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Contents

AF Mpanga Advocates (Bowmans Uganda) is the Uganda office of the pan-African firm Bowmans, which has offices in South Africa, Tanzania, Kenya, Mauritius and Ethiopia. The firm has wide experience in insolvency and restructuring with specialist capabilities in receivership, managing distressed businesses, refinancing, asset recovery, dealing with going-concern status, distressed M&A transactions and formal restructuring procedures, such as schemes of compromise, schemes of arrangement and debt, equity swaps, exchange offers, business rescue and liquidation. The firm has advised the Central Bank of Uganda on insolvency proceedings against Greenland Bank Ltd, Cooperative Bank Limited, the International Credit Bank and Crane Bank Limited. The firm has also acted for Spencon Services Limited in one of the first cross-border insolvency proceedings in Uganda. Major clients in recent years include the Central Bank, DFCU Bank Uganda Limited, Alexander Forbes Equity Holdings Proprietary Limited and many of the local banks operating in Uganda.

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1. Market Trends and Developments

1.1 State of the Restructuring Market

The Uganda restructuring market is still in a nascent stage, though the number of insolvency proceedings is reportedly on the rise.

According to the Uganda Registration Services Bureau (URSB), about 89 companies commenced the liquidation process between January 2018 and June 2019, but only 33 companies had completed the liquidation process by early October 2019.

Trends Influencing Financial Restructurings

The recent collapse of one of the top five commercial banks precipitated an increase in incidences of financial restructuring and insolvencies of companies that were major borrowers in that bank. In addition, the political instability in one of the neighbouring countries with which Uganda had significant trade meant that many Ugandan suppliers remained unpaid, leading to an increase in the number of requests for financial restructuring, government bailouts and insolvency.

The Uganda Bankers' Association (UBA), an association of commercial banks, has led a private sector initiative in the form of an Asset Reconstruction Company (ARC) to take over non-performing loans/assets with a view to restructuring them. It is still early days, but this development is expected to lead to increased use of financial restructuring and insolvency proceedings in the resolution of NPLs.

The URSB has aggressively pushed for the adoption of business rescue mechanisms, as opposed to liquidation, with a view to encouraging economic growth. This is especially the case for companies that are deemed insolvent due to their inability to repay debts, but which still boast a strong asset base.

Changes and Developments

The Insolvency legal regime has seen the addition of:

- the Insolvency Practitioners Regulations Section I No 55 of 2017, which provide for registration and regulation of insolvency practitioners with the Official Receiver;
- the Insolvency (Investigations and Prosecutions) Regulations Section I No 4 of 2018, which provide for the procedure for investigation and prosecution of insolvency practitioners, directors, shareholders and contributories, and all present and past members of the insolvent company or company under insolvency proceedings; and
- the Insolvency Fees (Amendment) Regulations Section I No 5 of 2018 which prescribe the fees payable in insolvency matters as provided for under the Insolvency Act, 2011.

These regulations have created certainty and helped professionalise insolvency practice in Uganda as persons with specialist knowledge in the field are registered and held accountable for their actions.

On the tax enforcement side, the increased vigilance and enforcement by the Uganda Revenue Authority (URA) of tax collection measures in order to increase government revenue and bridge the shortfall between government revenue and expenditure, has led to the URA pursuing aggressive recovery measures including putting some companies into receivership, and has eventually forced some companies to wind up their operations.

1.2 Changes to the Restructuring and Insolvency Market

The Financial Institutions Act, 2004 prohibits any financial institution from purchasing non-performing loans from another financial institution. As a result, borrowers with non-performing loans have to resort to other means of financing or restructuring, including, private equity and financing from outside the jurisdiction.

With the establishment of the ARC, some of the banks have been able to offload NPLs to the asset recovery company, thus cleaning up their credit portfolio and reducing their direct participation in recovering NPLs.

2. Statutory Regimes Governing Restructurings, Reorganisations, Insolvencies and Liquidations

2.1 Overview of Laws and Statutory Regimes

The principal legislation governing insolvency in Uganda is the Insolvency Act, 2011, which is supported by the Insolvency Regulations, 2013. The Insolvency Act also provides for matters to do with receivership, administration, bankruptcy, arrangements and cross-border insolvency, while the Companies Act, 2012 deals with compromises with creditors, arrangements, reconstructions, amalgamation and voluntary winding-up.

Uganda's legal system applies the doctrine of precedent and the use of common law and doctrines of equity by following decided cases.

2.2 Types of Voluntary and Involuntary Restructurings, Reorganisations, Insolvencies and Receivership

Uganda has the following voluntary and involuntary procedures:

- compromise or arrangement with creditors;
- reconstruction or amalgamation;
- voluntary winding-up;

- voluntary liquidation;
- creditors' voluntary liquidation;
- members' and creditors' voluntary liquidation;
- liquidation subject to supervision by the court;
- liquidation by the court;
- provisional administration;
- administration; and
- corporate receivership.

2.3 Obligation to Commence Formal Insolvency Proceedings

There are no specific provisions that require a company to file for insolvency within given timelines. Section 58 of the Insolvency Act gives a company the option of filing for voluntary liquidation where the shareholders decide by special resolution that the company cannot by reason of its liabilities continue its business and that it is advisable to liquidate. However, there are no provisions that force a company to file for insolvency even when it cannot continue business due to its liabilities.

Though there are no specific provisions, directors have a statutory duty to cease trading once a company is insolvent, ie, unable to pay its debts. Contravention of this law disqualifies a director from acting as a director for three years.

2.4 Procedural Options

The options available include administration, compromise/arrangement, restructuring, amalgamation or voluntary liquidation. Directors usually opt for business rescue mechanisms such as administration or compromise with creditors before opting for voluntary liquidation.

2.5 Commencing Involuntary Proceedings

A creditor may commence involuntary proceedings by making an application (a petition for liquidation) to the High Court for the appointment of a liquidator on the ground that the company is unable to pay its debts. In such a situation, liquidation is deemed to commence at the time of presentation of the petition for liquidation.

The company shall be presumed to be unable to pay its debts if:

- it has failed to comply with a statutory demand within 20 working days;
- execution issued against the debtor in respect of a judgment debt has been returned unsatisfied in whole or in part; or
- all or substantially all the property of the debtor is in the possession or control of a receiver or some other person enforcing a charge over that property.

2.6 Requirement for Insolvency

Insolvency is shown by an inability to pay debts and it is required to commence voluntary and involuntary proceedings. This is shown above under **2.5 Commencing Involuntary Proceedings**.

2.7 Specific Statutory Restructuring and Insolvency Regimes

Banks, Commercial Lenders and Other Credit Institutions

Under the Financial Institutions Act, 2004 the Central Bank may make an order for the winding-up of a financial institution where the Central Bank determines that such financial institution should be liquidated. The Central Bank or any person appointed by the Central Bank shall be the liquidator of the financial institution.

Under the Tier 4 Micro Finance Institutions and Money Lenders Act, 2016, the Micro Finance Regulatory Authority may place a micro finance or tier 4 institution under receivership if it cannot meet the demands of its depositors or pay its obligations in the ordinary course of business, or it has incurred losses that have or are likely to deplete a substantial amount of its capital. Furthermore, receivership or liquidation of such micro finance and tier 4 institutions can only be commenced by the authority.

Insurance Companies or Undertakings

Section 129 of the Insurance Act, 2017 prohibits the voluntary winding-up of a company carrying on life insurance business, without the prior written approval of the Insurance Regulatory Authority (the Regulator/IRA), except for the purposes of effecting an amalgamation or transfer. Further, the IRA is the only body authorised to wind up a licensee (insurers, reinsurers and insurance intermediaries licensed by the IRA) and a petition to wind up a licensee must be referred to the IRA, which will decide either to handle the petition or give permission to the petitioner to proceed with the court process. The IRA may wind up a licensee on the grounds of:

- carrying on insurance business without being licensed;
- non-compliance with the prescribed paid-up capital, solvency margin or security deposit requirements;
- revocation of a licence;
- inability to meet obligations to a policyholder under an insurance contract; or
- the IRA believes it is just and equitable and in the best interests of the policyholders to wind up the licensee.

Section 131 (2) of the Insurance Act, 2017 also prioritises insurance claims over all others and expressly states that the assets of the company shall first be applied in satisfying the company's liabilities under insurance contracts, after payment of the properly incurred costs and expenses of winding-up.

Other Entities Operating in Financial Markets
Under the Capital Markets Authority Act, the Capital Markets Authority (CMA) may apply to court for the appointment by the court of "a statutory manager" to assume the management, control and conduct of the affairs and business of a licensed stock broker, dealer or licensed fund manager and an approved stock exchange, and to exercise all the powers of a licensed person to the exclusion of its board of directors. Where it appears to the statutory manager that the business of the licensed person is insolvent and there is no reasonable prospect of rehabilitating the business by way of any restructuring or otherwise, and that it is just and equitable to do so in the interest of all interested parties, the statutory manager may, after consultation with the CMA, petition the court for the winding-up of the licensed person.

3. Out-of-court Restructurings and Consensual Workouts

3.1 Restructuring Market Participants

Market participants in Uganda generally prefer to restructure companies through consensual reconstruction, with a view to rescuing a company in dire financial straits and keeping the business as a going concern. This usually takes the form of compromise with creditors or a scheme or arrangement which can be made where three quarters of the value of creditors agree to such compromise or arrangement. This agreement is then binding on all creditors, the company itself, the liquidator and contributories of the company. These frameworks are based on the Companies Act and informal frameworks are not commonly used. The INSOL Principles may at times be reflected in the scheme of arrangement.

There is a general perception among restructuring market participants and professionals that consensual, non-judicial or other informal restructuring processes are preferable to statutory processes. Agreements or contracts governing the restructuring are usually faster to conclude and are a more cost-effective means of restructuring a company.

Lenders such as banks are generally supportive of borrower companies in financial difficulties while the borrower's financial position is being assessed.

Informal restructurings tend to avoid using or adopting the insolvency laws and, to the extent that the restructuring is permitted by law, practitioners prefer to use more practical and simplified procedures that enhance a quick resolution.

Ugandan law does not, however, require mandatory consensual restructuring negotiations before commencement of a formal statutory process.

3.2 Consensual Restructuring and Workout Processes

Out-of-court or workout processes are varied in nature and depend on the circumstances of each particular case. Workout processes are usually contractual in nature as no informal framework governing consensual restructuring exists. As such it is not possible to fix a particular timeline to the process as this will depend on how long negotiations take between a company and its creditors.

It is common, especially for financial institutions, to agree to stop or to halt enforcement actions and to waive defaults in cases where negotiations for a restructuring are ongoing.

Typical undertakings of a debtor company during an informal and consensual restructuring include:

- not to take on additional debt without the approval of the existing creditors;
- not to declare and pay any dividends without the approval of the existing creditors; and
- not to dispose of any assets.

Section 71 of the Insolvency Act gives authority to creditors at a creditors' meeting to appoint no more than five persons to be members of a committee of inspection. The committee of inspection represents the different lenders and has the power to appoint a liquidator. The creditors may appoint no less than three and no more than five members to the committee of inspection by resolution and such committees usually receive indemnities or fees from the company. The selection of such committees is generally influenced by the creditor with the most exposure, who usually gets to nominate members. The experience and integrity/reputation of persons chosen to be members are also significant factors.

During the restructuring/workout process, creditors, committees and other stakeholders usually have access to management accounts, audited accounts, if any, a comprehensive list of creditors and amounts owed, a comprehensive lists of assets of the company and current valuations, and business plans.

The priority given to registered security is determined in accordance with the date of registration. It is not usual for creditors to agree to cede their priority secured status. It is usual for creditors to insist on deferring repayment of related company debt or enforcement of related company securities held by related companies.

3.3 New Money

New money may be injected by investors and it is normal for such investors to demand and be granted super-priority.

3.4 Duties on Creditors

Creditors owe a duty of care to the debtor and to the general body of creditors in the insolvency process. For instance, they have a duty to present and verify their full claims, and a duty to make true declarations such as regarding any surplus obtained from enforcing their security. In addition, there are also common-law duties, for example the duty to act in good faith and the duty to make full disclosure.

3.5 Out-of-court Financial Restructuring or Workout

In Uganda, informal consensual processes are often difficult to achieve as a restructuring method, especially where there are numerous smaller creditors. Any legal device meant to deal with dissenting creditors will, more often than not, be opposed.

An out-of-court financial restructuring cannot be agreed over the dissent of minority creditors. Since this is largely contractual, the agreement will only bind the parties to the contract governing the restructuring. Provisions granting majority lender status are typically seen in syndicated facilities where the majority lenders may bind other lenders.

In Uganda, a formal statutory process is therefore usually needed to bind dissenters.

4. Secured Creditor Rights and Remedies

4.1 Liens/Security

Common types of liens or security by secured creditors include the following:

- a mortgage includes any charge or lien over land, or any estate or interest in land in Uganda, for securing the payment of an existing or future or a contingent debt or other money or money's worth or the performance of an obligation, and includes a second or subsequent mortgage, a third-party mortgage and a sub-mortgage;
- a charge is an interest in a chattel paper, a document of title, goods, an intangible, money, negotiable instrument or security. It can be fixed or floating;
- a security can be also be created from a chattel paper, a document of title, goods, an intangible such as IP, money, or a negotiable instrument, and includes:
  (a) a chattel mortgage;
  (b) a conditional sale agreement including an agreement to sell subject to retention of title;
  (c) a hire purchase agreement;
  (d) a pledge;
  (e) a security trust deed;
  (f) a trust receipt;
  (g) an assignment;
  (h) a consignment;
  (i) a lease; or
  (j) a transfer of chattel paper.

4.2 Rights and Remedies

Secured Creditors

A secured creditor is a creditor who holds a charge over properties in respect of a debt or obligation.

Depending on the contractual arrangement, a secured creditor typically has those rights and remedies that exist under the terms of the agreements. These will include realising any asset and exercising all those rights under events of default. A secured creditor will have rights of foreclosure on the property. A secured creditor who realises an asset subject to a charge may claim as an unsecured creditor for any of the balance due, after deducting the net amount realised.

Such remedies are typically not subject to inter-creditor covenants. The law applies concepts of first in time and pari passu. This does not, however, deter contractual arrangements between multiple creditors.

Secured creditors can only disrupt a formal voluntary or involuntary process, including in-court processes, where through a creditors' meeting, two or more creditors can vote on a proposal that a committee of inspection be appointed to act with the trustee. This committee of inspection consists of creditors or persons holding power of attorney from creditors. The committee has the power to apply to court for orders in relation to the trustee's duties. Such processes may disrupt the insolvency processes. The trustee has, however, the power to reject the request to call such meetings if the request is deemed frivolous, not made in good faith and the costs of the meeting would not be proportionate to the value of the estate.

A secured creditor's rights are discretionary. A secured creditor may realise any asset subject to a charge, where they are entitled to do so, can claim as a secured creditor in the order of preferences, or surrender the charge for the general benefit of all creditors and claim as an unsecured creditor.

4.3 Typical Timelines

The timelines for enforcing a secured claim and liens/security in formal restructuring, insolvency and liquidation are dependent upon the course of action taken by the secured creditor. The process will defer for debenture deeds mortgages to cover the special procedure of enforcing a secured creditor's rights. As a matter of law, there are prescribed timelines for enforcing a secured claim and liens/security in formal restructuring, insolvency and liquidation proceedings.

A legal mortgagee, is entitled, upon the breach of the mortgage agreement, to foreclose and sell the mortgaged property to realise their security.

A creditor can realise the security by leasing, entering upon possession or selling the property. The creditor has to give notice to the debtor prior to realising the security. If the debtor is still unable to pay the debts, the creditor will follow the processes under each specified course of action. The most common is sale of the property. The law requires that the creditor has to advertise the property and ensure that there is a clear description and picture of the property prior to the sale. The sale can be by private treaty or public auction. In either case, the creditor has to ensure that they take the best bid available and avoid instances of fraud or lack of transparency during the sale.

A debenture creates rights for the creditor to realise the security under the Security Interest in Movable Property Act. The first stage is to determine priority over the assets. Having determined priority, the creditor can enforce the security through sale in a private sale or public auction and these rights are permissible without judicial action.

4.4 Foreign Secured Creditors

There are no special procedures or impediments that apply to foreign secured creditors. However, Sections 233 and 234 of the Insolvency Act state the conditions under which a foreign creditor can have access to insolvency proceedings under the Act. Foreign creditors have the same rights regarding commencement of participation in the process as all other creditors. Furthermore, being a foreign creditor does not affect ranking. Lastly, claims by foreign creditors may not be ranked lower than non-preferential debts.

However, it should be noted that the statutory provisions deal only with "foreign creditors" and not with "foreign secured creditors".

4.5 Special Procedural Protections and Rights

Secured creditors are entitled to special procedural protections and rights under the Insolvency Act. A secured creditor has the right to realise any asset subject to a charge, where they are entitled to do so, claim as a secured creditor, or surrender the charge for the general benefit of the creditors and claim as an unsecured creditor for their whole debt.

5. Unsecured Creditor Rights, Remedies and Priorities

5.1 Differing Rights and Priorities

Differing rights and priorities are determined according to whether a creditor is categorised as secured or unsecured.

Secured creditors have a right to realise their asset upon proof of their claim, or can claim as secured creditors, or can surrender the charge for the general benefit of the creditors, and claim as an unsecured creditor.

Sections 11 and 12 of the Insolvency Act provide for rights and considerations for preferential and non-preferential debts, and priorities among the various classes of secured and unsecured creditors. Preferential debts shall, insofar as assets are insufficient to meet them, have priority over the claims of secured creditors in respect of assets, which are subject to a security interest and became subject to the security interest by reason of their application to certain existing assets of the grantor and those of its future assets which were after-acquired property or proceeds.

All the other claims that are unsecured are to be treated as ranking in pari passu, and rank equally among themselves. They are paid in full unless the assets are insufficient to meet them, in which case, they abate in equal proportions.

The priority of claims in a liquidation under the law is therefore as follows:

- 1) secured creditors (they can realise the asset, claim as secured creditors or surrender the charge and act as an unsecured creditor);
- 2) preferential debts, which are prioritised as follows:
  - (a) remuneration and expenses properly incurred by the liquidator;
  - (b) any receiver's or provisional administrator's fees;
  - (c) any reasonable costs of any person appearing on the petition whose costs are allowed by the court;
  - (d) all wages or basic salary;
  - (e) all amounts due in respect of any workers' compensation;
  - (f) all amounts that are preferential debts relating to the liquidator's documents;
  - (g) any amount of tax withheld; and
  - (h) contributions payable under the National Social Security Fund Act; and
- 3) non-preferential debts of unsecured creditors that rank equally among themselves.

5.2 Unsecured Trade Creditors

There is no specific aspect of the law that deals with unsecured trade creditors. All claims from unsecured creditors rank equally among themselves.

5.3 Rights and Remedies for Unsecured Creditors

Unsecured creditors have a right to make a claim to the liquidator or the trustee for unpaid debt.

They may also disrupt the beginning of a formal process by enforcing their right, like all the other creditors, to petition for insolvency and pursue other forms of restructuring if there has been an inability to pay what is owed.

5.4 Pre-judgment Attachments

Pre-judgment attachments are available under the Civil Procedure Rules. If at any stage of a suit the court is satisfied,

by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against them is about to dispose of the whole or any part of their property; or is about to remove the whole or any part of their property from the local limits of the jurisdiction of the court; or has quit the jurisdiction of the court leaving in that jurisdiction property belonging to them, the court may order the attachment of the defendant's property.

5.5 Timeline for Enforcing an Unsecured Claim

There are no statutory provisions for timelines for enforcing an unsecured claim.

5.6 Bespoke Rights and Remedies for Landlords

Landlords are not included among the list of preferential debtors under the Insolvency Act and have no bespoke rights. They can claim like any other creditors, following the laws on priority of payment of debts.

5.7 Foreign Creditors

Sections 233 and 234 of the Insolvency Act state the conditions under which a foreign creditor can have access to the proceedings under the Act. Section 233 allows foreign creditors to have the same rights regarding commencement of participation in the insolvency process, like all creditors. Being a foreign creditor does not affect ranking and claims by foreign creditors may not be ranked lower than non-preferential debts.

5.8 Statutory Waterfall of Claims

See the list of priority of claims in **5.1 Differing Rights and Priorities**.

5.9 Priority Claims in Restructuring and Insolvency Proceedings

Section 12 of the Insolvency Act provides for priority claims in the following order:

- 1) remuneration and expenses properly incurred by the liquidator;
- 2) any receiver's or provisional administrator's fees;
- 3) any reasonable costs of any person appearing on the petition whose costs are allowed by the court;
- 4) all wages or basic salary;
- 5) all amounts due in respect of workers' compensation;
- 6) all amounts that are preferential debts relating to liquidator's documents;
- 7) any amount of tax withheld; and
- 8) contributions payable under the National Social Security Fund Act.

Under the statutory provisions, these claims have priority over those of a secured creditor only insofar as the assets of the company are insufficient to meet all the claims.

6. Statutory Restructurings, Rehabilitations and Reorganisations

6.1 Statutory Process for a Financial Restructuring/ Reorganisation

Scheme of Arrangement

The processes that are considered under a scheme of arrangement in a reorganisation or restructuring plan are contractual in nature.

When a company is about to be or is in the course of being liquidated, its creditors enter an arrangement with the company to determine how debts shall be paid. Once a scheme of arrangement has been entered into between the creditors and the company, it is binding on the company if sanctioned by a special resolution, and on the creditors if acceded to by three quarters of the total number and value of the creditors.

A creditor or contributor may, within three weeks from the completion of the arrangement, appeal to the court against the arrangement and the court may, as it thinks just, amend, vary or confirm the arrangement.

In a special resolution, the applicable threshold is three quarters of the creditors.

Limitations

The creditors' meeting shall not approve any proposed arrangement, or proposed arrangement as modified, where any preferential debt is not to be paid in priority to the debts that are not preferential debts, or a preferential debt is to be paid in a smaller proportion than the amount paid to another preferential debt of the same proportion, except with the written consent of the preferential creditor concerned.

Commencing Restructuring

An arrangement entered into between a company, which is about to be or is in the course of being liquidated, and its creditors, shall, subject to the right of appeal under this section, be binding on the company if sanctioned by a special resolution, and on the creditors if acceded to by three quarters of the total number and value of the creditors.

Objectives of Proceedings

A person bound by an arrangement shall not:

- make an application for a bankruptcy order or proceed with an application made before the arrangement became binding on the person;
- appoint a receiver of any property of the individual or commence or continue with an application to appoint a receiver;
- take any other steps to enforce any charge over any of the individual's property, except with the leave of the court and in accordance with the terms as the court may impose; or

- commence or continue other proceedings, execution or other legal process or levy distress against the individual or their property.

A secured creditor is not estopped from realising or dealing with charged property except insofar as the arrangement provides for a secured creditor who voted in favour of the resolution resulting in the arrangement.

Commencement of Proceedings
Reorganisations are creditor/liquidator/trustee-driven, and can also be court-driven. Such proceedings are commenced when the creditors and a company agree to a scheme of arrangement which is sanctioned by the creditors.

There are no specific statutory timelines that apply to formal restructuring/reorganisation proceedings. There are no available provisions for an expedited process.

Calculation of the Claim
The amount of a claim is ascertained as at the date of the commencement of the liquidation or bankruptcy. Where a claim bears interest, the interest payable in respect of any period after the commencement of the arrangement shall be suspended. The amount of a claim based on a debt denominated in a currency other than the Ugandan currency, shall be converted to Ugandan currency at the exchange rate on the date of commencement of the arrangement and if there is more than one rate of exchange on the date, at the average of those rates.

Regulations
The creditor is required by law to deliver a notice of the claim at the commencement of the proceedings, including proof of particulars of the asset subject. The arrangement will bind all creditors who have made their claims known, or who have lodged a claim.

The procedure is confidential, and key commercial and economic terms do not require to be disclosed. There are specific procedures that have to be followed by any person who wishes to acquire this information.

The potential for a challenge may arise from the fact that certain procedures have not been followed or sections of the law have not been complied with.

The Procedure for a Plan/Agreement
Where there is a proposed arrangement, the creditors will meet in a creditors' meeting to consider the arrangement. The creditors will vote on the arrangement, and if it is passed, the proposed supervisor shall pass the result to the court and an arrangement order shall be granted. Immediately after the arrangement order, a notice of arrangement will be sent to each creditor and a public announcement will be made.

6.2 Position of the Company
Where reorganisation has been undertaken under a scheme of arrangement, which has already been entered, the law does not provide for an automatic stay of claims. However, this is not the case with liquidation or administration. The effect of commencing liquidation or administration is that no legal proceedings can be asserted against the company thereafter, particularly in relation to the assets of the company.

The provisions of the Act do not restrict borrowing or continuing to operate the business while under a scheme of arrangement. The Act has no provisions in relation to the company stopping operation of its business under an arrangement.

The statute does not contain provisions as to management by a trustee while under a scheme of arrangement. However, other processes like administration, liquidation and court processes are managed by an insolvency practitioner.

The provisions of the statute do not provide for borrowing during a reorganisation. In practice, however, insolvency constitutes default and a company would therefore not be in a position to borrow money.

6.3 Roles of Creditors
Creditors are ordinarily categorised as secured or unsecured. An arrangement entered into between a company which is about to be, or is in the course of being, liquidated and its creditors, shall, subject to the right of appeal, be binding on the company if sanctioned by a special resolution of the creditors and acceded to by three quarters of the total number and value of the creditors.

There are no formal procedures regulating how creditors organise themselves. This will be decided and agreed by the body of creditors as the creditors themselves deem fit. A creditor or contributory may, within three weeks of the completion of the arrangement, appeal to the court against the arrangement and the court may, as it thinks just, amend, vary or confirm the arrangement.

The financial information made available to creditors in a restructuring process includes:

- management accounts;
- audited accounts, if any;
- a comprehensive list of creditors and amounts owed;
- a comprehensive list of assets of the company and current valuations; and
- business plans.

The office holder has the power to request such information.

6.4 Claims of Dissenting Creditors
Once a scheme of arrangement has been entered into between the creditors and the company, it is binding on the company if sanctioned by a special resolution and it is binding on the creditors if acceded to by three quarters of the total number and value of the creditors. This scheme may modify the claims of dissenting creditors.

6.5 Trading of Claims Against a Company
The law does not prohibit the trading of claims against a company when the company is undergoing a restructuring. In the absence of such a law, these claims can be transferred and, in practice, certain disclosures regarding the nature and size of the claim, the type of claim and the ranking of the claim are provided to the transferee.

6.6 Use of a Restructuring Procedure to Reorganise a Corporate Group
There are no specific restrictions or prohibitions against using a restructuring procedure to reorganise a corporate group. The Act provides for voluntary arrangement and liquidation with no specific provisions regarding a corporate group. However, as long as the arrangement is contractual in nature, the parties involved may use it to reorganise the group.

6.7 Restrictions on a Company's Use of or Sale of Its Assets
Under a scheme of arrangement, the law does not provide any restrictions regarding the sale of shares of a company. However, under liquidation, a company cannot sell its assets or shares during a formal restructuring unless it has the approval of the insolvency practitioner or the court.

6.8 Asset Disposition and Related Procedures
The sale of assets or the business will depend on the scheme of arrangement and the terms underlying the arrangement. The sale of assets is typically prohibited insofar as it reduces the pool of assets available to the creditors. However, in certain circumstances, such a sale will be approved by the insolvency practitioner who is managing the company. An interested party including a creditor or contributor can also apply to the court to have the sale approved.

Where such asset disposal is according to the law or by court order, the purchaser will acquire good title. If a person acquires an asset under a transaction while being unaware of the circumstances surrounding the sale or the insolvency proceedings, and they pay valuable consideration for the asset, they will have good title, although the transaction is voidable if the asset was acquired at undervalue.

The law does not prohibit creditors from bidding as long as the process is transparent, the sale is in good faith and the buyer is given value for money. However, limitations are placed on creditors who are mortgagees under the Mortgage Act from participating in a sale where a mortgagor has defaulted.

The law provides a section for voidable transactions, insider dealings and transactions at undervalue. If the requirements under the law are met, it is possible to effectuate the proceedings.

6.9 Secured Creditor Liens and Security Arrangements
The release of a secured creditor's lien is dependent on the terms under the security agreement. If the terms provide for such procedure, then the procedure can be applied. In the absence of this express provision, the parties would have to agree under an arrangement without breaching the other sections of the law.

6.10 Priority New Money
See **7.4 Priority New Money During the Statutory Process**.

6.11 Determining the Value of Claims and Creditors
It is possible to use the statutory process as a forum for determining the value of claims. The law under the insolvency regulations provides for quantification of claims and states that an office holder shall estimate the value of a claim. This value shall be revised accordingly, and the amount payable is the value that has been estimated.

Furthermore, under the Civil Procedure rules, the law states that by originating summons, parties to a dispute can ascertain the value of the claim by bringing the dispute before the courts. The law clearly states that this value shall be ascertained as at the date of commencement of the arrangement.

6.12 Restructuring or Reorganisation Agreement
The restructuring or reorganisation plan or agreement among the creditors that emerges from such a procedure is subject to an overall "fairness" or similar equitable test. The agreement is binding on the company if sanctioned by three quarters of the total value and number of creditors by a special resolution. This does not require approval by the court. However, a creditor or contributor may appeal to the court within three weeks and have the agreement varied, modified or confirmed.

There are no statutory procedures under which a company or statutory office holder may reject or disclaim contracts in such a procedure, although a creditor can challenge or confirm the arrangement. However, depending on the terms of the agreement, this might be governed by other remedies under contract.

6.13 Non-debtor Parties
There are no provisions under the law relating to the release of non-debtor parties from liabilities.

6.14 Rights of Set-off

Creditors may exercise rights of set-off. An account shall be taken of what is owed by one party to the other in respect of mutual debts or credits – an amount due from one party shall be set off against the amount due from the other party and only the balance of the account may be claimed in liquidation or is payable to the company. However, a person shall not be entitled, under this section, to claim the benefit of any set-off against the property of a debtor in any case where the person can reasonably be expected to have foreseen that, at the time of giving credit to the debtor,it would be unlikely that the debtor would beable to pay their debts.

6.15 Failure to Observe the Terms of Agreements

The implications of failing to observe the terms of an agreed restructuring will be determined by the terms within the agreement. The creditors may apply to set the agreement aside and it would then cease to be binding.

6.16 Existing Equity Owners

There are no provisions in the law restricting equity owners from receiving or retaining property on account of their ownership interests.

7. Statutory Insolvency and Liquidation Proceedings

7.1 Types of Voluntary/Involuntary Proceedings

The legal regime in Uganda sets out the following options to pursue liquidation of a company:

- voluntary winding-up;
- voluntary liquidation of a company by the members or creditors;
- liquidation subject to supervision by the court; or
- liquidation by the court.

Voluntary winding-up and voluntary liquidation, by the members or creditors, are commenced by a company resolving to pass a special resolution to wind up or liquidate the company.

Liquidation subject to supervision by the court commences upon passing a resolution for voluntary liquidation, where such resolution is passed before the presentation of a petition for liquidation of a company. However, where the petition is presented before a resolution for voluntary liquidation is passed, the liquidation of the company is taken to commence at the time of presentation of the petition for liquidation.

Voluntary Winding-up

Voluntary winding-up of a company can take place when a company is not insolvent or unable to pay its debts, but decides of its own volition to wind up and cease to operate as a going-concern.

Voluntary winding-up commences when the board of directors resolves the following at a board meeting:

- to make a declaration of solvency that the directors, having made a full inquiry into the affairs of the company, have formed the opinion that the company will only be able to pay its debts in full within a period not exceeding 12 months from the commencement of the liquidation; and
- to make a statement of the company's assets and liabilities at the latest practicable date before making the declaration of solvency.

The company then delivers a declaration of solvency and a statement of its assets and liabilities to the Registrar of Companies and a copy is given to the Official Receiver for registration (Section 271(2)(b) of the Companies Act, 2012).

Thirty days from the date of registration of the declaration of solvency and statement of the company's assets and liabilities has been given to the Registrar of Companies, the company shall call an extraordinary general meeting to pass a special resolution for voluntary winding-up, appointment of a liquidator and fixing the remuneration of the liquidator (Section 268(1) of the Companies Act, 2012).

Seven days after the passing of the special resolution for voluntary winding-up, the company shall register the resolution for voluntary winding-up with the Registrar of Companies and give a copy to the Official Receiver (Section 269(2) of the Companies Act, 2012).

Within 14 days of passing the resolution for voluntary winding-up, the company shall issue a notice of the resolution in the Gazette and in a newspaper with wide national circulation (Section 269(1) of the Companies Act, 2012).

The appointed liquidator shall then call a general meeting of the company to present an account of the liquidation, showing how the liquidation was conducted and how the property of the company was disposed of, and to give any required explanation (Section 67(1)(a) & (b) of the Insolvency Act, 2011).

The notice calling the aforementioned general meeting shall be published in the Gazette and a newspaper of wide circulation stating the time, place and the object of the meeting at least 30 days before the meeting (Section 67(2) of the Insolvency Act, 2011).

Thirty days or more from the publication of the notice to call the general meeting, the liquidator shall hold the meeting.

Within 14 days of the general meeting, the liquidator shall:

- send a copy of the account to the Registrar of Companies; and
- make a return of the general meeting and of its date to the Registrar of Companies.

The Registrar of Companies shall then register a copy of the account and returns (Section 67(5) of the Insolvency Act, 2011).

Three months from the date of registration of a return, the company shall be taken to be dissolved (Section 67(6) of the Insolvency Act, 2011).

This process can be completed within a period of six months.

Voluntary Liquidation by Members

Voluntary liquidation is when a company resolves that it cannot by reason of its liabilities continue its business and that it is advisable to liquidate in accordance with Section 58(1) of the Insolvency Act, 2011. It commences as follows:

The company shall, after passing a board resolution authorising the extraordinary general meeting, convene an extraordinary general meeting to pass a special resolution for voluntary liquidation, appointment of a liquidator and fixing of the liquidator's remuneration (Section 58(2) of the Insolvency Act, 2011).

Within 14 days of passing the special resolution, the company shall issue a notice of the resolution in the Gazette and in a newspaper of wide circulation (Section 59(1) of the Insolvency Act, 2011).

Within seven days from the passing of the resolution, the company shall have the resolution registered with the Registrar of Companies and a copy sent to the Official Receiver.

The appointed liquidator shall then call a general meeting of the company to present an account of the liquidation, showing how the liquidation was conducted and how the property of the company was disposed of, and to give any required explanation (Section 67(1)(a) & (b) of the Insolvency Act, 2011).

The notice calling the aforementioned general meeting shall be by publication in the Gazette and a newspaper of wide circulation stating the time, place and the object of the meeting, at least 30 days before the meeting (Section 67(2) of the Insolvency Act, 2011).

Thirty days from the publication of the notice to call for the general meeting, the liquidator shall hold the meeting.

Within 14 days of the general meeting, the liquidator shall:

- send a copy of the account to the Registrar of Companies; and
- make a return of the general meeting and of its date to the Registrar of Companies.

The Registrar of Companies shall then register a copy of the account and returns (Section 67(5) of the Insolvency Act, 2011).

Three months from the date of registration of a return, the company shall be taken to be dissolved (Section 67(6) of the Insolvency Act, 2011).

This process can be completed within a period of six months.

Voluntary Liquidation by Creditors

In a creditors' voluntary winding-up, the company calls a meeting of the creditors on the same day as the meeting for the resolution for liquidation is to be proposed or on the following day. The company sends the creditors notice of the meeting of the creditors, together with notice of the meeting for proposing the resolution for liquidation.

The notice for the meeting of the creditors is advertised once in the Gazette and in the official language in a newspaper of wide circulation in Uganda.

At the meeting of the creditors, the directors present a full statement of the position of the company's affairs and a list of the creditors of the company and the estimated amount of their claims.

At their respective meetings, under Section 69, the creditors and the companymay nominate a person to be liquidator for the purpose of liquidating the affairs and distributing the assets of the company. If the creditors and the company nominate different persons, the person nominated by the creditors shall be the liquidator, but if the creditors do not nominate anyone, the person nominated by the company shall be the liquidator.

Liquidation Subject to Supervision by the Court

Where a company passes a resolution for voluntary liquidation, the court may make an order that the voluntary liquidation shall continue, subject to the supervision of the court, and that the creditors, contributories or other interested persons, are at liberty to apply to the court and generally on such terms and conditions as the court may think just.

Where an order is made for a liquidation subject to supervision, the court may, by that order or any subsequent order, appoint an additional liquidator. Where an order is made for liquidation subject to supervision, the liquidator may, subject to any restrictions imposed by the court, exercise all their powers without the sanction or intervention of the

court, in the same manner as if the company were being liquidated voluntarily.

Liquidation by the Court
The High Court may appoint a liquidator on the application of the company, a director of the company, a shareholder of the company, a creditor of the company, a contributory, or the official receiver if it is satisfied that the company is unable to pay its debts.

The court order shall appoint the official receiver or any insolvency practitioner the court considers fit as provisional liquidator of the company, for the preservation of the value of the assets owned or managed by the company. The provisional liquidator shall have the power to sell or dispose of any perishable and any other goods, the value of which is likely to diminish if they are not disposed of, unless the court limits the powers, or places conditions on the exercise of the powers, of the provisional liquidator.

The provisional liquidator shall, within 14 days after the commencement of the liquidation, give public notice of the date of commencement of the liquidation and call a shareholders' meeting.

The liquidator shall, within five working days after their appointment, give notice in the Gazette and a newspaper of wide circulation of the date of commencement of the liquidation.

Within 40 working days of the commencement of the liquidation or a longer period as the court may allow, a liquidator shall prepare a preliminary report showing the state of the company's affairs, proposals for conducting the liquidation and the estimated date of its completion, and the right of any creditor or shareholder to require the liquidator to call a creditors' meeting, and shall make the report available at their address for inspection by every known creditor, shareholder or contributory.

A liquidator shall, within 20 working days after the end of every six month period during the liquidation, make an interim report and give public notice of the progress of the liquidation during the preceding six months, as well as the liquidator's further proposals for the completion of the liquidation.

Before completion of the liquidation, a liquidator shall give public notice of the final report, final accounts and statement, and the grounds on which a creditor or shareholder may object to the removal of the company from the register under the Companies Act.

The liquidation of a company is complete when the liquidator delivers to the official receiver a final report and final accounts of the liquidation and a statement indicating that all known assets have been disclaimed, realised or distributed; all proceeds of realisation have been distributed; and that in the opinion of the liquidator, the company should be removed from the register.

Calculation and Recognition of Claims
A creditor must submit a claim in writing to the office holder, ie, an insolvency practitioner such as a receiver or liquidator, and state whether they are claiming as a secured or unsecured creditor. Unsecured creditors may be required to verify their claim by statutory declaration. The office holder examines every claim and has the discretion to admit or reject the claim, in part or in full. Contingent claims may be included and the office holder shall estimate the value of any debt which, by reason of its being subject to contingency, does not bear a certain value.

Proceedings may be commenced upon the determination that a company is unable to pay its debts. See the section above.

Although the statute does not mention the procedure, claims can be transferred. The office holder should be notified of the transfer.

There is a moratorium on the continuation of legal proceedings or enforcement of claims.

A company shall, from the commencement of voluntary liquidation, cease to carry on business, save for what may be required for the beneficial liquidation of the company. The corporate status and powers of the company shall continue until dissolved. A liquidator is appointed to manage the company during liquidation and is required to:

- exercise any of the powers given to the liquidator in a liquidation by the court;
- exercise the power of the court in settling a list of contributories;
- exercise the power of the court to make calls on shares or any other matter;
- summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or for any other purpose as the liquidator may think fit;
- pay the debts of the company and adjust the rights of the contributories among themselves.

Where the company or liquidator rejects a claim or contract, it can be referred to the court for determination.

Creditors may exercise rights of set-off. An account shall be taken of what is due from one party to the other in respect of mutual debts or credits, an amount due from one party shall be set off against an amount due from the other party, and only the balance of the account may be claimed in liquida-

tion or is payable to the company. However, a person shall not be entitled, under this section, to claim the benefit of any set-off against the property of a debtor in any case where the person can reasonably be expected to have foreseen that it was unlikely that the debtor would be able to pay their debts at the time of giving credit to the debtor.

The following financial information is made available to creditors:

- management accounts;
- audited accounts, if any;
- a comprehensive list of creditors and amounts owed;
- a comprehensive lists of the assets of the company and current valuations; and
- business plans.

Value may be distributed through the distribution scheme under the law. See the list of priority of claims in **5.1 Differing Rights and Priorities**.

7.2 Distressed Disposals

The liquidator authorises the sale of assets or the business during liquidation proceedings.

The purchaser of any assets from a company in liquidation will acquire good title where the liquidator follows the right procedure in selling the asset.

There is no legal restriction on a creditor bidding for company assets. However, creditors holding mortgages over real property are prohibited from bidding for the secured property.

Pre-negotiated sales transactions may be effectuated. However, such transaction may be voided if:

- it was entered into within one year preceding the commencement of the liquidation;
- the value of the consideration received by the company is significantly less than the value of the consideration provided by the company;
- when the transaction was entered into, the company:
  (a) was unable to pay the company's or individual's due debts;
  (b) was engaged or about to engage in transactions for which its, his or her financial resources were unreasonably small; or
  (c) incurred the obligation knowing that the company would not be able to perform the obligation when required to do so;
- the company or individual became unable to pay its, his or her debts as a result of the transaction; or
- the transaction was entered into to help the insolvent put the asset beyond the reach of the creditors.

7.3 Failure to Observe Terms of Agreed/Statutory Plan

Failure to observe the statutory plan entitles the other party to a claim against the party that breaches the plan.

7.4 Priority New Money During the Statutory Process

New money may be invested during the statutory process. The priority of such advances would have to be agreed by the existing secured creditors, ie, such creditors would have to agree to subordinate their debt to that of the new money creditor. Where the company has assets which are unencumbered, the new money may be secured by such assets with a first ranking charge.

7.5 Insolvency Proceedings to Liquidate a Corporate Group

There are no statutory provisions that specifically deal with the collective liquidation of a corporate group. However, a petition for liquidation is a suit within the meaning of the Civil Procedure Rules, which allow for the joinder of parties. Such procedure may therefore be used to apply for the liquidation of a corporate group on a combined basis.

7.6 Organisation of Creditors or Committees

See **3.2 Consensual Restructuring and Workout Processes**.

7.7 Use or Sale of Company Assets During Insolvency Proceedings

A liquidator has a duty to realise the value of the company's assets as advantageously as possible, while distributing the assets of the company and the power to use or sell the company's assets. Court permission is not required unless so ordered by the court in a liquidation supervised by the court.

8. International/Cross-border Issues and Processes

8.1 Recognition or Relief in Connection with Overseas Proceedings

Uganda's insolvency laws provide for recognition or other relief in connection with restructuring. A foreign representative may apply to the court for the recognition of foreign proceedings in which a foreign representative has been appointed.

An application for such recognition shall be accompanied by:

- a certified copy of the decision commencing the foreign proceedings and appointing the foreign representative; or
- a certificate from the foreign proceeding and from the appointment of the foreign representative; or
- in the absence of this evidence, any other evidence acceptable to the court of the existence of the foreign

proceedings and the appointment of the foreign representative.

This application shall also be accompanied by a statement identifying all foreign proceedings against the debtor that are known to the foreign representative.

A foreign proceeding shall be recognised if the application has been submitted to the court and the application meets the requirements as described above. More specifically, a foreign proceeding shall be recognised as a foreign main proceeding if it is taking place in the state where the debtor has the centre of its main interests; or as a foreign non-main proceeding if the debtor has an establishment in the foreign state. However, this shall not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist.

Once an application for recognition of a foreign proceeding has been filed, but before the application is decided, the court may, at the request of the foreign representative – where relief is urgently needed to protect the assets of the debtor or the interests of the creditors – grant provisional interim relief including staying execution against the debtor's assets, and entrusting the administration or realisation of all or part of the debtor's assets located in Uganda to the foreign representative or another person designated by the court, in order to protect and preserve the value of the assets which are perishable, susceptible to devaluation or otherwise in jeopardy.

The court may refuse to grant relief, however, if this would interfere with the administration of a foreign main proceeding.

Upon recognition of a foreign proceeding, whether main or non-main, where it is necessary to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including:

- staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities, to the extent they have not been stayed;
- staying execution against the debtor's assets to the extent that it has not been stayed;
- suspending the right to transfer, encumber or dispose of any assets of the debtor to the extent that that right has not been suspended in accordance with the law;
- providing for the examination of witnesses, taking of evidence or delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;
- entrusting the administration or realisation of all or part of the debtor's assets located in Uganda to the foreign representative or another person designated by the court;
- extending relief granted in accordance with the law; and
- granting any additional relief that may be available to a trustee or liquidator under the laws of Uganda.

8.2 Co-ordination in Cross-border Cases

When a foreign proceeding and a proceeding under the Act regarding the same debtor are taking place concurrently, the court shall seek co-operation and co-ordination as follows:

- where the proceeding in Uganda is taking place at the time the application for recognition of the foreign proceeding is filed:
  (a) any relief granted under the law shall be consistent with the proceeding in Uganda; and
  (b) where the foreign proceeding is recognised in Uganda as a foreign main proceeding, the other proceedings shall be stayed;
- where the proceeding in Uganda commences after recognition or filing of the application for recognition, of the foreign proceeding:
  (a) any relief in effect under the law shall be reviewed by the court and shall be modified; or
  (b) terminated if inconsistent with the proceeding in Uganda;
- where the foreign proceeding is a foreign main proceeding, the stay and suspension referred to under the law shall be modified or terminated if inconsistent with the proceeding in Uganda; and
- in granting, extending or modifying relief granted to a representative of a foreign non-main proceeding, the court shall be satisfied that the relief relates to assets that, under the law of Uganda, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

8.3 Rules, Standards and Guidelines

The laws of the country in which a company is domiciled will determine the rules and guidelines to be applied. The domicile of the company is the country in which the company has its place of business and operates most of its business and which it considers its permanent residence.

8.4 Foreign Creditors

There are no special procedures or impediments that apply to foreign secured creditors. However, Sections 233 and 234 of the Insolvency Act state the conditions under which a foreign creditor can have access to insolvency proceedings under the Act. Foreign creditors have the same rights as other creditors regarding commencement of participation in the process Being a foreign creditor also does not affect ranking and claims by foreign creditors may not be ranked lower than non-preferential debts.

9. Trustees/Receivers/Statutory Officers

9.1 Types of Statutory Officers

Receiver

A receiver or a manager includes a receiver and manager, or administrative receiver, in respect of any property and any person appointed as receiver by or under any document, or by the court in the exercise of its power to make such an appointment, as given by any Act or any rule of the court, or in the exercise of its inherent jurisdiction.

A receiver is appointed by way of instrument or by the court. Where the appointment of the receiver is by the court, the receivership shall commence, and the appointment shall take effect as specified in the court order. In all other instances, receivership commences when the receiver accepts the appointment in writing.

Liquidator

A liquidator of a company is appointed under the law after a voluntary members' meeting or a creditors' meeting at a resolution to wind up the company.

A liquidator can be appointed through a resolution at a members' meeting for voluntary winding-up, at a creditors' meeting if it is a creditors' voluntary liquidation, and by court order if it is a court-ordered liquidation.

Administrator

An administrator is specified in an administration deed and appointed to supervise the company through the administration process.

A provisional administrator of a company is appointed by a special resolution of the board and a notice in writing on the date of the interim protective order. The notice appointing the provisional administrator includes a certificate signed by the appointer certifying that the company is, or will be, unable to pay its debts.

An administrator, on the other hand, is appointed by the company in a general meeting through an administration deed.

Whether or not the person is empowered to sell any of the property in receivership is determined by the powers granted and the benefit to the company. A receiver's powers are conferred, either expressly or by implication, by the appointing document and the receiver is only empowered to sell in accordance with the appointing document, unless granted leave by the court to do otherwise.

9.2 Statutory Roles, Rights and Responsibilities of Officers

A liquidator has an obligation to comply with all statutory processes to manage the proceedings. The liquidator has a fiduciary duty to the company to deal honestly with its affairs. The liquidator also has a duty to the creditors.

A receiver has the powers conferred, either expressly or by implication, by the appointing document as well as the powers described in the statute, which include the power to:

- demand or recover, by action or any other means, all income of the property in receivership;
- issue receipts for income recovered;
- manage any of the property under receivership;
- inspect at any reasonable time any documents of the grantor, or other records relating to the property under receivership, in the custody of the grantor or of any other person; and
- execute in the name and on behalf of the grantor all documents necessary or incidental to the exercise of the receiver's powers.

The receiver is accountable to the secured creditor through which the rights to appoint a receiver were exercised.

An administrator has an obligation to investigate the company's business, property, affairs and financial circumstances; and to exercise power to ensure the survival of the company. An administrator is appointed by members of the company through a special resolution. The administrator is accountable to the company and the court, where the administrator is appointed by the court. An administrator is expected to:

- take custody and control of all the property to which the company is or appears to be entitled;
- keep company money separate from other money held by or under the control of the provisional administrator; and
- keep, in accordance with generally accepted accounting procedures and standards, full accounts and other records of all receipts, expenditure and other transactions relating to the company and retain the accounts and records for not less than six years after the administration ends.

9.3 Selection of Officers

A liquidator may be appointed by the creditors and the company at their respective initial meetings. If the creditors and the company nominate different persons, the person nominated by the creditors shall be the liquidator, but if the creditors do not nominate anyone, the person nominated by the company shall be the liquidator. A liquidator may be challenged by the company or a creditor through the court and removed by an order of the court.

A receiver is appointed under or by any document binding on the company, or by the court in the exercise of its power to make such an appointment, given by any law or rule of the court or in the exercise of its inherent jurisdiction.

A provisional administrator of a company is appointed by a special resolution of the board and a notice in writing is made on the date of the interim protective order.

Statutory officers have the power to manage the company's affairs during each process, ie, liquidation, receivership or administration. As such, they require the co-operation of the management and directors to provide information about the company needed to achieve the process. They have the power to direct the management of the company.

The following cannot serve as statutory officers:

- a person less than 25 years old;
- a corporate body;
- an undischarged bankrupt;
- a person declared by a court of competent jurisdiction to be of unsound mind;
- a person who is the subject of a prohibition order under Section 209;
- a person who is the subject of a disqualification under the Companies Act for fraudulent trading, or who is disqualified from holding an office under the Companies Act;
- any person who has been convicted in the preceding five years of:
  (a) an offence under this Act; or
  (b) a crime involving dishonesty or moral turpitude;
- a person disqualified from acting as a liquidator, provisional liquidator, administrator or provisional administrator, receiver, trustee or supervisor under the law or any document providing the process of appointment; or
- a person subject to disciplinary proceedings or punishment under any law.

Furthermore, creditors, creditor representatives, owners, officers or directors of the company cannot be appointed as statutory officers due to partiality or bias concerns.

The law allows a lawyer, an accountant or a chartered secretary who is a registered member of the relevant professional body, or is a registered member of any other professional body, to act as insolvency practitioners. All insolvency practitioners have to be duly registered.

10. Advisers and Their Roles

10.1 Typical Advisers Employed
Lawyers, asset managers, accountants and chartered secretaries are typically employed as professional advisers.

10.2 Compensation of Advisers
Professional advisers may be appointed by the creditors, the debtor or the courts. In every case, they are remunerated by the party by which they are appointed. The law provides for who can be paid out of the assets of the company as part of the expenses of the receiver/liquidator.

10.3 Authorisation and Judicial Approval
The receiver has the power to appoint such advisers.

10.4 Duties and Responsibilities
Professional advisers owe duties to the company and to their appointers.

Lawyers file and present petitions in court and advise on the procedural aspects of any given restructuring or insolvency process. Accountants assist with the inventory, books of accounts and auditing.

11. Mediations/Arbitrations

11.1 Utilisation of Mediation/Arbitration
Parties do not typically arbitrate disputes in restructuring and insolvency proceedings because the court has the jurisdiction to handle the formal processes such as arrangement, administration and liquidation.

11.2 Mandatory Arbitration or Mediation
This is a statutory requirement and the courts do order mandatory court-annexed mediation prior to all civil disputes.

11.3 Pre-insolvency Agreements to Arbitrate
Pre-insolvency agreements to arbitrate disputes are not typical in Uganda. However, if valid, they would be enforceable like any other arbitration agreement.

To the extent that the dispute touches on a matter covered by an agreement and there is an agreement to arbitrate the dispute, then pre-insolvency agreements to arbitrate the dispute will be enforceable.

11.4 Statutes Governing Arbitration/Mediation
Arbitration and mediation in Uganda are principally governed by the Arbitration and Conciliation Act, 2000.

11.5 Appointment of Arbitrators
The parties are free to agree on a procedure to appoint an arbitrator or arbitrators, but if there is no agreement:

- in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint the third arbitrator; or
- in an arbitration with one arbitrator, the parties shall agree on the person to be appointed.

In the case of three arbitrators, if a party fails to appoint an arbitrator within 30 days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within 30 days of their appointment,

the appointment shall be made, upon application of a party, by the appointing authority. Likewise, in the case of one arbitrator, if the parties fail to agree on the arbitrator, the appointment shall be made, upon application of a party, by the appointing authority.

Where, under a procedure agreed upon by the parties for the appointment of an arbitrator or arbitrators, a party fails to act as required under that procedure; or the parties or two arbitrators fail to reach the agreement expected of them under that procedure; or a third party, including an institution, fails to perform any function entrusted to it under that procedure, any party may apply to the Centre for Arbitration and Dispute Resolution (CADER) to take the necessary measures, unless the agreement provides otherwise, for securing compliance with the procedure agreed upon by the parties.

The qualifications/calibre of arbitrators/mediators will also generally depend on the terms of the arbitration agreement or clause, save that the law prohibits exclusion on the basis of factors such as nationality. CADER certifies persons who may serve as mediators.

12. Duties and Personal Liability of Directors and Officers of Financially Troubled Companies

12.1 Duties of Directors

Directors typically owe a duty of care and good faith to the creditors up until a liquidator or receiver is appointed to manage or dissolve the entire company. The duty of good faith and disclosure generally extends to assisting the liquidator or receiver with any information sought. In a creditors' voluntary winding-up, the directors are required to present a full statement of the position of the company's affairs and a list of the creditors of the company and the estimated amount of their claims, to the meeting of the creditors.

Financial distress or insolvency is generally determined by any means by which inability to pay debts may be proved. The three most common indicators are: failure to comply with a statutory demand; execution of a judgment debt against the debtor being returned unsatisfied in whole or in part; all or substantially all of the property of the debtor being in the possession or control of a receiver or a third party enforcing a charge thereon.

Creditors owe a duty of care to the debtor and to the general body of creditors in the insolvency process. For instance, they have a duty to present and verify their full claims and a duty to make true declarations such as of any surplus obtained from enforcing their security.

A director owes a duty of care, good faith and disclosure to the creditors personally and collectively. Except in cases of fraud or other malfeasance, there are no continuing duties owed to owners/shareholders/company affiliates/subsidiaries.

Except in cases of fraud or other malfeasance, the directors will not be held liable for acts performed in the ordinary course of business and in the best interest of the company, regardless of their impact on the insolvency of the company. However, directors who are found culpable of fraud or other misfeasance may be held accountable by award of fines, penalties, incarceration, disqualification or restriction on acting as a director without leave of the court.

12.2 Direct Fiduciary Breach Claims

Fiduciary breach claims should be brought by or through an insolvency office holder.

12.3 Chief Restructuring Officers

The appointment of chief restructuring officers is not typical in Uganda. However, companies do appoint law firms, audit firms or distinguished insolvency practitioners to advise on and conduct restructurings. These officers typically report to management.

12.4 Shadow Directorship

Uganda does recognise shadow directorship and creditors can become shadow directors. A shadow director has the same duties and potential liabilities as a director.

12.5 Owner/Shareholder Liability

Owner/shareholder liability depends on the nature of the debtor company. Except for in cases of fraud or other malfeasance, the liability of owners/shareholders to creditors is generally limited to the amount remaining unpaid on their shares.

Lifting the Veil of Incorporation

Under Section 108 of the Insolvency Act, the law provides for instances where the veil of incorporation can be lifted.

Upon application of the liquidator or any creditor or shareholder, the court may lift the veil of incorporation of any associated company on terms and conditions as it may consider fit, to facilitate and ensure due completion of the liquidation process in a just and equitable manner and may order that:

- a company that is or has been an associated company of the company in liquidation pays to the liquidator the whole or part of any or all of the claims made in the liquidation; or
- where two or more associated companies are in liquidation, the liquidation of each of the companies extends

as far as the court orders and is subject to the terms and conditions imposed by the court.

13. Transfers/Transactions That May Be Set Aside

13.1 Historical Transactions

Historical transactions that preceded an insolvency process may be set aside or annulled if the transaction:

- amounts to insider dealing;
- consisted of a charge over the insolvent's assets to secure an antecedent debt while the insolvent was unable to pay its debts;
- was secured at an undervalue; or
- was effected at a preference.

13.2 Look-Back Period

The look-back period for setting aside transactions is one year prior to the commencement of insolvency proceedings.

13.3 Claims to Set Aside or Annul Transactions

Any receiver, creditor, trustee, liquidator, member or contributory, or creditor can bring a claim individually or in a representative capacity, whether in restructuring or insolvency proceedings. An individual creditor can commence the setting aside and does not have to fund an office holder to do this.

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14. Importance of Valuations in the Restructuring and Insolvency Process

14.1 Role of Valuations

Valuations are important in determining the value of the company's assets and liabilities with a view to ascertaining insolvency and determining the optimum restructuring process. The Supreme Court recently emphasised the importance of making an up-to-date and objective valuation of assets to determine the market value and forced sale value before conducting a liquidation of the assets in Ranchhobhai Shivabhai Patel Ltd & Anor v Henry Wambuga (Liquidator of African Textile Mill Ltd) & Anor, SCCA No 6 of 2017.

14.2 Initiating a Valuation

A valuation is usually initiated by the creditors or their representatives.

14.3 Jurisprudence

Valuation jurisprudence, in terms of writings/judgments, is not well developed in Uganda. However, there are local valuation experts who render expert opinion in court.It is regarded to be the duty of a person who puts themselves forward as a surveyor or valuer and as having the knowledge that a reasonably competent member of the profession would have, to take reasonable care to give a reliable and informed opinion on the open-market sale value of the property at the date of valuation.

In Uganda, open-market sale value and forced-sale value are mainly used, as well as discounted cash-flow method when valuing an income-generating asset.

Officeholders usually hire an independent valuer to give them an opinion. The asset has to be exposed to the market and the law requires that mortgaged property be advertised in colour print.