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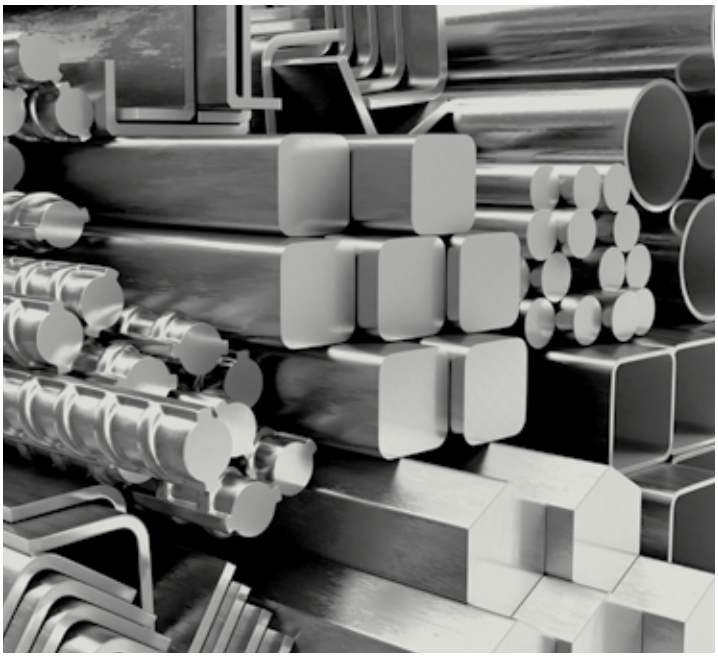


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# The Legal Framework For Restructurings and Insolvencies in Mozambique

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Before the enactment of the Insolvency Law in 2013, Mozambique did not have a tradition of instituting insolvency or restructuring procedures. One of the main reasons for this was the extensive length of such procedures (which could take more than 5 years) as well as the stigma of "bankruptcy" and its reputational consequences.

The Insolvency Law introduced expedited procedures for insolvency, which replaced the previous references to the concept of "bankruptcy" with "insolvency", and introduced the new concept of "restructuring", providing the companies facing a situation of financial distress the possibility to recover their economic potential.

Even so, to date Mozambican entrepreneurs are still reluctant to use the Insolvency Law regime to embark on a process of insolvency or restructuring and tend to delay this decision based on the argument that such regime still needs to be tested for efficiency, despite the consequent negative economic impact of such deferral.

To our knowledge, very few companies have used the Insolvency Law regime. Interestingly, most of the companies that used it so far have relied on the restructuring provision (and not the insolvency ones). In addition, the courts took some time

to become acquainted with this new regime. During such time, no decisions were being issued under the new regime. However, after a series of training programs that began in 2013, the judges seem now to be ready to issue decisions on these matters.

As such, there is no helpful statistical or other empirical data regarding restructuring and insolvency procedures in Mozambique. However, we expect the number of restructurings or insolvencies to increase based on the increased familiarity of judges with the Insolvency Law and in light of the recent economic and financial crisis (2014 through 2016) that affected Mozambique and its businesses.

## Restructuring & Insolvency Legal Regime

The insolvency and restructuring of companies and partnerships in Mozambique is governed by the Decree–Law no. 1/2013, dated July 4, 2013, which approved the regime of insolvency and rescue of entrepreneurs (the "Insolvency Law").

The Insolvency Law (i) regulates the procedures for restructuring or "business rescue" (judicial and extrajudicial) and for the insolvency of companies and (ii) defines the creditors' rights and the insolvency administrator's duties.

Commercial bench courts handle and supervise restructuring, liquidation and administration proceedings in Mozambique. There are no specialist judges for insolvency matters. While there is a generalized lack of confidence in the Mozambican court system, the introduction of specialized insolvency judges could raise the level of confidence among investors.

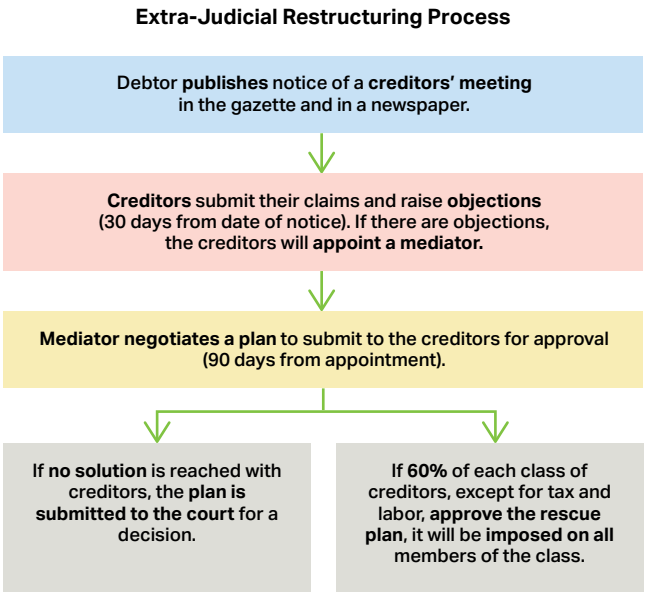
There are no specific restructuring and insolvency regimes applicable to banks and other credit institutions, insurance companies or undertakings, other entities operating in financial markets such as investment firms or entities engaged in payment systems and securities settlement, or any other sectors (such as power and energy, railways, water and ports etc.). While having special regimes for these sectors would be beneficial, considering that the Insolvency Law is still in its infancy, the existing legal regime should be the starting point to test for efficiency and any potential benefits and disadvantages of the Insolvency Law before sector-specific insolvency regimes are introduced.

## Restructuring

Before 2013, Mozambique did not have a tradition of processing either formal or informal consensual restructuring of distressed companies. The introduction of the Insolvency Law in 2013 included provisions regulating both the judicial and the extrajudicial (or consensual) recovery of companies.

The aim of any extrajudicial or judicial recovery plan is to reinstate the "good standing" of the company and its economic viability and to help overcome a debtor's inability to comply with its obligations to creditors. It provides tools and conditions for those entrepreneurs who can still recover to avoid insolvency and liquidation, thus helping to maintain and stimulate employment, the economy, the social environment and growth.

In Mozambique, banks and credit institutions are typically supportive of companies experiencing financial difficulties and




have historically supported debt refinancing or restructuring in many cases.

**Extra-Judicial Restructuring Process**

In principle, the extrajudicial restructuring must be implemented under the rules of conciliation and mediation set forth in Law No. 11/99, dated July 8, 1999 (the "Arbitration Law"). Under this regime, a conciliator or mediator will be appointed by the creditors at the creditors' general meeting. However, the debtor and creditors may also agree on other private agreements for the restructuring of the debtor. We have no knowledge of these informal procedures having ever been put in place in Mozambique.

While the Insolvency Law is relatively new, arbitration as a way to resolve disputes and reach agreement between parties (which can be applied to a company in distress regarding compliance with its obligations) has been applied in many cases.

Under the Insolvency Law, the debtor that (i) has not been declared insolvent by a competent court (or if it was insolvent, whose liabilities have been discharged by final judgment); (ii) has not been granted, within the last two years, a business rescue; and (iii) has not been convicted, and is not in the process of being convicted, as director or dominant shareholder, for a breach of criminal provisions set forth in the Insolvency Law, may negotiate with its creditors a plan for its extrajudicial recovery.[1]

The debtor company (or the executor or the remaining shareholders of the debtor company, as the case may be) can request an extrajudicial restructuring process but must convene all of its creditors, for the submission of their claims, by publishing a notice (which could include the proposed recovery plan) in the Government Gazette and in a newspaper with wide national circulation, or by registered letter addressed to the creditors with acknowledgement of receipt. During the extrajudicial restructuring process, existing management continues to operate the business and, unlike a judicial business rescue, there is no mandatory stay over other creditor claims applied by the courts.

The creditors then have 30 days to present their claims or to challenge the recovery plan. If there is such a challenge, the general meeting of the creditors will nominate a mediator or conciliator, who shall have access to all documents, projects and required information to the practicability of the plan and who shall, within 90 days from his or her nomination, negotiate, mediate, conciliate and formulate, with the creditors, the definitive recovery plan to be submitted for the approval of the general meeting of the creditors. If no solution is reached with the creditors under the guidance of the conciliation and mediation rules, the plan will have to be submitted to the judicial court for decision. Once the plan is presented to the court, the creditors preserve the right to challenge the plan.

The general meeting of creditors may propose the creation of a creditors' committee and, upon a proposal of the debtor, the creditors may appoint an administrator who shall, together with the debtor's single director or board of directors and eventual creditors appointed by the creditors' committee (if existing), help the debtor with the conduct of business and implementation of the recovery plan.

If the recovery plan is approved by creditors representing three-fifths of the credits of the same class, with the exception of labor and tax credits, the plan provisions are imposed on all other creditors of the same class, with respect to claims constituted up to the date of submission of the extrajudicial rescue.

Labor credits are subject to the following rules under the Insolvency Law: the recovery plan cannot provide (i) for a period of more than one year for the payment of credits derived from labor legislation or from labor-related accidents due until the date of the petition for the extrajudicial business rescue; and (ii) for a period of more than 30 days for the payment (an amount which will equal no more than five minimum wages per employee) of labor remuneration credits overdue in the three months preceding the petition for the extrajudicial business rescue. As for tax credits, the debtor is entitled to pay them in instalments, as authorized by the tax authorities (upon request of the debtor after the approval of the recovery plan).

Without prejudice to the above, the extrajudicial recovery plan cannot impair the right or action by creditors who have not voted in favor of such plan to request a declaration of insolvency, which may lead to a significant setback for those creditors that had agreed to the plan.

### Judicial Restructuring Process

A judicial business rescue is a voluntary procedure that may be petitioned by the debtor company through its board of directors (alternatively, by the executor or the remaining shareholders of the debtor company, if any) if, at the time of the petition, the debtor has conducted the business of the company for more than 12 months and meets all the same requirements mentioned above for the extrajudicial recovery (i.e., not being insolvent, not previously granted a business rescue and not being or having been convicted for breach of criminal provisions in the Insolvency Law).

The judicial business rescue will commence when the judge orders that the company be placed in business rescue and the rescue process shall remain in place for a period not longer than two years from the date that the business rescue was approved by the judge.

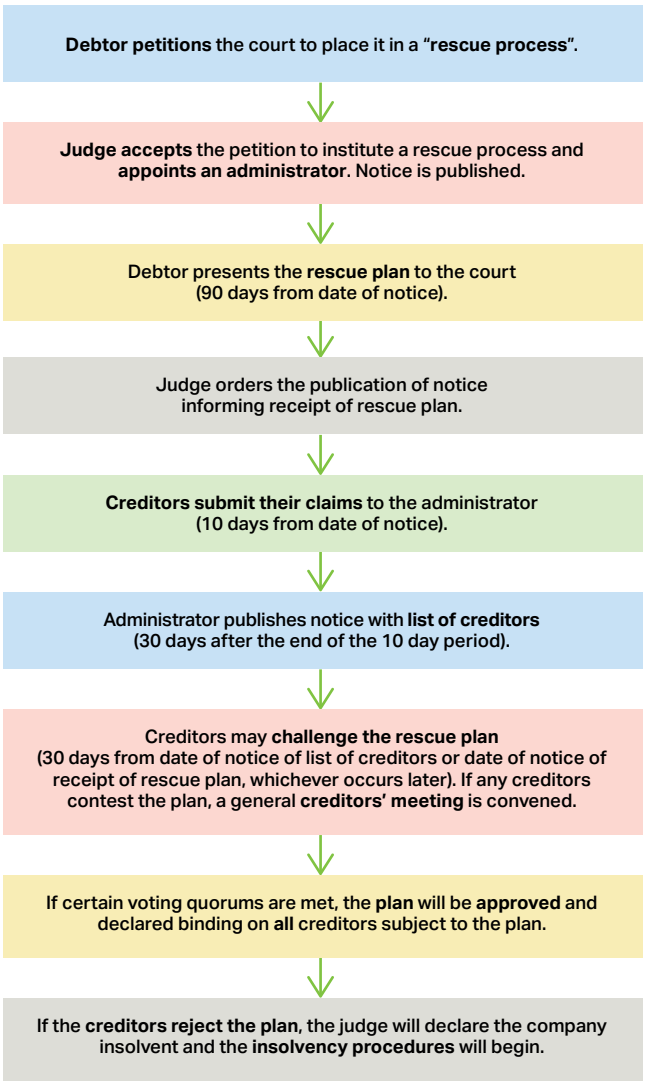
The judicial business rescue process is initiated through the courts and conducted by the insolvency administrator (appointed by the court) together with, if existing, a creditors' committee. This is a court-driven and court-supervised process as the insolvency administrator will have to submit to the judge a monthly report on the debtor's business activities and a final report on the execution of the rescue plan upon termination of the rescue process.

Once the petition for business rescue has been submitted to the court, the judge will analyze it in order to issue either its acceptance or denial. Due to the lack of precedents released publicly, there is currently insufficient information to estimate the average length of time for the judge to issue a decision.

If the judge accepts the request for business rescue, a notice of such acceptance is sent by letter to the creditors identified in the petition and the same notice is published in the Government Gazette and in a newspaper with wide circulation in the place where the judicial business rescue is petitioned. This will allow any creditor that was not previously identified to have the possibility of claiming credits.

The creditors, thereafter, have 10 days within which to submit their claims or objections to the insolvency administrator. The creditors may also contest the commencement of the business rescue process and the rescue plan itself within 30 days of the date on which the notice, including the rescue plan and the list of creditors, is published. The rules applicable to the labor and tax credits under the extra-judicial process also apply to the judicial rescue plan.

**Judicial Restructuring Process**




If the rescue plan is contested by any creditor, the judge must convene the general meeting of creditors to resolve the matter, and the meeting must be held no later than 60 days from the deadline to contest the plan.

The creditors are organized in a general meeting, according to their respective class of claims. There are mainly three classes:

a. holders of credits derived from labor legislation or from labor-related accidents;

b. holders of credits secured by real property rights; and

c. holders of ordinary credits (unsecured credits), with special privilege (tax and social security) and with general or subordinated privilege.

The general meeting of creditors may form a creditors' committee composed of one representative of each of the aforesaid classes of creditors.

Once the rescue plan is submitted to the creditors for approval, all classes of creditors must approve the said rescue plan, according to the following thresholds:

— with regard to creditors of the classes (b) and (c) above, the rescue plan must be approved by a simple majority of the creditors present at the general meeting, provided that they also represent more than half of the total value of the claims submitted to the general meeting of creditors; and

— with regard to creditors of class (a) above, the rescue plan must be approved by a simple majority of the creditors present at the general meeting, regardless of the value of their credits.

Provided that (i) the debtor expressly agrees and (ii) the rights of the creditors not present at the general meeting are not impaired, the general meeting of creditors may change the rescue plan submitted by the debtor for approval. If the general meeting rejects the rescue plan, the judge will declare the insolvency of the debtor and insolvency procedures shall commence.

If the rescue plan is approved, it shall bind the debtor and all creditors (including those holding contingent claims) that are subject to the rescue plan.

Notwithstanding the above, the judge may declare that a rescue plan is binding on all creditors, even if it has not been approved by all classes of creditors in the same general meeting of creditors, provided the following quorums are cumulatively met:

— a favorable vote by creditors representing more than half of the total value of the claims submitted to the general meeting of creditors, regardless of the classes;

— a favorable vote by two classes of creditors (according to the thresholds indicated above) or, if there are only two classes of voting creditors, approval by at least one of them; and

— with respect to any class of creditors that rejected the plan, the favorable vote of more than one-third of the creditors (according to the thresholds indicated above).

The commencement of a judicial business rescue will impose a stay, for a non-extendable period of 180 days from the date on which the court accepts the petition for business rescue, on all pending and new claims and all actions and executions against the debtor company (including arbitration proceedings), except regarding credits derived from labor relationships.

During the business rescue process, the company is expected to conduct business under the supervision of the creditors' committee (if any) and of the insolvency administrator (appointed by the court) who shall handle the management of the company.

After the submission of the request to the court for judicial business rescue, the debtor company is not allowed to transfer or encumber any of the assets or rights of its permanent estate, save for what is authorized after the judge has heard the creditors' committee (if any) and the insolvency administrator. Exceptions are made for those contracts, transfers or encumbrances already contemplated in the rescue plan.

The business rescue procedure can be utilized to restructure and reorganize a corporate group on a consolidated basis for administrative efficiency provided it is established in the approved rescue plan.

**Amongst other things, the following are permitted under a rescue procedure:**

— Division, merger or conversion of the company, establishment of a wholly owned subsidiary or the transfer of shares, all subject to the rights of the shareholders in accordance with applicable law;

— Change of the company's control;

— Total or partial replacement of the debtor's managers or the modification of its corporate bodies;

— Share capital increase;

— The establishment of a management team selected by both the debtor and creditors;

— The incorporation of a creditors' company;

— The transfer of the commercial establishment, including to a company constituted by the debtor's employees;

— The incorporation of a specific purpose company to adjudicate, in payment of the claims, the debtor's assets; and

— A salary reduction, compensation schedules and reduction of work hours through an agreement or collective agreement.

The breach of any obligation contained in the agreed rescue plan by the debtor will lead to the conversion of the business rescue process into the insolvency of the company.

## Insolvency

There is no obligation to commence insolvency proceedings within a specific timeline. The law provides that a debtor company will be considered insolvent if it is experiencing financial difficulties (which determination is made by the court on a case–by-case basis based on documentation presented by the petitioner) and believes it will not be granted a judicial business rescue or if, after having started an extrajudicial business rescue, no agreement has been reached with regard to the proposed rescue plan.

A request for declaration of insolvency (which will commence the liquidation within the insolvency process) may be submitted before the competent court by the debtor company or the shareholders of the debtor company, under the terms of the law or of the company's articles of association; and/or any creditor of the debtor.

As soon as the judge declares the insolvency of the debtor company, an insolvency administrator will be appointed and the liquidation process will commence.

From the insolvency declaration until the final and unappealable decision extinguishing the debtor's obligations, the insolvent debtor may not undertake any economic or business activity.

**Insolvency Proceedings**

Insolvency can be voluntary (the debtor company presents itself voluntarily in court requesting to be declared insolvent) or involuntary (the process is initiated by one or more creditors against the debtor).

Regardless of how it is initiated, the insolvency process will always result in the liquidation of the company (once it has been accepted by the court), unless, in case of involuntary insolvency, the debtor contests the insolvency procedure and such objection is accepted by the court.

The declaration of insolvency and the list of creditors of the insolvent company must be published in the Government Gazette. From the date of such publication, creditors have 10 days to prove any claim that they believe they have against the company.

Any claim against the debtor must be submitted to the insolvency administrator who will, within 30 days, publish a notice indicating the place, time and deadline for opposition to a creditor's claim.

The judgment declaring the insolvency will also order the suspension of any and all claims and executions against the insolvent company, save for those claims instituted or executed by the debtor's employees, which will continue in force. Furthermore, the same judgment will suspend any retaining right held by a creditor who must return any assets so retained to the insolvency administrator.

**Any creditor may request that a debtor be declared insolvent whenever the debtor:**

— Does not pay on maturity, without justification, a net obligation (no de *minimis* amount) which is subject to an enforceable title;

— Having been ordered to pay any net amount, does not, within the legal timeframe, pay, deposit or list, for attachment purposes, sufficient assets to cover the debt; and/or

— Carries out any of the following acts, except if they form part of a rescue plan:

- Proceeds with a hasty liquidation or resorts to ruinous or fraudulent means to make payments;
- Performs, or attempts to perform, in order to delay payments, or to defraud creditors, a simulated/false transaction or disposal, partial or total, of its assets to a third party, whether such third party is a creditor or not;
- Transfers its business to a third party, whether such party is a creditor or not, without the consent of all creditors and without keeping sufficient assets to pay its liabilities;
- Simulates the transfer of its principal business for the purposes of defrauding the law or in order to harm the creditor;
- Gives or strengthens security granted to a creditor without keeping sufficient free and clear assets to pay its liabilities;
- Becomes absent, without leaving a legal representative with enough resources to pay the creditors, abandons its business establishment or tries to hide from its domicile, place of registered office or main business establishment; and/or
- Fails to comply, within the prescribed time period, with an obligation imposed on it in respect of any rescue plan.

In a situation of insolvency, the management of the company is fully replaced by the insolvency administrator. The board of directors relinquishes its responsibilities save for the requirement to assist the insolvency administrator in the winding-up of the company. From the moment that the insolvency is declared or the assets have been seized, the debtor can neither manage nor dispose of its assets, but it has the right to supervise the activity of the insolvency administrator and request appropriate measures for the preservation of its rights or seized assets.

During the insolvency proceeding, it is possible to set-off debts which matured up to the date of the declaration of insolvency. Set-off is not possible in regards to:

— credits transferred after the declaration of insolvency, except in cases of succession by merger, incorporation or division; and

— credits which, even if matured before the declaration of insolvency, were transferred when the economic/financial crisis of the company was already known, or those transferred with fraud or fault.

Sale of assets or a business is executed by the court in accordance with the rules of the Code of Civil Procedure. Under the Insolvency Law, the object of the sale will be sold free of any liens or encumbrances and does not imply the succession of the purchaser to the debtor's obligations, including tax obligations. The liquidation of the assets should occur immediately after the seizure of all the assets of the debtor, but there is no timeline imposed by the law.

Once the restitutions are made, the non-concurrent credits (as defined in the section below) are paid and the list of creditors is consolidated, all proceeds received from the sale of the assets are used to pay the creditors, taking into consideration the ranking of the respective credits.

Once the proceeds of the liquidation of assets are distributed to the creditors, the insolvency administrator must submit a preliminary report to the judge. Afterwards the insolvency administrator must submit a final report detailing the value of the assets and the proceeds obtained from each sale of such assets, the value of the liabilities of the company and payments made to creditors as well as the responsibilities that continue to be incumbent on the insolvent estate. Upon receiving this last report, the judge will hand down a judicial sentence terminating the liquidation which will be published in the Government Gazette.

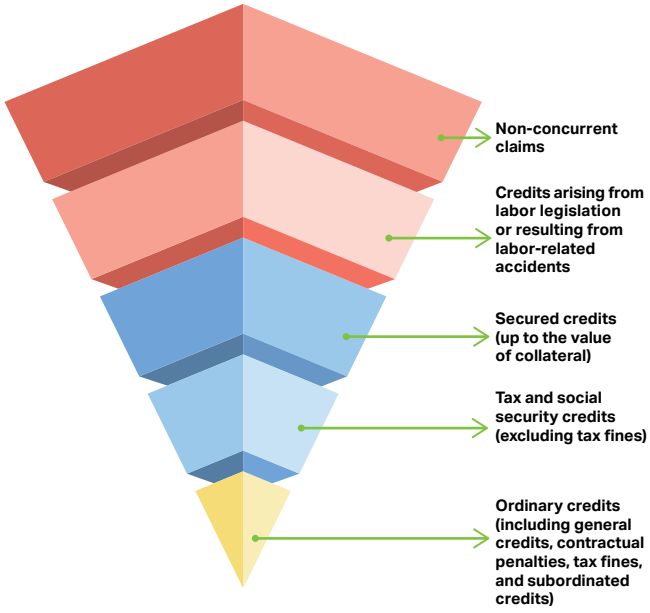
## General considerations

### Debt Trading

The Insolvency Law does not prohibit the trading of claims, which must be done in accordance with the general Civil Code. The transferee must submit its rights to the claims before the court with the insolvency administrator.

The customary legal mechanics of debt transfer are novation and assignment and the associated security is usually transferred with the debt.

**Mozambique – Payments Waterfall**




### Priorities and Waterfalls

The following are considered priority claims (also called "**non-concurrent claims**") in restructuring and insolvency procedures (according to the order set forth below):

— Remuneration owed to the insolvency administrator and his/her assistants;

— Credits arising from the labor legislation or from labor-related accidents regarding services rendered after the declaration of insolvency;

— Amounts that were provided to the insolvent estate by the creditors after the declaration of insolvency (a concept similar to but distinct from "debtor-in-possession financing" as it does not benefit from super-priority status);

— Expenses related to the apprehension, administration and sale of the assets, and distribution of the respective proceeds, as well as the costs of the insolvency process;

— Judicial costs regarding the actions and executions in which the insolvency estate has been overcome; and

— Obligations arising from valid judicial acts performed during the judicial business rescue or after the declaration of insolvency, and tax expenses generated after the declaration of insolvency.

The waterfall, or ranking of credits, is as follows:

1. Non-concurrent claims;
2. Credits arising from labor legislation or resulting from labor-related accidents before the declaration of insolvency;
3. Secured credits, up to the value of the collateral (any attempted "sharing" of the security with other creditors requires the prior approval of the secured creditor and the debtor. If the original security is amended to include other creditors, in that case such other creditors become secured creditors);
4. Tax and social security credits (excluding tax fines); and
5. Ordinary credits, including the general credits, the contractual penalties and tax fines and the subordinated credits.

**Remedies Available to Unsecured Creditors**

As can be seen above, unsecured creditors are typically ranked last in the waterfall. That said, unsecured trade creditors are generally kept whole during a restructuring process, provided they are identified and have their credits recognized under the restructuring procedure.

Unsecured creditors may also seek other protections. For example, Mozambican laws on civil proceedings allow for interim relief measures to be decided by the courts within a maximum of 30 days from the date on which the restructuring process is accepted and serve to protect an imminent risk of loss or aggravation of the risk to the claimant. The interim relief measure is only provisional, and it requires that a main suit begin within 30 days after the relief measure has been declared by the courts at the court of competence in accordance with the contract in dispute. If the main action does not start within such period of time, the court will be forced to release the order given under the interim relief measure.

However, as mentioned above, the commencement of the judicial restructuring will suspend, for 180 days, the course of all pending claims and all actions and executions against the debtor; and the declaration of insolvency will suspend all claims and executions against the debtor. The declaration of insolvency also suspends any exercise of retention rights and the exercise of the right to be exonerated or of the transfer of shares with regard to its shareholders.

In normal enforcement cases (i.e., outside of insolvency or recovery procedures), which is the more common form of seeking recovery, the timeline for enforcing an unsecured claim can be up to two years.

There are no special procedures or impediments that apply to foreign unsecured creditors. However, it should be noted that all credits in foreign currency will be converted into the national currency at the rate applicable on the date of the judicial decision (for both insolvency and restructuring procedures).

**Secured Creditors: Security and Enforcement**

Collateral available in Mozambique falls into two categories: (i) real property security such as mortgages and pledges; and (ii) personal security such as suretyships or promissory notes.

A pledge and other security may be enforced extra-judicially if the debtor agrees to it. If not, only the courts may enforce the security as Mozambican law does not allow for self-appropriation measures. Mortgages may only be enforced by courts.

In normal enforcement cases (i.e., outside of insolvency or recovery procedures), the timeline for enforcing security can be up to two years.

As for the cases within the insolvency and restructuring procedures, it should be noted that the enforcement of security outside these procedures will not be allowed as creditors will have to claim their rights and credits within the respective procedures.

Similar to foreign unsecured creditors, there are no special procedures or impediments that apply to foreign secured creditors but all credits in foreign currency will be converted into the national currency at the rate applicable on the date of the judicial decision (for both insolvency and restructuring procedures).

**Transactions that may be set-aside**

**Under the Insolvency Law, the following transactions may be annulled:**

- Payments by the debtor company of debts which are not due for payment;
- Payments of debts due and payable within their legal term in a manner not provided for in the contract;
- Creation of an *in rem* right of security, including the right of retention, in case the debt was previously contracted;
- Transactions for no consideration, within a period of two years prior to the declaration of insolvency;
- The sale or transfer of the business without the express consent of, or payment to, all creditors; and/or
- The registration of a real property right and the transfer of ownership thereafter, or the endorsement of an immoveable property, made after the declaration of insolvency.

In addition, any act performed by the debtor prior to the commencement of insolvency with the intent to cause harm to creditors is revocable.

Except for the situations where it is two years, as mentioned above, the claw back period prior to the onset of the insolvency, pursuant to which the transactions can be challenged, shall be the one determined by the court in the insolvency declaration, which cannot be more than 90 days before the judicial business rescue or insolvency request.

Claims regarding the aforesaid transactions can be brought by any of the creditors, the creditors' committee (if any), the insolvency administrator, or by the State's Public Prosecutor Office. Such claims can be brought in both restructuring and insolvency proceedings.

## Conclusion

There is still significant cultural resistance in Mozambique to instituting insolvency or restructuring through court proceedings and the number of precedents is still very limited. These factors, together with the fact that there is no public record of the court decisions, inhibit investors and entrepreneurs from embarking on a process of insolvency or restructuring.

### Scorecard of Mozambique's Current Insolvency Regime

**Experience Level:** Recently approved law or no established precedents

| KEY PROCEDURAL ISSUES | |
|---|---|
| Can bondholders/lenders participate directly? (i.e., do they have standing to individually participate in a proceeding or must they act through a trustee/agent as recognized creditor?) | Yes |
| Involuntary reorganization proceeding that can be initiated by creditors? | No |
| Can creditors propose a plan? | No (but they can vote to amend a plan proposed by the debtor) |
| Can a creditor-proposed plan be approved without consent of shareholders? | N/A |
| Absolute Priority Rule? | Yes |
| Are ex parte proceedings (where only one party participates and the other party is not given prior notice or an opportunity to be heard) permitted? | No |
| Are corruption/improper influence issues a common occurrence? | No |
| Viable prepackaged proceeding available that can be completed in 3-6 months | No |
| Secured creditors subject to automatic stay?[2] | Yes |
| Creditors have ability to challenge fraudulent or suspect transactions (and there is precedent for doing so) | Yes, but we are not aware of precedents |
| Bond required to be posted in case of involuntary filing or challenge to fraudulent/suspect transactions? | No |
| Labor claims can be addressed through a restructuring proceeding | Yes |
| Grants super-priority status to DIP financing? | No |
| Restructuring plan may be implemented while appeals are pending? | Yes, within the 10 days granted to the debtor to contest the insolvency request |
| Does the restructuring plan, once approved, bind non-consenting (or abstaining) creditors? | Yes |
| Does the debtor have the ability to choose which court in which to file the insolvency proceeding (or is it bound to file where its corporate domicile is)? | No |
| Other significant exclusions from automatic stay?[2] | Yes, credits derived from the labor in judicial restructuring and insolvency proceedings |
| Prevents voting by intercompany debt? | N/A |
| Strict time limits on completing procedure? | No |
| Management remains in place during proceeding? | Yes, in restructuring proceedings<br>No, in insolvency proceeding |

One recent known case is that of the restructuring proceeding of Moza Banco, S.A., a Mozambican commercial bank, with the purpose of restoring its prudential and financial stability. The Bank of Mozambique, as supervisor of the financial and credit institutions, unilaterally determined the application of reorganization measures, which included the recapitalization of the said bank by means of the increase of the respective share capital. These measures were adopted based on the legislation applicable to the credit institutions and financial companies only and without resorting to the restructuring regime set forth in the Insolvency Law. This is an example of the lack of confidence and possibly lack of knowledge still existing with regard to the Insolvency Law.

It is our opinion that this situation (of lack of confidence and knowledge) shall only be overcome once the current insolvency and restructuring regime has been tested and proved effective. To this end, investing in the training of specialist judges for insolvency and restructuring, reducing the response time of the courts on this matter and making public the court decisions would surely be important actions to improve the application of the said regime. Another option would be to explore the possibility of extrajudicial restructuring foreseen in the Insolvency law, using conciliators or mediators (under the Arbitration Law) which would be trained to become specialists in insolvency and restructuring.

Finally, there is one provision of the Insolvency Law which (to the best our knowledge) has not been tested yet and may have an important impact on entrepreneurs in general and foreign creditors/investors in particular. The declaration of insolvency automatically accelerates the indebtedness of the debtor and converts all the credits in foreign currency into the national currency (Meticais) at the rate applicable on the date of the judicial decision. Taking into consideration the currency devaluation, which has been affecting Mozambique in recent times, this may have a very negative impact on the foreign credits as the foreign creditors will be impaired by the currency fluctuations between the time in which the respective credits are converted into Meticais and the time on which they are effectively paid. We do not believe this negative factor was considered at the time of approval of the Insolvency Law but taking into consideration the current Mozambican economic and financial situation it is definitely something that will need to be addressed with respect to insolvency proceedings involving companies with foreign creditors. ■

1. There is no imposition to resort first to informal procedures before filing for a formal "statutory process".
2. There is no automatic stay in extrajudicial restructuring proceedings.

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