

Liberia's Insolvency Practice
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Liberia has passed several pieces of legislation to set the pace for an effective credit infrastructure framework. In 1999, the Legislature enacted law to provide for the conduct of financial institutions as regulated by the Central Bank of Liberia.¹ Part V of the Act is one of early instances where Liberian law recognized and made provisions by addressing insolvency matters within financial institutions. As it relates to “rescuing” and reorganizing the entity as opposed to direct liquidation, the Act states,

“The Central Bank shall have the power to determine compulsory reorganization of a financial institution. In making such determination the Central Bank shall be guided by the obligation to protect the interest of depositors and creditors having regard to safeguarding the integrity and the preservation of confidence in the Liberian financial system...”²

As discussions continued on issues surrounding resolving Insolvency in a manner conducive to the insolvent party, the Legislature sought to address these concerns by making amendments to existing laws. In 2002, the Legislature amended the Associations Law (Business Corporations Act) by revising provisions on the Dissolution of Limited Liability Companies. Specifically, the revised provision states “Unless otherwise provided in a limited liability company, or with the written consent of all members, 120 days after the commencement of any proceeding against the members seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute...”³ This language indicates deliberate exchanges on creating an enabling rescue culture in the commerce environment.

Considering the narrow focus of these laws, a robust regime was needed to handle the complexities regarding debtors and creditors rights. In 2010, the Legislature enacted law creating the Liberian Commercial Code of 2010. Since passage of that law and the establishment of the Commercial Court of Liberia also in 2010, Liberia experienced an increase under the World Bank Group’s Doing Business Index. Further to the passage of these two Acts, the creation of the Collateral (Movables) Registry housed at the Central Bank of Liberia also shifted the needle upward in the mentioned Doing Business Index.

This latest piece of legislation supporting the development of a viable credit lending infrastructure is the Liberia Insolvency and Restructuring Act (LIRA) of 2017. This Act is transformative within Liberia’s jurisprudence because it provides for efficient and credible

¹ See New Financial Institution Act (1999).

² *Id.* at Part V §50.

³ An Act Further Amending Certain Sections of the Associations Law, Title 5, As Amended of the Liber Code of Laws Revised, §14.3.4 (b) (June 19, 2002).

framework for the rescue of businesses and natural persons under financial distress.⁴ The rescue culture, though mentioned in other Acts, is not common to the Liberian marketplace. The common trend in the Liberian market is that businesses windup, go bankrupt, without expectation of recovery. Therefore, the introduction of LIRA is significant. LIRA attempts to grow a '*Business Rescue*' culture that brings hope particularly to micro, small and medium enterprises (MSME) that are often cash-strapped and more vulnerable to insolvency.

This Act, and the Collateral Registry which encourages lending against movable assets creates the mechanisms for an efficient credit system, improves access to credit and sustains entities. Together, there is improvement in debt recovery for creditors and more opportunities to transform the economic health of MSMEs which translates into saving jobs and advancing the general wellbeing of businesses in a challenging business environment.

Prior to enactment of the LIRA, no comprehensive legal, regulatory and institutional framework existed to resolve insolvency, and to support lending against movables assets. The World Bank's 2017 Doing Business Report, ranked Liberia 174 among 190 countries as a place to do business.⁵ Liberia also scored poorly on two Doing Business indicators that measure how courts resolve commercial and insolvency matters, which serve as proxies for debt recovery.⁶ However, with the passage of LIRA Liberia saw improvements in the Resolving Insolvency indicator due to the reforms prescribed in the new law. As of the 2018 Doing Business Report, while overall Liberia remained 172 among 190 countries for doing business, relative to the Resolving Insolvency indicator, Liberia jumped from 168 in 2017 to 106 in 2018.⁷

Liberia improved approximately 31.25% as it relates to Resolving Insolvency with the passage of LIRA.⁸ Yet, LIRA is not operational. Therefore, the Commercial Court continues to work closely with the World Bank Group in its final stages of implementing a three-component project to: 1. Operationalize LIRA with supporting implementing regulations, 2. Develop a court-annexed Commercial Mediation framework and 3. Develop an Electronic Case Management System to improve the Court's overall operation.

Efforts are ongoing to educate lending institutions and court users on the reforms being implemented to improve the overall credit infrastructure in Liberia. The Commercial Court continues to receive positive feedback from Commercial Banks, evidenced by noticeable improvements to resolve commercial disputes in a fast and predictable manner. With emphasis on Mediation, the Central Bank of Liberia and the Commercial Banks are hopeful that this measure will enhance confidence in lending because there's an effective alternative for recovery of non-performing loans. Banks are able to work with debtors to restructure debt and work towards viable solutions.

⁴ See Insolvency and Restructure Act, §8.3 (2017).

⁵ The World Bank, 2017 Doing Business Report, 14th ed. (2016)

⁶ See *id.*

⁷ The World Bank, 2018 Doing Business Report, 15th ed. (2017)

⁸ *Id.* at 174

Despite efforts to advance the credit lending space, Liberia still faces challenges in its policy and regulatory framework. While LIRA was formally passed into law in January 2017, certain provisions are incomplete, thus stalling full implementation of the law. The Commercial Court recognizes the potential positive impact of these reforms on Liberia's lending environment and encourages relevant stakeholders to push for completion of the much-needed regulations governing the administration of insolvency.

The efforts to raise awareness among relevant court users continues to increase confidence among lending institutions that the Commercial Court is equipped to address issues surrounding Liberia's credit infrastructure.