INSOL International Africa Round Table on Insolvency Reform
Abuja, Nigeria

Report by Antonia Menezes (Insolvency Specialist, Investment Climate Department, World Bank Group)

Background

The first INSOL Africa Round Table 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 Round Table was established earlier this year at a meeting organized by INSOL in Dubai. The objectives of the Abuja Round Table 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.

Summary of identified problems in 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 Alistair Norris of London Court 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 about 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.

World Bank Restructuring & Insolvency Survey

Prior to the Round Table, similar problems had been identified in a Restructuring & Insolvency (R&I) World Bank survey (2010), where 12 countries from the Sub-Saharan African region reported on the sophistication of their insolvency regimes. These survey results were shared and discussed with the Round Table attendees. An example of the data is set out below, illustrating how the surveyed countries aggregately scored on eight, equally weighted elements considered best practices for effectively functioning insolvency regimes. These elements are whether:

- the insolvency law is contained in a single/comprehensive piece of legislation;
- expedited bankruptcy procedures, such as pre-packs or reorganizations exist;
- there is an official framework for out-of-court debt negotiations;
- it is possible to easily convert informal procedures into formal ones;
- the insolvency law applies to unincorporated entities, such as sole proprietorships;
• there is a regulatory body for insolvency practitioners;
• the law provides the regulatory body with monitoring, oversight and disciplinary powers over insolvency practitioners; and
• the law imposes deadlines for the duration of the different stages of insolvency cases.

Example of countries aggregate scores for eight elements of an effective insolvency regime

As seen above, three countries: Kenya, Malawi and Zambia did not have any of the eight elements present in their insolvency regimes, with the more robust insolvency regimes being found in some of the West Africa countries, Botswana, Rwanda and Mauritius. No countries had all eight elements present in regulating their insolvency regimes. Additional information is reported below. For further survey data, please contact Leonardo Lemes of the Investment Climate Department.

Example of countries’ survey responses relating to core elements of insolvency regimes

<table>
<thead>
<tr>
<th>Country</th>
<th>Unified law</th>
<th>Expedited procedures</th>
<th>Sole Proprietorships</th>
<th>Licensing</th>
<th>Ethical rules</th>
</tr>
</thead>
<tbody>
<tr>
<td>Botswana</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Burkina Faso</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Ghana</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Kenya</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Malawi</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Mali</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Mauritius</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Nigeria</td>
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<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Rwanda</td>
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<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Senegal</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>South Africa</td>
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<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Zambia</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Source: R&I Database – SSA Surveys
Sessions held throughout the day

The peer-to-peer session was an integral part of the Round Table, 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 Alternative Dispute Resolution (ADR) Regulatory Commission Bill encouraging the use of ADR in resolving disputes and the Financial Ombudsman Bill, which provides for the settlement of financial services disputes in the banking sector. Participants also discussed the success of specialized commercial courts in Zambia, and the fact that ADR is also strongly encouraged to ease the case-load of Zambian courts by providing a private forum for parties to resolve commercial disputes. 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 (whereby a buyer is lined up to buy a struggling business before it goes into administration). 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) has been established to recapitalize and restructure nine struggling Nigerian banks and help reduce their non-performing loans to 5%. AMCON is expected to buy US$10 billion of bad debt, thereby providing more liquidity to banks and encouraging the recovery of Nigeria’s financial system. 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.

The World Bank team shared some of the key lessons learned in implementing insolvency reform in emerging markets. These 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.
Senior experts from South Africa and Kenya 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 R&I survey results also illustrate that the regulation of insolvency practitioners is problematic in Sub-Saharan Africa. Only three countries: Mauritius, Rwanda and Senegal have a regulatory body that oversees insolvency practitioners and requires them to be licensed. None of the surveyed countries required insolvency practitioners to take an exam in insolvency law and practice prior to being licensed.

Conclusion

The participants agreed that the first Africa Round Table 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 Round Table with a consensus that it should be in Cape Town for ease of travel. There was also 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. Finally, all participants reiterated the need for international organizations to assist with capacity building and continue promoting dialogue across Africa.

For more information on the next Africa Round Table 2011, please contact Penny Robertson, INSOL International, 6-7 Queen Street, London EC4N 1SP. Tel: +44 (0)207 248 3333. Fax: +44 (0)207 248 3384. E: pennyr@insol.ision.co.uk