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The first INSOL Africa Roundtable on insolvency reform was convened on September 30 in Abuja, Nigeria. This one-day event was jointly organized by INSOL International and the World Bank Group, with support from International Monetary Fund, bringing together insolvency experts from a number of African countries (Ghana, Kenya, Nigeria, South Africa, Uganda and Zambia). In addition, the Senior Advisor on insolvency reform in the 17 West African OHADA countries was also present.

The Roundtable was established earlier this year at a meeting organized by INSOL in Dubai. The objectives of the Abuja Roundtable were three fold: to have a high level dialogue with both private practitioners and public policy makers regarding insolvency reform in Africa, thereby encouraging reform experiences to be shared and challenges to be discussed in an open and frank forum; to elevate insolvency reform on the African policy agenda; and finally , to encourage insolvency policy makers and professionals to establish an annual forum to stimulate discourse and learning across the region.

Throughout the day, several prevalent themes arose across all countries. The problem of overburdened courts was common, and there were numerous discussions regarding how to alleviate this pressure and encourage specialized insolvency judges. Justice Alastair Norris of the Royal Courts of Justice shared the experience of UK courts in resolving insolvencies in an efficient and speedy manner. There was also extensive discussion about the need to strengthen political will across the continent to implement insolvency reform and improve understanding regarding the correlation between robust insolvency regimes and economic growth. Having uniform, coherent laws was felt to be an important element in this process. There was also consensus that the lack of “barriers of entry” and quality control for insolvency practitioners was a common problem, and that minimum qualifications along with better regulation and oversight were required. The context of these issues is provided in more detail below.

The peer-to-peer session was an integral part of the Roundtable, and provided a channel for participants to discuss the successes of their insolvency regimes or the areas where reform is still required. For instance, many francophone countries in West Africa currently face similar challenges, such as the large informal sector that makes the identification of debtors problematic; the large gap between having effective laws in place and effective implementation on the ground; and the inconsistent interpretation of laws by judges which can excessively prolong the process.

Other participants echoed many of these problems, particularly the need for more efficient courts. Nigeria has introduced two bills in order to help alleviate the pressure on inundated courts: the ADR Regulatory Commission Bill and the Financial Ombudsman Bill. Participants also discussed the success of specialized commercial courts in Zambia, and the fact that arbitration and mediation are also strongly encouraged as alternative dispute resolution mechanisms to ease the case-load of Zambian courts. A two pronged strategy for improving overall courts’ effectiveness was suggested. First, more cases should be moved outside of the formal framework, with greater reliance on out-of-court workouts and prepacks. Secondly, private practitioners should support courts’ requests for more resources, rather than undermining them, which is essential to give momentum to insolvency reform.

There was extensive discussion on attempts to promote restructuring across the region. In Ghana, for instance, the new corporate insolvency bill includes provisions on reorganization, creditor committees and making liquidators more accountable to creditors. Folakemi Fatogbe, the director of risk management of the Central Bank of Nigeria, explained how the Asset Management Company of Nigeria (AMCON) was established to
recapitalize and restructure struggling Nigerian banks and reduce their non-performing loans. Sumant Batra, the INSOL President, complemented this discussion by giving an informative presentation on India’s sound out-of-court mechanisms and Corporate Debt Restructuring (CDR) framework, which have been useful in restructuring loans and allowing assets to be brought back to the economy in a more productive way.

Participants all emphasized the lack of political will as being an enormous impediment to insolvency reform in the region. More capacity building with the regulator is required and everyone agreed with the assessment that without good insolvency laws, investment will ultimately suffer. Moreover, coherent and responsive laws, which can accommodate choices, play a vital role in capacity building. Laws should be uniform and procedural rules should be in a single set of insolvency rules.

Mahesh Uttamchandani shared the results of a World Bank Group survey of insolvency systems in the region. The key lessons learned in implementing insolvency reform in emerging markets include the fact that insolvency regimes do not operate in isolation but are connected to a plethora of other laws; that even if, on a national level, countries are not considered to be effective reformers, innovative and effective techniques might be implemented on a state-level that can be learned from; that institutions are key for effectively implementing the law; and finally, that outcomes matter more than the formal “packaging” of the law, for instance, whether it is civil or common law.

Adam Harris of Bowman Gilfillan, South Africa and Ian Small of Begbies Traynor, East Africa moderated discussions on the role of insolvency practitioners, including whether their role is to maximize creditors’ recoveries or enhance the overall effectiveness of the system. The regulation of insolvency practitioners is essential, and given that insolvency practitioners have a public interest role, in being officers of the court, some participants suggested they owe a broader duty to society as a whole, not just creditors. Minimum standards and professional qualifications are therefore essential for a properly regulated environment. Others emphasized creditors’ culpability in failing to act promptly and through the right channels as undermining the regulatory regime.

The participants agreed that the first Africa Roundtable was a huge success and led to an important sharing of ideas and experiences. They all hoped that it could become an annual event, which could be expanded with more countries being involved. Several participants offered to host the next Africa Roundtable, and there was discussion of having more specialized meetings, such as with African regulators, as well as creating an online chat forum to keep abreast of regional developments. The organising committee of the Abuja Roundtable comprising of Seyi Akinwunmi, Akinwunmi & Busari, Nigeria; Adam Harris, Bowman Gilfillan, South Africa; Jacob Saah, Saah & Company, Ghana; Ian Small, Begbies Traynor, East Africa and Bemanya Twebaze, Ministry of Justice & Constitutional Affairs, Uganda worked hard over a number of months in making the Roundtable a success. They were supported by Penny Robertson from INSOL office and Antonia Menezes from the World Bank.

Finally, all participants reiterated the need for international organizations to assist with capacity building and continue promoting dialogue across Africa. Stay tuned for information on the next Africa Roundtable 2011.