THE
INSOLVENCY LAW
Simplified
This booklet has been designed to simplify the insolvency law by highlighting the key concepts and information contained in the law. In general, this law enables legal entities such as companies, associations and NGOs facing a distressful financial position to navigate their business through such a situation.

Insolvency is an often misunderstood concept, with most of the business community attaching negative perceptions to it. This guide is aimed at helping you understand how insolvency can help you navigate your business through financial difficulty by exploiting the different options available like administration, liquidation and informal work outs.

Please note that this booklet provides a simple guide to the law relating to commercial recovery and settling of issues arising from insolvency and only refers to the key concepts. It is not an exhaustive text on the law and should you require detailed information on the law that is not covered here, please visit the Office of the Registrar General at RDB offices or email us @..................

You may also refer to the law itself; Law no. 12/2009 of 26/05/2009 relating to commercial recovery and settling of issues arising from insolvency as modified and complemented by the law n° 35/2013 of 29/05/2013.

We trust that you will find this guide useful and assure you of our continued commitment to providing you with information on the laws and regulations that affect your business.

Louise Kanyonga
Registrar General
What is insolvency?

Insolvency arises when a business does not have enough assets to cover its debts or is unable to pay its debts when they are supposed to. Insolvency can lead to insolvency proceedings, in which legal procedures will commence to ensure that the value of the assets of the business is maximized to pay off the existing debt.

Who can go insolvent/ Who does this law apply to?

This law applies to businesses. It excludes individuals who are not exercising trade as their profession.

What are some of the common causes of insolvency?

The common causes of insolvency include the following:

- Poor cash management,
- Reduction in the forecasted cash inflow or
- An increase in cash expenses

How do I know if my business is insolvent?

You can know whether your business is insolvent or not by performing the solvency test on your business. The solvency test is a simple procedure that is undertaken to determine whether a company is able to pay its debts as they become due.

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A company is insolvent once the Liabilities are greater than Assets

Once Assets and Liabilities are balanced, it means the business has passed the Solvency Test
A company shall satisfy the solvency test when:

- The company is able to pay its debts as they become due in the normal course of business
- The value of the company's income is greater than the sum of the value of its liabilities and the company's share capital (the value of the company’s assets is greater than the value of its liabilities)

What are the main objectives of the insolvency law?
The main objectives of the insolvency law include:

- To ensure orderly and collective debt recovery proceedings which take into account the interests of all the parties (the insolvent business, creditors, employees and the government)
- To enable insolvent businesses that are still financially viable to continue with their business activities and maintain jobs through reorganization proceedings
- To ensure that the assets of the insolvent business are preserved and maximized so as to increase recovery rates.
- To release (discharge) honest debtors from outstanding debts.

What are the benefits of insolvency proceedings?
Insolvency proceedings have several benefits to the debtor (insolvent business), the creditors (lenders, suppliers and employees) and the economy alike. Some of these benefits include the following:

- **For the insolvent business**, insolvency proceedings provide an opportunity to reorganize the business and return to profitability, pay off all due debts and avoid liabilities that may accrue directly to the company directors if they knowingly continue trading while insolvent.
- **For the creditors**, insolvency proceeding ensures that all creditors are brought together in a collective and orderly process which ensures payment based on creditor ranking. This avoids frantic grabbing of assets by different creditors and piece meal payment to some creditors while excluding others. It also ensures that the assets of the business are well managed, maintained and their value maximized through the appointment of an administrator. This is turn increases the recovery rates for creditors.

- **For the economy in general**, the economic impact of business recovery and debt collection cannot be underestimated. It ensures sustainability of businesses especially SME’s and it also protects creditors which in turn promotes investor confidence and increases access to credit.
What do I do if my business is insolvent?

If your business is insolvent you must immediately disclose this. This is particularly important for companies as the directors may be found personally liable for the companies’ debts should they continue trading while knowing that the company is insolvent.

How are insolvency proceedings started?

Insolvency proceedings are started by an application to court. The application to commence insolvency proceedings can be made by creditors, debtors (insolvent business), members of the boards of either the debtor (insolvent business) or creditor and the Registrar General.

A creditor’s application shall be accepted by the court only if he/she has an interest and if he/she shows his/her claim as well as the reason why insolvency proceedings should commence.

A debtor cannot commence proceedings where his/her assets are insufficient to pay the expenses to be incurred in insolvency proceedings.

The court therefore has the power to dismiss such an application and inform the Registrar General.

What happens once the court has received the application?

The court reviews the application and all the supporting documentation. If the court is of the opinion that all the documentation is in order and that the business is indeed insolvent, then it shall accept the application and grant an order for the commencement of insolvency proceedings.

However if the court doesn't accept the application, then it shall issue an order rejecting the commencement of insolvency proceedings.

Who must be informed about the order commencing insolvency proceedings?

The court order commencing insolvency proceedings is published and copies are given individually on the creditors and debtors. The court registrar must also submit a copy of the order to the Registrar General.

Where the assets involved include real property (houses and land) then a copy must also be given to the Registrar of Authentic Land Titles.
What information is given in the court order commencing insolvency proceedings?

The court order commencing insolvency proceedings must include the following:

- The business/company name and its place of business/registered office address
- The names and address of the appointed insolvency administrator
- The hour and date when the insolvency proceedings were commenced
- The date upon which creditors must register and prove their claims (creditors must register and prove their claims within three months from the date of the granting of the insolvency order or following the court order)

What happens to the business and its assets once insolvency proceedings commence?

- Individual creditors cannot enforce their claims against the debtor’s assets. However, secured creditors can enforce their claims under the movable property and mortgage laws. Exceptions are provided for where the insolvent entity has submitted a re-organization plan. In that case, all claims including secured claims are suspended for a 6-month period.
- Any running contract entered into prior to the commencement of insolvency proceedings cannot be terminated.
- Debtor cannot dispose of or transfer any of its assets.
- The existing employment, sales and lease contracts are not terminated.
- The insolvency administrator has the right to continue or terminate the above contracts.

What assets are included in the insolvency proceedings?

All assets owned by the debtor on the date of commencement of insolvency proceedings and those acquired during proceedings are included in the list of assets of the insolvent entity. This means that these assets can be liquidated or sold to repay outstanding debts.

All assets acquired by the debtor after the conclusion of proceedings and exempted assets such as the debtor’s household property, clothing, beddings and those determined by the Registrar General are excluded from the list of assets and therefore cannot be sold to repay outstanding debts.

Who manages the assets once insolvency proceedings commence?

The insolvency administrator takes over the management of the debtor’s assets once insolvency proceedings commence. However, the debtor can also request to be granted self-administration rights.
Can a debtor transfer property after the commencement of insolvency proceedings?

No, the transfer of any item involved in the insolvency proceedings on the commencement of the proceedings shall be considered illegal and such items shall be returned together with their interest.

What happens when the debtor is a foreigner?

In case of a foreign company which operates in Rwanda or if the debtor is a foreigner, the insolvency proceedings shall be subject to Rwandan law on insolvency, unless international agreements signed between Rwanda and one or more countries provides otherwise.

What are the main steps during the insolvency proceedings?

Step 1: Application for commencement of insolvency proceedings is made to court. Court reviews the application and advises accordingly.

Step 2: Notice is given to all known creditors and the first meeting of creditors is held. This is chaired by an administrator appointed by the court.

Step 3: The administrator provides a report that determines what debts are dischargeable, what assets are exempt, and what payments are possible.

Step 4: If there are assets available then the creditors are requested in writing to file a creditor’s claim.

Step 5: There may be other hearings, reports, proposals, hearings on claims of fraudulent debts, petitions for removing the stay on foreclosures and other matters.

Step 6: The final step is a hearing on discharge of the insolvent, which wipes out unsecured debts (or a pro rata share of them).

NB: A creditor’s application must specifically indicate his/her interest or claim as well as the reasons for commencement of proceedings; failure of which, the application will be rendered inadmissible.

What are the main outcomes of insolvency proceedings?

There are two main outcomes for the business which the Insolvency administrator will submit to the creditors committee for their approval: Reorganization and liquidation.

- **Re-organization**: This outcome is undertaken where the applicant indicated this option in their application, submitted a reorganization plan as required by the law and the plan was approved by the court. It is designed to rescue the business and to allow it meet all its financial obligations while remaining in business.

- **Liquidation**: This outcome is undertaken when the administrator concludes that the business cannot be rescued. This procedure ensures that the value of the assets of the business are maximized and then sold. The proceeds are then distributed among its creditors.

The Debtor can draw a reorganisation plan in order to salvage the company from going bankrupt.
Who gets the court order commencing insolvency proceedings?
The court order commencing insolvency proceedings is published and served individually on the creditors and debtors. A copy of the court order is also submitted to the Registrar General and the Registrar of Authentic Land Titles in case the insolvent estate includes immovable property.

In what order are debts paid off upon completion of insolvency proceedings?
Before the administrator pays off any debts, he/she must first submit to the court the administrator’s distribution record. If the court approves this document, then the administrator shall settle all debts immediately after this approval in the following order of priority:

- The costs of maintaining, conserving and sale of the assets, administrator’s fees and expenses incurred, wages and salary of any person engaged in the administration of the estate and expenses incurred by the court.

- Secured creditors on the basis of their ranks

- Creditors with the right to retain an item in consideration of the improvement they have to make on it.

- Salaries or other wages of former employees of the insolvent person for a period of six (6) months

- Social security contributions.

- Government taxes

- Unsecured claims

The insolvency administrator must provide any surplus after payment of the above debts to the debtor.

What are the duties of the different participants in insolvency proceedings?
The key participants in insolvency proceedings include the debtor, the creditor, the administrator and the Registrar General. These have different duties and roles in the process as highlighted below:

Duties of the Debtor:

- To manage the insolvent estate once his request to manage is granted

- To assist the insolvency administrator in the discharge of his/her duties
Duties of the Creditor:

- To attend the creditors meetings;
- To decide on the type of outcome to be followed;
- To verify filed claims during the verification meetings;
- To register and prove their claims;
- To participate in the development of the insolvency plan; and
- To participate in the distribution of proceeds realized from the sale of assets.

Duties of the Administrator:

- Sell the property or use any other means to increase the capacity for the debt repayment;
- Lease any immovable property;
- Institute and participate in any action in court relating to the debtor’s property;
- Borrow or mortgage the property of the debtor upon approval by a creditor’s meeting;
- Divide any object (that isn’t easily sold) in its existing form among creditors according to its value and its unique nature;
- Continue or dissolve any existing lease contracts on the assets in the insolvent estate.

Duties of the Registrar General:

The Registrar General is the chief insolvency administrator and is therefore responsible for the following:

- Collect and settle any debts owing to the debtor;
- Design a program and identify procedures for reviving the debtor’s business;
- Convene and chair creditors meetings;
- Submit a report of his/her activities to the creditor’s meeting after completion of his duties;
- Perform any other assignment as required by the court.
When do insolvency proceedings terminate?
As soon as the final distribution is completed, the court shall take a decision on termination and shall publish such decision.

Are there any informal work outs available during insolvency?
Yes, the law provides for informal workouts in settling issues arising from insolvency. Besides the insolvency proceedings discussed in detail above, the law provides for a Compromise proposal with the insolvent company's creditors.

Who can propose a Compromise?
The following people may propose a Compromise where he/she has reason to believe that a company is unable to pay its debts:

- The Board of Directors of the company
- A receiver appointed in relation to the whole assets of the company
- A liquidator of the company
- Any creditor or shareholder of the company with the leave of the Court.

What information should be provided to enable the creditor make a compromise proposal?
When the Court grants leave to a creditor or shareholder, it may make an order directing the company to give to the creditor or shareholder, within a given period of time, a list of the names and addresses of the company's creditors showing the amounts owed to each of them or such other information as may be specified to enable the creditor or shareholder to propose a compromise.

Once the above information is provided, the proponent shall compile, in relation to each class of creditors of the company, a list of creditors known to the proponent who would be affected by the proposed compromise, setting out: the amount owing or estimated to be owing to each of them; and the number of votes which each of them is entitled to cast on a resolution approving the compromise.

What are the effects of a Compromise?
A compromise, including any amendment, approved by creditors of a company is binding on the company and all creditors.

Who bears the costs of the Compromise?
The costs incurred in organizing and conducting a meeting of creditors for the purpose of voting on a proposed compromise is met by the company.

In case the cost is incurred by a receiver or liquidator it becomes a cost of the receivership or liquidation; and where it is incurred by any other person, the debt is due to that person by the company and, where the company is put into liquidation, this debt is payable in the order of priority indicated in the liquidation process.

Any creditor, shareholder and any other interested person may request for the amalgamation or a compromise with company's creditors.
Conclusion:

The information contained in this booklet is a guide to the key concepts and information provided for in the insolvency law. It is not meant to substitute the bigger law. Should you require any information not indicated in this booklet, please do not hesitate to refer to Law no. 12/2009 of 26/05/2009 relating to commercial recovery and settling of issues arising from insolvency as modified and complemented by the law n° 35/2013 of 29/05/2013.

We hope that the information contained in this booklet has helped you understand the insolvency law better and will guide you in making the right decisions regarding the future of your business.