects in the pipeline in over 90 countries across six continents totaling approximately $80 million. Over 50% of these engagements are with clients from countries eligible for concessional financing from the International Development Association.
Debt Resolution and Business Exit

Insolvency Reform for Credit, Entrepreneurship, and Growth

The willingness of banks and investors to support new businesses depends a great deal on the rules that govern failing businesses. Effective insolvency regimes save struggling firms when possible, or reallocate assets of failing firms more productively. These procedures—focused on the end of the business life cycle—have a profound impact on the beginning. Banks and investors are more willing to lend when they know they can recover at least some of their investment. Entrepreneurs are more willing to enter the market when they are not putting their entire personal fortunes at risk. This Viewpoint examines literature that quantifies the impact of effective insolvency regimes.

Need for insolvency reform

The World Bank Group Enterprise Survey of businesses in 135 emerging markets shows that almost 60 percent of businesses require a loan at some point, while only just over one-third of businesses have a loan or line of credit. Well-designed insolvency laws are one of the factors that can help businesses access these crucial loans. A number of published studies associate effective insolvency reform with a lower cost of credit, increased access to credit, improved creditor recovery, strengthened job preservation, promotion of entrepreneurship, and other benefits for small businesses. Countries that implement sound insolvency regimes reduce the cost of credit and increase overall economic stability. In contrast, in countries with weak insolvency regimes, struggling companies and their assets often languish unproductively, limiting creditor recovery. In countries where unincorporated businesses such as sole traders are subject to personal bankruptcy regimes, owners of struggling small businesses often face the threat of a lifetime of debt. Banks worried about their ability to recover loans may limit their lending to those borrowers that present the least risk, or they may impose extensive collateral requirements that small entrepreneurs cannot meet.

Given that market exit is an integral part of the business life cycle, particularly in times of crisis, even developed economies with more efficient insolvency regimes are faced with addressing business failure. More than five
years from the onset of the global financial crisis, many wealthier countries continue to flounder, with weak financial markets and many indebted firms. The Credit Reform Economic Research Unit reported that between 2010 and 2011 corporate insolvencies increased by 6.4 percent in Belgium, 18.7 percent in Spain, and 7 percent in Ireland. Reorganizations of multinationals such as U.S.-based General Motors, where at least 1.2 million jobs in the automotive supply chain were at stake, and Eurotunnel with 2,300 employees and 800,000 shareholders, emphasize the far-reaching and cascading effects of business distress and subsequent business rescue on jobs, business supply chains, and bank reserves. The financial crisis has shown that even countries with more established and orderly insolvency procedures are looking at ways to make their economies more resilient through improvements in their debt resolution systems.

Benefits of effective insolvency frameworks
The World Bank Development Report 2014 states that “Bankruptcy law and the depth of resale markets are particularly important to liberate productive resources from an unproductive enterprise and to ensure that creditors and potential investors in other enterprises are protected if a business fails.” Insolvency law provides an orderly process for the reorganization or liquidation of insolvent entities in a collective manner. It serves as an important safety net for business activity, ensuring that when businesses face financial difficulties, mechanisms are available to either rescue them or maximize the value realized from their assets through their deployment to more productive firms. It also ensures an orderly payment process, avoiding a chaotic race by creditors to collect. Unlike bilateral debt enforcement, all creditors participate in insolvency proceedings, and effective insolvency regimes aim to provide a balance of both debtor protection and creditor recovery. Finding this balance is one of the main challenges that policymakers face when designing an insolvency law. The best approaches will be tailored to meet the particular needs, characteristics, and economic and social goals of a given country. The literature shows that effective insolvency regimes preserve jobs by facilitating the survival of distressed but viable businesses, reduce credit risk, and attract venture capital and associated high-quality innovation, particularly vis-à-vis smaller firms.

I. Effective insolvency regimes are associated with a lower cost of credit
Credit opens markets to entrepreneurs and promotes expansion of successful businesses. Credit lines help to ease liquidity shortfalls inevitable to business. Constrained credit supplies, on the other hand, limit growth as liquidity concerns reduce lenders’ willingness to take risk. A 2007 study in China showed that after the enactment of credit and property rights reforms, firms could more readily invest in growth opportunities, with less sensitivity to cash flow.

The World Bank Group World Development Indicators have shown that access to credit is a constraint in many parts of the world. Table 1 shows that in many countries, domestic credit provided by banks as a percentage of GDP is below 50 percent.

Indeed, the World Bank Group Enterprise Surveys of more than 130,000 firms in 135 regions show that:

<table>
<thead>
<tr>
<th>Region</th>
<th>Domestic credit as a percentage of GDP for 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Least developed countries: UN classification</td>
<td>29.9%</td>
</tr>
<tr>
<td>Middle East &amp; North Africa</td>
<td>37.4%</td>
</tr>
<tr>
<td>Europe &amp; Central Asia</td>
<td>62.6%</td>
</tr>
<tr>
<td>South Asia</td>
<td>71.1%</td>
</tr>
<tr>
<td>Latin America &amp; Caribbean</td>
<td>73.6%</td>
</tr>
<tr>
<td>East Asia &amp; Pacific</td>
<td>141.5%</td>
</tr>
<tr>
<td>European Union</td>
<td>156.0%</td>
</tr>
<tr>
<td>OECD members</td>
<td>205.8%</td>
</tr>
</tbody>
</table>

Source: World Bank Development Indicators (Financial Indicators)
countries documents that access to a bank loan or line of credit is restricted in developing regions—particularly Africa—in relation to the number of firms requiring such financing. Table 2 shows that more than half of firms in developing regions need a loan, but in none of these regions are more than half the firms able to access credit, with access acutely tight in the Middle East.

Insolvency laws directly affect the willingness of lenders to extend credit, and the terms on which they are prepared to lend. A study across France, Germany, and the United Kingdom showed that banks price loans based on their rights in case of default, and price them higher to mitigate creditor-unfriendly aspects of the bankruptcy law. The study sampled similar small and medium enterprises (SMEs) that had defaulted on bank loans. The authors examined whether differences in the level of creditor rights in bankruptcy in the different jurisdictions had an impact on lending terms. After adjusting for other factors, they found that French banks required more collateral, and specific forms of collateral, than in the other two countries because of provisions in the French bankruptcy code, which were unfavorable to creditors. The study also found that France, the least ‘creditor friendly’ country among the three, had a significantly lower rate of business recovery than in Germany or the United Kingdom. Limiting the availability of credit enabled French banks to mitigate, but not fully avoid, the costs of “unfriendly” bankruptcy laws.

Reforming an insolvency regime can help lower interest rates, making credit more affordable. A 2012 study examined Italy’s 2005 reform of its reorganization and liquidation procedures under the bankruptcy law. The study separately analyzed the impacts on the cost of credit to SMEs of reorganization and liquidation reforms. Supplementing their analysis of loan-level data with firm-level data on borrowers, the authors found that the liquidation reform led to a decrease in interest rates, although the reorganization reform had the opposite effect. In particular, firms with higher numbers of bank creditors saw the most pronounced reduction in interest rates due to the enhanced coordination provided by the bankruptcy law.

## II. Effective insolvency regimes are associated with increased availability of credit

Effective insolvency systems enhance predictability and thus lender confidence in loan recovery upon default, which encourages more lending and leads to financial inclusion for more businesses.

A 2012 study of Brazil’s 2005 bankruptcy law reform compared accounting data pre- and post-reform from 698 publicly traded firms in Brazil, Mexico, Argentina, and Chile to evaluate the impact of the reform on loan terms and levels of debt. The authors put their firm-level data in context by considering aggregate data on credit market development in Brazil as compared with the other countries. The authors reported a statistically significant increase in the Brazilian private credit market after the 2005 reform, an increase not replicated in the other jurisdictions that had not implemented insolvency reform. At the firm level, the authors reported a 10- to 17-percent increase in total debt and a 23- to 74-percent increase in long-term debt, although with no evidence of change in short-term debt. The authors attributed a significant fall in trade credit to the increased availability of other forms of debt financing. They also reported a

<table>
<thead>
<tr>
<th>Economy</th>
<th>Percentage of firms with a bank loan/line of credit</th>
<th>Percentage of firms not needing a loan</th>
</tr>
</thead>
<tbody>
<tr>
<td>East Asia and Pacific</td>
<td>37.7</td>
<td>44.9</td>
</tr>
<tr>
<td>Eastern Europe and Central Asia</td>
<td>41.2</td>
<td>46.4</td>
</tr>
<tr>
<td>Latin America and Caribbean</td>
<td>47.6</td>
<td>42.1</td>
</tr>
<tr>
<td>Middle East and North Africa</td>
<td>6.0</td>
<td>38.1</td>
</tr>
<tr>
<td>South Asia</td>
<td>34.8</td>
<td>40.3</td>
</tr>
<tr>
<td>Sub-Saharan Africa</td>
<td>23.8</td>
<td>34.1</td>
</tr>
</tbody>
</table>
7.8- to 16.8-percent reduction in the cost of debt financing for the Brazilian firms. In short, the study found that the reform helped make credit more available, and on better terms.

Just as an effective insolvency system promotes access to credit, a weak system inhibits it. A 2008 study comparing 88 countries found that failure to enforce debt contracts, including inefficient bankruptcy proceedings, reduced the amount and quality of available credit at the macro level.

The World Bank Group Doing Business report for 2014 uses a resolving insolvency indicator to measure the time, cost, and outcome of insolvency proceedings involving a financially distressed small domestic company. The methodology for measuring the recovery rate for creditors—the percentage of their original investment they recover in a liquidation or reorganization proceeding—depends on these three variables. If a distressed company emerges from the proceedings as a going concern, the recovery rate tends to be higher than when a failed company’s assets are sold piecemeal. Figure 1 shows a strong correlation between the indicator’s recovery rate and the availability of domestic credit from a country’s banking sector (measured as a percentage of GDP). The correlation coefficient between the Doing Business 2014 recovery rate and the percentage of domestic credit by the banking sector is 0.70. The correlation is significant even at the 1 percent level. More developed insolvency systems that have a variety of tools to address financial distress are positively associated with higher levels of credit and, conversely, less developed systems with lower aggregate credit levels have lower recovery rates.

It is interesting to note that a 2014 study tested the effect of 38 selected indicators on seven measures of the regulatory and institutional environment. Among the 38 indicators, the study identifies the recovery rate of the resolving insolvency indicator of the Doing Business report as the single most valuable measure.

III. Effective insolvency reforms are associated with increased returns to creditors

Studies have shown that insolvency reforms improve creditor returns in cases of loan default. A 2007 study in Mexico showed that the enactment of a new corporate insolvency law, which was designed to reduce delay and ensure better filtering of non-viable from viable debtors, increased the average recovery rate for secured creditors from 19 cents on the dollar to 32 cents on the dollar, and shortened the duration of proceedings from an average of 7.8 years to 2.3 years.

A 2012 study of 348 formal insolvencies in the United Kingdom showed that giving unsecured creditors more control in insolvency through the new administration procedure increased gross levels of returns. The study examined the effects of abolishing the use of receivership, whereby, a creditor with security over the whole of a company’s assets could appoint a receiver to assume control over the debtor and conduct a “private liquidation.” Administration, introduced greater accountability to unsecured creditors through a combination of improved voting rights and fiduciary duties. In addition to increasing the gross level of returns, administration also reduced the duration of cases from a median of 602 days under the receivership procedure to 358 days for the administration procedure. The study showed that the financial gains in returns from using the administration procedure were partially offset by an increase in the costs, because
of more court appearances and procedural requirements.19

The Doing Business report’s resolving insolvency indicator for 2014 illustrates that economies that combine developed insolvency systems with effective reorganization frameworks produce higher recovery rates for creditors compared to countries that have not updated their insolvency procedures (see Figure 2).

IV. Effective insolvency reforms are associated with job preservation through reorganization and business rescue

Businesses in severe financial distress, such as a cash-flow crisis, sometimes have no option but to liquidate and close. If well managed, this can result in the redeployment of assets to more productive firms and improved economic efficiency. However, it can also lead to significant job losses and diminished value for owners and creditors. A business that can overcome financial difficulties will be able to preserve jobs, keep supply chains intact, and retain asset value. Formal insolvency tools have been shown to be effective in encouraging the healthy recovery and rehabilitation of financially distressed firms.

A corporate reorganization code in Colombia enacted in 1999 dramatically improved the efficiency of reorganization proceedings. The duration of the proceedings fell from an average of 34 months to 12 months. The authors of a study of the code found that, post-reform, liquidating firms were unhealthier than before and reorganizing firms were healthier. They concluded that the reform allowed for self-selection of healthy firms to opt for reorganization rather than liquidation, and to do so sooner. After controlling for macroeconomic conditions, the authors found that reorganized firms were able to recover faster under the new law, and achieved greater equity value.20

Effective reorganization in countries such as Colombia and Belgium can allow a company’s workforce to remain employed and productive. This outcome can also be achieved through formal procedures that facilitate the sale of the company’s business on a going concern basis. Recent studies in the United Kingdom21 showed that of all the sales of businesses as going concerns during receivership or administration proceedings, 65 percent concluded with the new owner preserving the entire work force. For pre-packaged sales, full retention of the work force was achieved in 92 percent of the cases.22 Even where some job loss occurred, job retention was still significant. In 73 percent of the cases where business sales resulted in some job loss, the new owner was able to retain at least three-quarters of the work force. For prepackaged sales involving some job loss, 95 percent concluded with at least three-quarters of the work force still on the job.23 These numbers demonstrate the ability of a well-functioning insolvency regime to preserve jobs on a meaningful scale.

V. Effective personal insolvency reforms support entrepreneurship

Entrepreneurship creates jobs, increases productivity, and promotes innovation.24 Recent studies show that start-ups and newly established firms produce multiplier effects that can increase long-term employment growth rates at companies throughout an entire region.25

Venture capital funding provides valuable support to entrepreneurship and innovation. A 2004 study of the United States and 10 European countries found a correlation between debtor-friendly personal bankruptcy regimes and levels of venture capital funding. The authors speculated that greater protections for personal
assets, with more “forgiving” bankruptcy regimes, made entrepreneurs more willing to commit their own resources and better able to attract other venture capital.26

At the level of bank lending to businesses, effective insolvency laws strengthen creditor rights and promote access to credit and growth. At the level of the individual entrepreneur or consumers, laws that are more debtor-friendly can also encourage growth. Entrepreneurs often have to commit personal assets to start a business, and personally guarantee loans to the new venture. A safety net provides a certain level of protection through personal insolvency laws, and appears to encourage the risk-taking necessary for entrepreneurship and innovation.27

Several studies have shown a connection between a country’s personal insolvency law and entrepreneurship. A 2003 survey compared asset exemptions during insolvency proceedings (for the residential home, personal effects, retirement accounts, and other personal assets) among U.S. states. The survey of 20,000 families found that there are more entrepreneurs in those states with higher asset exemptions.28 A 2008 study that compared self-employment in 15 countries in Europe and North America between 1990 and 2005 found that more forgiving personal bankruptcy laws, measured particularly in reference to the time a bankrupt individual has to wait to be discharged from pre-bankruptcy debts, combined with ready access to limited liability protections, enhance entrepreneurial activity.29 A 2009 study, again comparing U.S. states and their bankruptcy exemptions for personal property, found that the probability of starting a business is 25 percent higher in states with higher exemptions.30

VI. Effective insolvency reforms are associated with benefits for small firms

Small and micro firms may be the primary beneficiaries from certain insolvency reforms. When increased availability of debt financing leads to businesses being able to pay suppliers on time, or allows a company to finance cash shortfalls through credit lines, small businesses are less susceptible to failure due to liquidity issues. A 2008 study examined the impact of a reform by Belgium in 1997 affecting small and micro businesses. The reform involved three major changes:

- Introduction of a new court-supervised reorganization procedure.
- Implementation of an early warning system for financial distress by the establishment of special units in charge of monitoring firms’ financial health.
- Amendments to the liquidation procedure to ensure the recognition of retention of title interests, thereby strengthening property rights.

The authors reported a lower failure rate in the post-reform period than in the period immediately preceding reform. After controlling for various factors, they found that the reduced failure rates occurred in small and micro businesses in two sectors in particular—manufacturing and trade.31 They attributed the improvement to the strengthened recognition of proprietary interests in liquidation.

Small and medium enterprises were most affected by Italy’s 2006 insolvency reforms. In a study comparing interest rates pre- and post-reform, “riskier” SMEs, those more likely to default, were shown to have lower interest rates after the liquidation reform. The authors of the study used loan-level data on 202,964 SMEs and 1,097 banks to prove their assumption that improved creditor control during liquidation raised the liquidation value of firms, which led to lower interest rates for the SMEs in the riskier group.32 In China, a 2013 study of reforms that made it easier for secured creditors to foreclose on collateral and restricted expropriation of private property held by local government found that the changes enabled firms to respond to growth opportunities due to greater access to credit with less sensitivity to cash flow.33

Conclusion

Effective insolvency regimes have a dual aim: to save viable businesses and to ensure that non-viable businesses can quickly exit the market, allowing the deployment of assets to more productive firms. In achieving these dual goals, strong insolvency regimes aim to balance creditor and debtor rights, maximizing recovery, provid-
ing a safety net for financially distressed debtors and impacting numerous economic indicators including credit, job preservation, and entrepreneurship. Moreover, the quality of an insolvency regime affects the willingness of investors, banks, companies, and entrepreneurs to take risks and invest in growth. As the studies described here demonstrate, an effective insolvency system can enhance all of these measures and promote economic growth. Empirical evidence points to the importance of developing effective and efficient insolvency systems through thoughtful, targeted reform, and the results can be felt economy-wide, in improved investment climate, economic growth, and job creation.

Notes
1. This Viewpoint was prepared under the World Bank Group Debt Resolution & Business Exit (DRBE) program, under the leadership of Mahesh Uttamchandani. The DRBE program is part of the World Bank Group’s Finance and Markets Global Practice. The author wishes to gratefully acknowledge the contributions to this viewpoint by Angana Shah, Andres Martinez and Fernando Duncana.
2. Creditreform Economic Research Unit
3. Sean P. McAlinden, Debra Maranger Menk, “The Effect on the U.S. Economy of the Successful Restructuring of General Motors”, CAR Research Memorandum, Center for Automotive Research, December 5, 2013, describing the effects of a scenario where General Motors was not rescued, and suppliers were bankrupted in a cascading effect, with estimated job losses of 1.2 million.
5. The nature of the ‘protection’ required will of course vary depending on whether the debtor is an individual person or a legal entity such as a limited liability corporation.
7. D. Berkowitz, C Lin & Yin Ma 2013
10. 338 (around half) Brazilian firms, 108 Mexican, 82 Argentine and 170 Chilean.
11. Depending on which model was used: Araujo, Ferreira and Funchal 2012
12. Funchal 2009
16. M. Gamboa-Cavazos and F Schneider, 2007)
17. Mean was 627 days
18. Mean was 357 days
19. Armour, Hsu and Walters 2012
20. Gine and Love 2010
22. i.e. sales negotiated in anticipation of the commencement of the formal proceedings, and executed on entry into those proceedings.
23. Ibid.
27. Uttamchandani and Menezes 2010
28. Fan and White 2003
29. Armour 2009
30. Mathur 2009
31. N Dewaelheyns and C van Hulle 2008
32. Rodano, Serrano-Velarde, Tarantino (2012)
33. Part II, Berkowitz, C Lin & Y Ma 2013
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