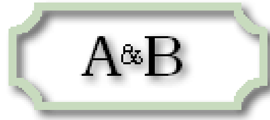

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INSOLVENCY PRACTICE IN AFRICA – THE NIGERIAN EXPERIENCE

Introduction

This paper seeks to examine the practice of insolvency in Nigeria, the perception of the Nigerian public to the concept as well as give a broad overview of the legislation regulating the regime as well as various insolvency options open to creditors in Nigeria.

Historical Overview

Legal Practitioners the world over and indeed in Nigeria have made commendable in-roads into various areas of practice in their various jurisdictions, for instance we accept that there is legal expertise in maritime law, aviation law, intellectual property, environmental law, petroleum law to mention a few. However there seems to be a bit of a problem with the concept of the law and practice of insolvency in Nigeria. In contrast to the reactions to these other areas of the law, the mere mention of insolvency law to the average Nigerian, including legal practitioners, evokes the impression of a company being wound up for inability to pay its debt or of an individual who is tagged bankrupt.

Many people believe that they know as much about insolvency law and practice as they need to, simply because they know the meaning of the word "insolvency" which has the feel of failure about it. The truth is that there is a lot that people do not know about the practice of insolvency law and indeed about Insolvency Practitioners much of whose work, contrary to the popular foreboding belief is very positive. Now in Nigeria, because of the relative dearth of actual statistics, we can not put figures to facts, but we know that in the U.K for instance, out of the 23,000 (twenty three thousand) jobs put at risk through insolvency in a typical year, 70,000 (seventy thousand) are rescued. Also apart from liquidations, Insolvency Practitioners find a rescue solution in at least 59% of formal company insolvencies[1]

[1] Courtesy Voice of the Insolvency Procession-Society of Practitioners of Insolvency.

Although the nomenclature; Insolvency Practice with all its attendant technicalities may not have been in wide spread use in Nigeria, in reality the practice of Insolvency is not entirely new in Nigeria. Even before the independence of the country, liquidators had been appointed over many indigenous banks and since then, particularly since the mid 1980's there have been several liquidations of limited liability companies. More recently there were a large number of liquidations of banks and insurance companies a statutory corporation known as the Nigeria Deposit Insurance Corporation established to act as liquidators to such distressed banks. However the practice is still in its youth, consequently there are only a few persons who have had significant experience in insolvency matters. The expertise is limited to a handful of law firms and a few accounting firms who either have partners with a bias for insolvency or are large enough to have insolvency departments.

The practice of insolvency with particular emphasis on the appointment of receivers however became more popular as a result of the economic depression prevalent in Nigeria in the past 15 (fifteen) years. The downturn of the Nigerian economy in recent years as well as the devaluation of the Nigerian currency (the Naira) as compared to the various convertible currencies, specially the US$ (US Dollar) since the late 1980's have taken their toll on all business sectors of the economy. Probably most affected is the manufacturing sector comprising of the large manufacturing industries who have had to import raw materials as well as machinery and spare parts at increasingly exorbitant rates. In order to finance this importation, these companies have had to borrow very heavily from the various lending institutions in the country, in some cases the lending institutions have had to form consortiums in order to meet the huge demand for funding.

Most lending institutions and indeed the various consortia that were created to give out loans have, in a bid to protect their interest, insisted on the execution of a mortgage by the borrower. Where the mortgage included floating assets, the security was documented by way of debentures, which usually provided for the appointment of a receiver in the event of default by the borrower. However, in the event of the harsh

economic climate of the time, the inconsistent economic policies of the erstwhile military regimes, mismanagement and fraudulent practices in companies, there was a high rate of default in the repayment of those loans. The debenture holders have in a lot of cases taken the option of appointing a receiver to sell of the assets of the debtor company to repay the loans. The foregoing scenario has been the major advertisement for the practice of corporate insolvency in Nigeria, therefore the general belief is that the practice of corporate insolvency consists solely of receiverships and that the practice becomes relevant only when a company is insolvent. Nothing could be further from the truth, the fact is that the law and practice of insolvency is relevant not only when the existence of a company is threatened but also when the company is expanding or restructuring. It is relevant not only to companies faced with insolvency but also to creditors, shareholders and employees of such companies. The import of this is that the insolvency practitioners should provide prescriptions to an entity faced with insolvency and also give advice regarding options available to an entity that seeks to avoid the threat of insolvency.

Having given a brief overview of the concept of insolvency practice from the Nigerian perspective vis a vis what it ought to be, this paper shall now seek to address some of the salient issues to consider in understanding the Nigerian experience. In Nigeria the term "bankruptcy" is limited to personal insolvency while the term "insolvency" is associated with corporate insolvency. Bankruptcy is however rather rare in Nigeria. This is not an indication that Nigerians are more prudent than their counterparts in other countries but as a result of their custom.[2]

We shall consider the legislation governing the insolvency regime with particular emphasis on corporate insolvency, the judicial enforcement machinery, forms of lending and insolvency options available under the regime.

Legislation

What legislation is applicable to Corporate Insolvency in Nigeria?

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[2] They seem not to buy the idea of ostracizing their insolvent relations because a declared bankrupt is to all intents and purposes a social outcast.

The core laws relevant to the insolvency of companies in Nigeria are only part of the general Company Law of the country and are embodied in the Companies and Allied Matters Act 1990 which is the legislation that deals with corporate matters generally in Nigeria. It contains portions dealing with Receivers and Managers, Arrangements and Compromise, and the winding up of companies. The rules governing the winding up of companies in Nigeria are contained in the Winding-up Rules which were made pursuant to the Companies and Allied Matters Act 1990.

Other relevant statutes include;

1. The Land Use Act Chapter 202, Laws of the Federation 1990 which is the major land legislation in Nigeria and which has made a deliberate incursion into the law of mortgages. About the most radical change it wrought was the vesting of all land in the country in the state or federal government with individuals being entitled to only statutory rights of occupancy for a maximum of 99 (ninety nine) years.

2. Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Decree No. 18 of 1994. This was promulgated during the military regime specifically to deal with cases of banks that were designated as distressed. It is however arguable whether the aims of the decree (generally considered laudable on it's promulgation) achieved it's desired objectives as allegations emerged at the inception of the recent democratic dispensation that it was merely promulgated as an instrument of selective vendetta.

3. Mortgage Institutions Act Chapter 231 Laws of the Federation of Nigeria 1990.

4. Nigerian Deposit Insurance Corporation Act Chapter 301 Laws of the Federation of Nigeria 1990.

Courts

What courts are involved in the insolvency process/ Are there any restrictions in the court's jurisdiction?

It is no doubt trite that the existence of an efficient judicial enforcement machinery is essential to the success of any legal regime. In Nigeria, corporate insolvency matters are dealt with in the first instance by the Federal High Court which by virtue of **Section 251 (1) of the Constitution of the Federal Republic of Nigeria 1999** is vested with exclusive jurisdiction to handle insolvency matters. Appeals may be made to the Court of Appeal and then from there to the Supreme Court of Nigeria.

Unfortunately, our courts have not faired any better in terms of judicial experience in this area of practice and this is epitomised by the insufficiency of local case law on receivership in Nigeria decided upon by the Supreme Court. Since most insolvency cases arise from the issue of unpaid debts, both our legal practitioners and our courts treat them as being akin to debt recovery cases. This is no doubt consequent upon a paucity of knowledge on the part of our practitioners and judicial officers on technical issues relating to insolvency, as they do not have access to regular international insolvency publications (there are quite a few of them) and sources of information such as the "J-Base' which is an electronic database of international insolvency material. For example, a receiver may be appointed over the assets of a company, which assets may be subject to adverse trust claims, intellectual property right claims or third party claims of set-off, yet not many courts or legal practitioners in Nigeria have had experience of dealing with issues such as the effect of insolvency on intellectual property rights, trust assets in insolvency proceedings or the rights of set off and deposits as security in cases of insolvency. The effect of this is that the insolvency matters in general and receivership matters in particular are dealt with in Nigeria only on the periphery based on general company law principles and laws relating to pre-emptive remedies, without adequate appreciation of the technicalities of insolvency.

It is however important to note that our courts do have considerable experience in other forms of insolvency proceedings such as winding up procedures available under voluntary and involuntary liquidations.

Forms of Lending

What are the forms of lending in Nigeria?

Generally, there are 2 (two) forms of lending prevalent in Nigeria i.e unsecured and secured credit. However, virtually all lending institutions practice secured lending.

Secured credit

The main type of security accepted in Nigeria over immovable property is the Legal Mortgage. The Legal Mortgage is the transfer of the whole of the debtor's legal ownership in the property covered by the security, subject to a right to redeem the legal title to the property upon repayment of the debt (This is known in legal parlance as the equity of redemption).

An alternative is the Equitable Mortgage which differs from the Legal Mortgage in that only the beneficial interest (as distinct from the legal interest) is transferred by the debtor. It is essentially an agreement to enter into a Legal Mortgage. An Equitable Mortgage can be created by a written agreement to execute a Legal Mortgage or by the deposit of title deeds with the creditor with the intention of creating a security.

Another alternative to the Legal Mortgage is the Fixed Charge. This involves no transfer of ownership but gives the creditor the right to have the designated property sold and the proceeds applied to discharge the debt. A Fixed Charge attaches to the property in question immediately on creation (or, if acquired later, after creation but immediately on the debtor acquiring the right over the property to be charged). The debtor may then only dispose of the property once the debt has been repaid or with the consent of the creditor.

Most banks in Nigeria prefer that Floating Charges are created over the whole business and undertaking of a company and therefore cover all present and future assets of the company. A Floating Charge does not attach to a specific asset but is created over a class of assets, present or future, and allows the debtor to buy and sell such assets whilst the charge remains floating. It is only on the happening of a certain event, such as default on the repayment of the debt, that the charge attaches to the secured assets which are at that

time owned by the debtor company. This is known as ‘crystallisation’. On crystallisation, the floating charge becomes a fixed charge and the debtor is no longer free to deal with the assets without repayment of the debt or without the consent of the creditor.

In practice however the security document usually executed to secure credit to companies in Nigeria is the Debenture or what is sometimes known as a Mortgage Debenture. It is a security document that includes the fixed and floating charges as well as mortgages in one document. Once executed, the document has to be registered as a mortgage at the relevant land registry and subsequently the debenture has to be registered at the Companies Registry known in Nigeria as the Corporate Affairs Commission within 90 (ninety) days of it’s creation. Rules of priority apply to the registration process by virtue of section 197 of the Companies and Allied Matters Act 1990 and the failure to register a charge at the Commission makes the charge to be void against the liquidator and any creditor of the company, however when a charge becomes void under this provision, the money thereby secured shall immediately become payable by the debtor and the creditor is left with pursuing alternative remedies rather than resorting to the security.

Other forms of security such as the Pledge, the Quist Close Trust and Lien are not popular in Nigeria.

Unsecured Credit

What remedies are available to unsecured creditors?

A supplier of goods may protect himself by inserting a clause in the supply contract to reserve ownership of title to the goods in himself more usually, until all monies outstanding from the debtor have been paid. The creditor is therefore contractually entitled to the return of his goods should the debtor become insolvent. This is particularly useful where a receiver has been appointed over the assets of the debtor. If that remedy is unavailable, then an unsecured creditor would have to commence proceedings against the debtor for recovery of his debt. If there is no substantive

defence to the claim, the creditor can apply for summary judgment under the relevant rules of court, which could take anything from 2 (two) months to 6 (six) months. If the debtor can show that he has a real prospect of successfully defending the claim, it could take much longer. In the meantime, if the creditor has evidence that the debtor is likely to dissipate his assets he can apply to the court for an order that bank accounts be frozen or prevented from being dealt with or dissipated. The creditor may in some cases also apply to court for an injunction restraining the debtor from dealing with relevant assets pending the conclusion of the suit.

Once a judgment has been obtained, then proceedings to enforce the judgment can be commenced. Execution is carried out by the relevant court official who seizes the goods of the judgment debtor, sells them and uses the proceeds to settle the judgment debt. The court may in relevant cases give an order diverting the debtor's source of income to the judgment creditor (this is known as a garnishee order).

There are no special rules for foreign creditors except that in some cases the court might direct that the foreign creditor provides security for the defendant's costs in the event that the foreigner's claims fail. With regard to a foreign judgment against a Nigerian company, such judgment can be registered in the Nigerian court provided that the rules of reciprocity of enforcement of judgments exist between the country where the judgment was given and Nigeria. Such a judgment is then executed in the same manner as a judgment originally given by the Nigerian court would.

An unsecured creditor may also apply to court for the winding up of a debtor company where such creditor has served on the debtor a demand requiring the debtor company to pay the sum due and the debtor has for 3 (three) weeks thereafter neglected to pay the sum due or to secure or compound for it to the reasonable satisfaction of the creditor.

Receiverships in Nigeria

There are 2 (two) basic forms of appointment of receivers in Nigeria i.e. the court appointed receiver and the receiver appointed out of court usually under a security

document. In the case of a court appointed receiver, an application is made to the court to appoint the receiver on behalf of the debenture holder or other creditors of a company which is being wound up by the court. An application can also be made under section 389 Companies and Allied Matters Act by a person interested and the court has the power to appoint a receiver or a receiver and manager of the property or undertaking of a company if the principal money borrowed by the company or the interest is in arrears or the security or property of the company is in arrears. Such a receiver is known as the "Official Receiver" and he is regarded as an officer of the court and not that of the company and shall act in accordance with the directions and instructions of the court.

Usually, in forms of secured lending, the security document, be it the legal mortgage or the debenture makes provision for the appointment of a receiver or receiver/manager. Such a receiver appointed out of court, pursuant to the powers contained in the security document is deemed to be an agent of the person on whose behalf he is appointed, and if appointed a manager of the whole or any part of the company's undertaken is deemed to stand in a fiduciary relationship to the company and shall observe the utmost good faith towards it in any transaction with or on it's behalf. The general principles of receivership under the common law apply in that the powers of the director to deal with the undertaken of the company are suspended during the period of the receivership.

The receiver also has wide powers over the company's undertaking including the powers to receive rents and profits, discharge outgoings and to bring or defend actions in the name of the company. However, unless he is appointed as a receiver/manager, he cannot run the business with a view to a beneficial realization of security on behalf of his appointor. The powers, rights and duties of a Receiver are basically contractual in nature as they stem from the agreement between the lender and the borrower. They are also statutory powers which are codified in schedule 11 made pursuant to section 393(3) of the Companies and Allied Matters Act 1990. In practice, most security documents simply reproduce the provisions of the statute on the issue.

At the commencement of this paper I dealt extensively with the state of receivership in Nigeria which hitherto had not kept pace with developments in other jurisdictions. The absence of a body to amongst other things, control and regulate the practice of insolvency, was a serious factor militating against it's development. I am glad to inform you that the situation has changed with the establishment of the Business Recovery and Insolvency Practitioners Association of Nigeria (BRIPAN). Formerly known as the Insolvency Practitioners Association of Nigeria, the name was changed to it's current name in order to reflect the growing trends in other jurisdictions with a well developed regime of insolvency in which emphasis has shifted to business rescue and turn around management. Members of BRIPAN are registered as members of INSOL International. The Association is presently made up of professionals with backgrounds in accounting, legal practice and banking. Our President is Prince Adesupo Adetona one of the foremost chartered accountants in Nigeria with a strong bias for insolvency practice while I am the General Secretary of the Association.

The main objects for which BRIPAN was incorporated are;

i. To improve the standards of performance and discharge of all those functions, powers and duties which are attached or incidental to the offices or position of liquidators, trustees in bankruptcy and receivers and any other similar offices and positions concerning the assets, liabilities or affairs of any individuals, corporations, or other persons or bodies of persons (such offices and positions being hereinafter collectively referred to as Insolvency Administration Offices) and the performance and discharge of such functions, powers and duties as aforesaid being hereinafter collectively to as Insolvency Administration.

ii. To promote and develop Insolvency Practice as a distinct area of Professional Law and Accountancy Practice and to advance the theory and practice of insolvency administration in all its aspects.

iii. To promote and maintain high standards of practice and professional conduct amongst persons holding insolvency administration office or who are otherwise engaged in solvency administration.

iv. To develop a body of persons who are skilled and experienced in insolvency administration and to promote and effect the training and education of persons who wish to attain skill and experience in insolvency administration.

v. To facilitate the exchange of views and opinions, to promote a better understanding of and to inform public and professional opinion on the subject of insolvency administration and the problems connected therewith.

vi. To cooperate with similar organizations in Nigeria and abroad to facilitate the exchange of information relating to and opinions on insolvency administration.

vii. To create deeper awareness of the importance of the practice of insolvency and the relevance of the insolvency practitioner in the Nigerian socio-economic setting.

viii. To impact legislative reform by evaluating and focusing attention on the development of the Nigerian Law in the areas of bankruptcy, receivership and liquidations, business restructuring and turn around management.

It is hoped that the Association will take a pro-active role in the development of the law and practice of insolvency and ensure that existing legislation are reviewed to meet and keep up with the changing face of insolvency worldwide.

Voluntary Liquidation

What are the requirements for a debtor to commence a voluntary liquidation of its business/What are the effects of the commencement of the liquidation?

A company may be wound up voluntarily;

1. When the period, if any, fixed for the duration of the company by the articles expires, or the event, if any, occurs, on occurrence of which the articles provided that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily.

2. If the company resolves by special resolution that the company be wound up voluntarily.

The exercise of this prerogative is not always necessarily an indication of insolvency as the company may have been established for a specific purpose which when achieved may obviate the need for the continued existence of the company. Where the promoters of a company are however of the view that the company is unprofitable, an option open them is to liquidate the company by winding up it's affairs voluntarily. The resolution to voluntarily wind up a company must be advertised by publishing notice of it in the official gazette or in 2 (two) daily newspapers within 14 (fourteen) days of the passing of the resolution, and the Corporate Affairs Commission (Companies Registry) must also be notified within that time that the company has resolved to be wound up voluntarily.

A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up. Such resolution does not extirpate the corporate essence of a company, it remains a corporate person until it is finally dissolved. It can not exercise its normal powers or carry on its normal business unless such power or business as is conducive to the winding up of its affairs pursuant to the resolution.

Involuntary Liquidations

What are the requirements for creditors to successfully place a debtor in involuntary liquidation/What are the effects of the commencement of the liquidation?

There are various instances pursuant to which a court may wind up a company, such as where default has been made in delivering the statutory meeting, where the number of

members is reduced to below 2 (two) or where the court is of the view that it is just and equitable that the company be wound up. However in order to place a company into involuntary liquidation a creditor has to petition the court to have the company wound up and establish that the company is unable to pay its debts and in order to succeed in its petition to wind up a company for inability to pay its debt, the creditor must prove to the court that a debt exists, that the debt is due, that there has been a statutory demand (requiring 21 days Notice) and the company had been unable to pay.

A company is deemed to be unable to pay its debts if;

1. A creditor by assignment or otherwise, to whom the Company is indebted in a sum exceeding ₦2,000 (about $20) then due has served on the Company, by leaving it at its registered office or head office, a demand under his hand requiring the Company to pay the sum so due, and the Company has for 3 (three) weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; or

2. Execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the Company is returned unsatisfied in whole or in part; or

3. The court, after taking into account any contingent or prospective liability of the Company is satisfied that the Company is unable to pay it debts.

Where before the presentation of a winding up petition for the winding up of a company by the court, a resolution for the voluntary winding up of the company has already been passed, the winding up shall be deemed to have commenced at the time of the passing of the resolution. In any other case the winding up of a company by the court shall be deemed to commence at the time of the presentation of the petition for the winding up.

Once a winding up order is made, no action or proceeding shall be proceeded with or commenced against the company except by leave of court. An order for winding up of a

company shall operate in favour of all the creditors and contributories of the company as if made on the joint petition of a creditor and a contributory. Therefore all creditors may prove their debts and all contributories share in the surplus assets of the company.

Voluntary reorganisations

What are the requirements for a debtor to commence a financial reorganisation/what are the effects of the commencement of the reorganisation?

At the present time, there is no formal statutory rescue procedure in Nigeria for the financial reorganisation of companies in financial distress as is the case in many jurisdictions, such as the U.K. where you have the both the informal London Approach and the formal Administration Procedure under the Insolvency Act. Company rescue and corporate restructuring of debtor companies in financial distress are therefore usually carried out pursuant to agreements with the creditors and even then they are few and far between. A company and its creditors may enter into an agreement for the restructuring of a company's debt outside of court, these corporate restructurings usually involve the setting up of a committee of lenders or the appointment of trustees to negotiate the terms of the restructuring of the company with the help of financial and legal advisors paid by the company. Once these terms are agreed upon by the general body of creditors, they are documented in a formal contract.

However, a company, its members, creditors or liquidator may apply to the court, pursuant to the provisions of the Companies and Allied Matters Act, for the sanction of a compromise or scheme of arrangement between the company and its creditors (or any class of them) and/ or its shareholders (or any class of them). The procedure is as follows;

1. Once the scheme of arrangement or compromise is prepared by either the company, its members, creditors or where the company is being wound up, by the liquidator, a summary application is made to the court by such a person or group of persons praying for an order to convene a meeting of the creditors and/or shareholders with

whom a compromise is being sought or with whom it is sought to enter into a scheme of arrangement.

2. If the order is granted, then a meeting is called accordingly. The scheme must be approved by at least ¾ (three quarters) in value of the shares of members or class of members or of the interest of creditors or class of creditors, as the case may be, present and voting either in person or by proxy.

3. The compromise or scheme of arrangement may thereafter be referred by the court to the Securities and Exchange Commission to investigate the fairness of the compromise or scheme and make a written report to the court.

4. If the court is satisfied as to the fairness of the compromise or scheme it shall sanction the same and it shall be binding on all the creditors, or class of creditors or members or class of members as the case may be. However such order will be ineffectual until a certified true copy of the order has been filed and registered at the Corporate Affairs Commission (Companies Registry).

Involuntary Reorganisations

What are the requirements for creditors to commence an involuntary reorganisation/ What are the effects of the commencement of the reorganisation?

As discussed above a creditor may apply to court for sanction of a scheme of arrangement or compromise. The procedure and the effect of an involuntary compromise are the same as for a voluntary compromise.

Doing Business in Reorganisations.

Under what conditions can the debtor carry on business during a reorganization/What are the roles of the creditors and the court in supervising the debtor's business activities?

The relevant law; Section 530 of the Companies and Allied Matters Act allows for a scheme of arrangement to be initiated while the company is operating or after it has

been placed in liquidation. Where the company is in liquidation, the company's activities usually have ceased and its assets will have passed into the hands of the liquidator but since the law does not provide for a moratorium on creditors taking action against the company in a scheme of arrangement until the scheme is sanctioned by the court, schemes of arrangement are seldom used prior to liquidation because the process could be undermined at any stage by the filing of a petition by an aggrieved or unsatisfied creditor. On the other hand, where the reorganisation is a matter of contract between the parties, the effect of a compromise will depend on the nature and provisions of the scheme. However, it is possible for existing creditors of a company to agree to have their debts subordinated to allow the company to continue trading. The funds advanced by new directors, or fresh funds advanced by existing creditors, is usually given priority ahead of the existing debts.

The scheme of arrangement can be initiated, in theory, either while the company is operating or after it has been placed in liquidation. However, if the company is in liquidation, the company's activities usually have ceased and its assets will have passed into the hands of the liquidator.

A company which has entered into a compromise with its creditors is generally able to continue trading as usual. Sometimes a consultant or a sum committee of the lenders is appointed to oversee the activities of the company and report to the creditors on progress. The courts do not have an ongoing supervisory role. But an application may be made to court requesting its intervention if the company fails to comply with the scheme.

Successful Reorganisations

What are the mandatory features of a reorganisation plan/How are creditors classified for the purposes of a plan and how is the plan approved?

There are no mandatory features of an informal reorganisation or informal schemes of arrangement or compromise. The mandatory requirements for a scheme of arrangement under the Companies and Allied Matters Act are as follows;

1. A summary application is made to the court by such a person or group of persons praying for an order to convene a meeting of the creditors and/or shareholders with whom a compromise is being sought or with whom it is sought to enter into a scheme of arrangement.

2. Creditors who can establish valid retention of the title and other proprietary claims will have their property returned (or its monetary equivalent) in priority to those listed above.

Where there have been mutual dealings between a creditor and the company, the liquidator is required to take an account of what is due from each party to the other in respect of dealings and set off the sums due from one party to the other. The effect of this is that unsecured creditors entitled to set-off have an advantage over other unsecured creditors. Note, however that there are special provisions which apply to certain contracts in the financial markets.

The Financial Markets and Insolvency (Settlement Finality) Regulations came into force on December 11 1999. The Regulations implement Directive 98/26/EC of the European Parliament and of the Council on settlement finality in payment and securities settlement systems. The Directive seeks to reduce the risks associated with participation in payment and securities settlement systems by minimizing the disruption caused by insolvency proceedings brought against a participant in such a system.

The same privileged and priority creditors will also be present in a reorganisation but the extent to which they are given priority will be a matter of negotiation between the parties.

Distributions

How and when are distributions made to creditors in liquidations and reorganisations?

In both liquidations and reorganisations, a distribution will be made when sufficient funds are available to justify it. In the case of a reorganisation, the administrator or the responsible office-holder will decide when and how.