

**LEGAL ANALYSIS OF CREDITORS STANDING AND THEIR
PROTECTION UNDER RWANDAN AND CHADIAN LAW**

By

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A thesis submitted in partial fulfilment of the academic requirements for the
award of the Master degree of Law (LLM) in International Economics and
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ABSTRACT

This thesis declares about an analysis of legal standing of creditors and protection under Rwanda and Chadian law.

This research examine critically the rights and protections of creditors afforded under Rwanda and Chadian legislation in order to contribute for the growth of economics.

Understanding the legal standing and protections for creditors is of paramount importance in the realm of finance and business. Creditors, who lend money or extend credit to individuals or entities, need to be aware of their rights and the legal mechanisms available to protect their interests.

Indeed, when one looks at all Rwanda and Chadian laws regulating such legal arena, they do offer several options as forms of protection to secured creditors, nonetheless the most among the options offered remains sell of the mortgage or pledge of which this does not guarantee protection to a secured creditor utmost.

Key words: standing creditors rights, creditor's protections, secured, unsecured.

DECLARATION:

I, **HABITO Abdallah**, solemnly declare that this thesis of **Legal analysis of creditors standing and their protection under Rwandan and Chadian law** is my original work, conducted under the guidance of my academic advisor, and in fulfilment of the requirements the award of the Master degree of Law (LLM) in International Economics and Business Law at Kigali Independent University.

Throughout this research, I have followed the principles of academic integrity and have duly acknowledged all sources of information used in this study. Any external information, data, or ideas borrowed from other authors are properly cited and referenced following the prescribed citation style.

I further assert that this thesis has not been previously submitted, in whole or in part, to any other university or educational institution for any academic award. Additionally, I confirm that the work of others, which I may have cited and referred to, has been duly acknowledged and credited in the bibliography.

The opinions and findings presented in this thesis are solely my own and do not represent the views of my university or any other organization or individual.

I understand the consequences of academic dishonesty and plagiarism and hereby affirm that the content of this thesis is entirely original, except for the duly cited and referenced materials.

HABITO Abdallah

Signature:

Date:

APPROVAL

I hereby certify that I have supervised and hereby recommend for the acceptance the thesis entitled: **Legal analysis of creditors standing and their protection under Rwandan and Chadian law** in partial fulfilment of the requirements for the award of a Master's Degree in International Economic and Business Law. This project is submitted with my authority as the University supervisor.

Supervisor name: Dr. SHEMA Pierre

Signature:

Date:

DEDICATION

To my beloved parents, you have been my unwavering pillars of support and inspiration throughout this academic journey. Your love, encouragement, and sacrifices have enabled me to pursue my dreams and reach this significant milestone. Your belief in me, even during times of self-doubt, has pushed me to persevere and strive for excellence.

This thesis is dedicated to both of you for your wisdom, guidance, and values have shaped me into the person I am today. I am eternally grateful for the countless sacrifices you have made to provide me with the best possible opportunities in life.

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ABBREVIATIONS AND ACRONYMS

ART:	Article
BPR:	Banque Populaire du Rwanda LTD
BRD:	Development Bank of Rwanda
CHC:	Commercial High Court (Rwandan jurisdiction)
FRW:	Francs of Rwanda
FRW	Rwandan Francs
GTBR:	Guaranty Trust Bank Rwanda
GC:	General Collateral
HC:	High Court (Rwandan jurisdiction)
NBR:	National bank of Rwanda
No:	Number.
O.G:	Official Gazette
p.:	Page.
Para:	Paragraph
RDB:	Rwanda Development Board
SC:	Supreme Court (Rwandan jurisdiction)
TC:	Commercial court (Rwandan jurisdiction)
UCC:	Uniform Commercial Code
ULK:	Kigali Independent University

Table of Contents

ABSTRACT	i
DECLARATION:	ii
APPROVAL	iii
DEDICATION	iv
ACKNOWLEDGEMENTS	v
ABBREVIATIONS AND ACRONYMS	vi
CHAPTER ONE. GENERAL INTRODUCTION	1
I.1. Background of the study	1
I.2. Significant of the study	4
1. Problem statement	6
2. Research questions	7
3.1 General Objective	8
3.2 Specific objectives	8
4. Methodology	8
5. Research Techniques	8
6. Research Method	9
7. Exegetic Method	9
8. Scope of the study	9
9. Structure of the study	9
CHAPTER TWO CONCEPTUAL AND THEORETICAL FRAMEWORK	11
II.1 Creditor	11
II.2 Secured creditor	12
II.3 Security transaction	13
II.4 Unsecured creditor	14
II.5 Creditor protection	14
II.6 Debtor	16

- II.7 Collateral 16
- II.8 Fraud..... 19
- II.9 Security agreement 23
- II.10 Insolvency 25
- II.11 Security Interest..... 26
- CHAPTER THREE. THE LEGAL RIGHTS AND PROTECTIONS AFFORDED TO CREDITORS UNDER LAWS AND REGULATIONS IN RWANDA AND IN CHAD AND PROTECTIONS AFFORDED TO CREDITORS FOR SECURED AND UNSECURED DEBT 29**
- III.1 The legal rights and protections afforded to creditors under laws and regulations in Rwanda and in Chad 29**
- III.1.1 Creditor right to payment of debt 30**
- III.1.2 Creditors rights to access to information 31**
- III. 1.3 Creditors rights to enforce security interests 32**
- III. 1.4 Right to participate in insolvency proceedings 34**
- III. 1.5 Forced sell of a collateral 35**
- III. 1.6 Right to sell the security..... 38**
- III. 1.7 Right to sell collateral 39**
- III. 1.8 Creditors Rights to redeem the collateral 41**
- III. 1.9 Creditors preferential rights 43**
- III.1.10 Creditors rights in Bankruptcy..... 44**
- III.2 The legal rights and protections afforded to creditors for secured and unsecured debt..... 46**
- III.2.1 Legal rights and protections afforded for creditors in secured debt under Rwanda laws..... 47**
- III.2.2.2 The ability to seize and sell collateral to recover debts..... 48**
- III.2.2.3 Creditor rights to take action to enforce claim..... 51**
- III.2.2.4 Priority rights in the collateral..... 54**

III.2.5 Legal rights and protection afforded for creditor in unsecured debt under Rwanda and Chadian laws.....	56
III.2.3.1 The ability to initiate legal action to collect unsecured debts.....	57
III.2.3.2 Unsecured creditors participation in bankruptcy proceedings	59
III.2.3.4 The potential for obtaining garnishment	61
CHAPTER FOUR. CHALLENGES FACED BY CREDITORS ATTEMPTING TO COLLECT DEBTS AND IMPROVEMENT TO BETTER PROTECT FOR THE INTEREST	64
IV.1 Challenges in non-payment or Delays	64
IV.2 Lack of Communication.....	66
IV.3 Limitation of creditors rights in Bankruptcy or insolvency	67
IV.4 Insolvency law challenge in creditor’s protection	68
IV.5 Fraud in debts collection.....	71
IV.6 Intentional and unintentional misleading creditors	72
IV.2 IMPROVEMENT TO BETTER PROTECT FOR THE INTEREST	74
IV.2.1 Improvement to better protect creditor interest in insolvency law	75
IV.2.2 Loan Contract Enforcement.....	77
CHAPTER FIVE GENERAL CONCLUSION AND RECOMMANDATIO	79
V.1 GENERAL CONCLUSION.....	79
V.4. Recommendations	82
BIBLIOGRAPHY	85
i. Rwanda legal text.....	85
iii. Foreign legal text.....	86
iv. Books	87
v. Cases law	88
vi. Articles and journals.....	89
vii. Reports.....	89
viii. Internet sources.....	90

CHAPTER ONE. GENERAL INTRODUCTION

This part comprises the background of the study to announce significant of the creditor protection under Rwanda law and Chadian law and problem statement, research questions and hypothesis. It thereafter provides for the objectives of the study, scope of the study, research methodology and structures.

I.1. Background of the study

This background note aims to enumerate the discussions on the appearance of the creditor's law and its evolution. By definition of creditor's law refers to the body of law governing the rights and obligations of creditors and debtors in a commercial context. It encompasses a range of legal principles and rules that aim to protect the interests of creditors, who are individuals or entities that lend money or extend credit to others, and to ensure that debtors fulfil their obligations to repay their debts.

During the 19th and 20th centuries, creditor rights became increasingly important in the context of industrialization and modern business practices. Laws and regulations were enacted to ensure that creditors had legal standing and protection in the event of a debtor's default or bankruptcy. ¹For example, in the United States, the Bankruptcy Act of 1898 established a federal bankruptcy court system and provided a framework for debtors to discharge their debts and for creditors to recover their claims.

The foundation of creditor's law can be traced back to ancient civilizations, where systems were developed to regulate the lending and borrowing of money. In medieval Europe, various legal codes were established to regulate credit transactions and protect creditors' interests, such as the Lex Mercatoria or "Law Merchant." In the modern era, creditor's law has evolved in

¹ United States, the Bankruptcy Act of 1898 established a federal bankruptcy court system and provided a framework for debtors to discharge their debts and for creditors to recover their claims.

response to changing economic conditions and commercial practices. Today, it encompasses a range of legal principles and rules, including contract law, bankruptcy law, and secured transactions law, among others. These laws provide a framework for the enforcement of credit agreements and the resolution of disputes between creditors and debtors.

The Plurality of Creditors, "If a creditor is alone in the field, there is no need for regulations to protect the claimant from himself. Therefore a plurality of creditors, actual or potential is at the bottom of every bankruptcy process". To this day, some systems require more than one creditor to institute bankruptcy proceedings, although a potential plurality is generally considered sufficient.' Modern bankruptcy law has been formed from several distinct historical strands. In ancient Roman law, an unpaid judgment creditor could have the debtor's estate sequestered (*missio in bona*) and sold for the benefit of all creditors (*vendition bonorum*). Proceedings of this type caused a loss of civil rights.² To alleviate this hardship a debtor was given the privilege of relinquishing voluntarily his assets to his creditors by petitioning a magistrate (*session*). During the Middle Ages, both institutions underwent a revival and development. The medieval Italian cities enacted statutes dealing with the collection and distribution of the assets of debtors, especially merchants, who had absconded or fraudulently caused insolvency. Such bankrupts (*trumpeters and fall*) were subjected to severe penalties, and their estates were liquidated.

Laws dealing with the property of absconding and fraudulent debtors, modelled after the statutes of the medieval Italian cities, spread throughout Western Europe. Provisions of this type were adopted in the commercial canters of France, Brabant, and Flanders during the 15th and 16th centuries. The customs of Antwerp, printed in 1582, contained comprehensive rules

² Emmanuel S. Heller Professor of Law, University of California, Berkeley. Professor of Law, Hastings College of the Law, San Francisco. Author of *Creditors' Remedies and Debtors' Protection*. Last visit: 5/5/2023

on the treatment of bankrupts and their estates. The emperor Charles V, as Count of Flanders, inserted stringent provisions for the repression of bankruptcies in his Decree for the Administration of Justice and Good Order of 1531. There can be no doubt that the first English “act against such persons as doo make Bankrupt,” passed in 1542/43, was inspired by the northern European models, as the title reproduces the Flemish expression. It governed proceedings instituted against absconding or concealed debtors. It was replaced by a more detailed act of 1571 that applied only to merchants and other traders. Voluntary proceedings were not provided in England until 1844 and not in the United States until 1841. In France, national rules on insolvency and bankruptcy were inserted into the Ordonnance du Commerce of 1673. It regulated both voluntary assignments for the benefit of creditors made by merchants (Title X) and the proceedings and effects flowing from bankruptcy (Title XI). It was interpreted to restrict bankruptcy proceedings to merchants only, and the laws of many other countries followed the French lead. Thus, in Spain, the limitation of bankruptcy to merchants was adopted by the Ordinances of Bilbao, which were sanctioned in 1737 and subsequently applied in Latin America, especially Argentina.

The ultimate goal in integrating different concepts of creditor protection is to arrive at a system for efficient creditor protection.³ An investor protection regime based on such a system would consist of a set of well-adapted legal institutions or mechanisms each comprising a sub-set of rules that, as a whole, would ensure the required level of creditor protection, but would not accord overprotection. However, until now, such a system is not to be found anywhere.

³ For a description of the pertinent rules of the Directive s. P.O. Mülbert and M. Birke, 'Legal Capital – Is There a Case against the European Legal Capital', 3 EBOR (European Business Organization Law Review) (2002) p. 695 at p. 700 et seq. Last visit: 5/5/2023

In general way many countries have enacted legal reforms to faster economic growth among those countries, Rwanda has also adopted laws and regulation on creditor's protection. So far it is better to bring up the significant of the creditors protection under Rwanda law.

I.2. Significant of the study

Attracting loans and investment requires that repayment risks be reasonable and manageable. Systems of credit protection, resolution, and enforcement will underpin and uphold those expectations in the commercial relationship. ⁴Collateral is increasingly significant and quite varied in today's markets. With competitive pressures on domestic and international businesses, those businesses must tap latent asset values to secure financing and capital so they can grow their business. Modern security laws take advantage of current developments in access to security in all of its various forms and shapes. Collateral without reliable enforcement, however, affords little genuine protection. Consequently, the full dimension of broad security must be complemented by effective and efficient enforcement processes.

Rwanda has undergone significant legal reforms in recent years to improve the protection of creditor rights and promote economic growth. ⁵Prior to these reforms, the legal framework for creditor rights in Rwanda before was not well developed, and creditors often faced challenges in recovering their debts. ⁶While creditor protection is essential for the development of private credit markets, providing lenders with control rights might have adverse effects, such as too little risk taking or a creditor-induced 'liquidation bias'. Moreover, different rules of creditor

⁴ Financial Sector Assessment A Handbook, Chapter 9 Assessing the Legal Infrastructure Last visit: 5/15/23

⁵ Law No. 03/2009 of 27/03/2009 relating to security interests over movable property and claims: This is the primary law governing creditor protection in Rwanda. It provides a legal framework for the creation, registration, and enforcement of security interests over movable property and claims. visit: 4/25/23

⁶ Creditor Rights, Implicit Covenants, and the Quality of Accounting Information Posted 17 February 2022 visit: 4/25/23

protection, such as access to collateral or the degree of creditor control over bankruptcy procedures, may vary in their effect on creditors and debtors.

Consequently, in the majority of legal systems, various forms of creditor protection exist, encompassing the origin and extent of incentives and remedies, which are implemented through two primary mechanisms: legal regulations and contractual agreements with creditors. Thus, the Rwandan legal system also follows a similar path to safeguard secured creditors. In cases where debtors, whether individuals or legal entities, fail to fulfil their financial obligations, secured creditors are equipped with several remedies to aid in debt collection from these debtors. Some of these remedies may involve court proceedings, while others may not. For instance, outside of the court's involvement, secured creditors may initially attempt direct communication with debtors to recover the owed amount.

While this situation is not inherently problematic, it does contribute to the process becoming lengthy and tiresome. On other side, a creditor in Rwanda is afforded the protection during the recovery phase if the mortgage contract includes a specific clause granting the creditor the right to sell, possess, manage, or lease the property in question. In the absence of such a clause in their agreement, the defaulting party might contest the creditor's exercise of these rights following the default. Those rights enable parties to rely on contractual agreements, thus fostering confidence that fuels investment, lending, and commerce.

The Chadian Commercial Code provides provisions for secured transactions, allowing creditors to take security interests in a debtor's assets as collateral for a debt. This includes movable assets, such as inventory and equipment, as well as immovable assets, such as real estate. Creditors' rights are often established through contracts. The Chadian legal system recognizes the validity and enforceability of contracts, including lending agreements, and provides remedies for breach of contract.

Conversely, uncertainty about the enforceability of contractual rights increases the cost of credit to compensate for the increased risk of non-performance, and in severe cases, uncertainty leads to credit tightening. It could be reasonably asserted that creditors rights under Chadian Law are protected since they have the security to fall back too upon default, to possess, sell or rent. However Chadian legislations did not drafted a national law regarding protection of creditors, therefore they have implemented OHADA law to provide protection for creditors. But indeed, these remedies shall fall short once there is involvement of fraud.

1. Problem statement

Under Rwandan legislation, secured creditors has certain protections in the event of a debtor's default, which can be employed during the recovery process. These protections and standings are outlined in various statutes. Nonetheless, within this specific research thesis, the primary focus will be to understand the standing of creditors under Rwanda law and regulation also what are the mechanisms that provide efficient, transparent, and reliable methods for recovering debt, including seizure and sale of immovable and movable assets, as well as sale or collection of intangible assets such as debt owed to the debtor by third parties. Focusing on legal mechanism that, the Rwandan Parliament has enacted several laws including that ⁷governs creditor protection the Law No. 03/2009 of 27/03/2009 relating to security interests over movable property and claims (the "Security Interests Law"), thereby strengthening its secured transactions regime by permitting a wider range of debts and obligations, including intangible property such as receivables, to be secured via the use of a collateral agreement. There is also the⁸ law N° 075/2021 OF 06/12/2021 relating to insolvency which is afforded to

⁷ Law No. 03/2009 of 27/03/2009 relating to security interests over movable property and claims (the "Security Interests Law"), which was reviewed by the law 34/2013 on Security Interests in Moveable Property

⁸ law N° 075/2021 OF 06/12/2021 relating to insolvency

the need of protection of creditors however the challenges persist in debts recovery. Point on this step the need for protecting and legal standing of creditors are highly solicited in Rwanda usually creditor's right of protection is based on what they can do and get back their money from the debtors. In Rwanda, consumer protection laws, mortgage law security interest law, insolvency law and regulations sometimes limit the actions of creditors when they want to take to collect debts from individuals.

However, it reasonable and findings that the Rwandan legal system should be structure in any way that creditors have the ability not to depend on the information given by debtors since they can always act in ways favouring their interest and what exactly issues that creditors face when they try to attempt to recover their in debt default is there any standing and protection afforded to provide mechanism available.

However the core issue is that; even when secured creditors have the legal standing and protection vested in them by the security agreement, the issue remains that the mortgage or pledge remains in the possession and ownership of the debtor, who in turn is bestowed with rights to inform the secured creditor about any changes that might affect the security.

2. Research questions

It follows from the foregoing that the proposed research questions are as follows:

- 1. What are the legal rights and protections afforded to creditors under laws and regulations in Rwanda and Chad?**
- 2. How do the legal rights and protections afforded to creditors vary across different types of debt secured and unsecured debt?**
- 3. What are the common challenges faced by creditors when attempting to collect debts, and how can legal frameworks be improved to better protect their interests?**

3. Objective of the study

This study is subdivided in general objectives and specific objectives.

3.1 General Objective

In this thesis, the purpose of the study is primarily to learn and understand the legal standing of creditors and their protection under both domestic law Rwanda and Chadian law.

3.2 Specific objectives

The research aims to:

- Examine and analyse the legal standing of creditors and their protection under Rwanda and Chadian laws.
- Explore how does protection afforded to creditors across different types of debt and the common challenges faced by creditors when attempting to collect debts, and how legal frameworks can be improved to better protect creditor's interests.
- Understand the legal mechanisms of protection for creditors that face challenges in debts recovery and in insolvent procedure within the existing legal frameworks.

4. Methodology

To make this thesis researchable and address the legal questions proposed in the problem statement it is important to enumerate the tools that will be used to conduct this study. As the study is literature based, it will employ the qualitative research design. Materials such as books, journal articles, reports, soft law instruments, institutional rules, papers presented on the subject and online sources will, therefore, be identified and reviewed

5. Research Techniques

As far as research techniques are concerned, in order to collect data about the subject, this study was carried out by using the documentary technique which helped the researcher to read various related, domestic laws, international instruments, case laws, library books, online books, journal articles, and any other useful materials as well as from electronic sources. It provide a standardized approach to data collection and analysis, which helps to ensure that the results are consistent and can be compared across different studies and to minimize bias and subjectivity in this research process, ensuring that the results are objective and reliable.

6. Research Method

The analytical method was used to analyse legal framework, mechanism, procedures, laws, cases law in order to select what is necessary by gathering information to make this dissertation relevant.

7. Exegetic Method

By its definition, an exegetic method is a hermeneutical approach used to interpret and understand biblical texts. In this context of a research study was used a thorough analysis and interpretation of the text, and the various law materials and taking into consideration the context in which it was written, the language used the historical and cultural background and other relevant factors. The term "exegetical" comes from the Greek word "exegesis," which means "explanation" or "interpretation."

8. Scope of the study

This study included an examination of domestic legislation in particularly commercial law and other legal international instruments pertaining on foreign legislation to make this study well prepared.

9. Structure of the study

Before going into details of the study, it is important to clarify the subdivision of the work which was done in chapters. beside **chapter One** was with general introduction which enumerates the background of creditor protection during ancient time, problem statement, research questions, objectives of the study, scope of study, research methodology, research methods, structure of the study, the **chapter two** was consisted on conceptual and theoretical framework , **chapter three** was with the legal rights and protections afforded to creditors under current laws and regulations in Rwanda and in Chad, and the legal rights and protections afforded to creditors vary across different types of debt: secured vs. unsecured debt **chapter four** highlighted the common challenges faced by creditors when attempting to collect debts and need for improvement to protect better creditor's interest, then **chapter five** elaborated the end of the study with general conclusion and recommendation.

CHAPTER TWO CONCEPTUAL AND THEORETICAL FRAMEWORK

For the purpose of clarity and better understanding, it is pertinent for us to provide the full meaning of some concepts that will be consistently used in this study. The concepts that will be defined and discussed legal framework in this chapter are the complementarity principle, the legislation of State sovereignty and the principle of universal jurisdiction.

In general concept it is better to understand who is a creditors, what kind of protection he/she needs, why is he/she important in commercial transaction context and the framework protecting creditors is critical for the growth of economic?

II.1 Creditor

In general terms, a creditor can be any person, a member company or an entity. The term "creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another⁹ A creditor is generally regarded as an outside source from that of the company. However, a member can also become a creditor, if any money that has lend by the member to the company is due.

Creditor includes secured and unsecured creditor which is determined according to the creation of security by them over the loan. ¹⁰Secured creditor may be regarded as one having created a security over the assets of the company. Whereas, unsecured creditors are those that does not create any security on the assets of the company while granting loans to the company. Secured

⁹Fair Debt Collection Practices Act As amended by Public Law 111-203, title X, 124 Stat. 2092 (2010) Last visit: 6/22/23

¹⁰ Fair Debt Collection Practices Act As amended by Public Law 111-203, title X, 124 Stat. 2092 (2010) Last visit: 6/22/23

creditors enjoy the right to repayment of money prior to that of the unsecured creditor. They have a preferential payment over that of the unsecured creditors. Creditor's rights deal not only with the rights of creditors against the debtor, but also with the rights of creditors against one another. ¹¹Where multiple creditors claim a right to levy against a particular piece of property or against the debtor's accounts in general, the rules governing creditor's rights determine which creditor has the strongest right to any particular relief. In other words, the claim of the creditor should not only be determined on a pari passu basis but should also be determined according to pro-rata basis. The creditor that has granted an amount which is more in value than that of another creditor,¹² then the amount to that creditor shall be repaid according to the percentage of contribution he has made in the company.

II.2 Secured creditor

In definition term, “a secured creditor is a lender or creditor who has a security interest in the property of a borrower as collateral for a loan or debt. In other words, a secured creditor has a legal claim or lien on specific assets or property of the borrower that can be used to satisfy the debt if the borrower defaults on the loan or fails to make payments”.

In bankruptcy, a secured creditor has the right to be paid before any other creditors out of the proceeds of its collateral. Secured creditors have other rights in bankruptcy, including the right to receive post-petition interest, fees, costs, and charges and to receive adequate protection for any decrease in the value of their interest in the collateral resulting from any use, sale, lease, or grant of a lien. Secured creditors, those who have a valid security interest in the collateral, generally have priority over unsecured creditors in recovering their debts. The priority of

¹¹ Fair Debt Collection Practices Act As amended by Public Law 111-203, title X, 124 Stat. 2092 (2010) Last visit: 6/22/2023

¹² Defined under Presidency Towns Act and Provincial Insolvency Act Last visit: 4/25/2023

claims to the collateral can also be affected by the laws of the jurisdiction where the insolvency proceedings are taking place. A secured creditor has less challenges in recovering its debts.

II.3 Security transaction

Under UNCITRAL Legislative Guide on Secured Transactions the key to the effectiveness of secured credit is that it allows businesses to use the value inherent in their assets as a means of reducing the creditor's risk that it will not be paid.¹³ Risk is reduced because credit secured by assets gives creditors access to the assets as another source of recovery in the event of non-payment of the secured obligation. As prospective creditors perceive that this risk is reduced in a proposed credit transaction, they are more likely to be willing to extend credit and to increase the amount or reduce the cost of the credit they provide.¹⁴ A legal system that supports secured transactions is critical to reducing the perceived risks of transactions and promoting the availability of secured credit generally. Secured credit is more readily available to businesses in States that have efficient and effective laws that provide for consistent, predictable outcomes for secured creditors in the event of non-performance by debtors. On the other hand, in States where the absence of such laws means that creditors perceive the risks associated with credit transactions to be high, the cost of credit normally increases, as creditors require increased compensation to evaluate and assume the increased risk.¹⁵ In some States, the absence of an efficient and effective secured transactions regime or of an insolvency law regime, under which security rights are recognized, has resulted in the virtual elimination of credit for small and medium sized commercial enterprises, as well as for consumers.

¹³ Thomas huston law practice, [https://uk.practicallaw.thomsonreuters.com/0-382-3801?transitionType=Default&contextData=\(sc.Default\)2023](https://uk.practicallaw.thomsonreuters.com/0-382-3801?transitionType=Default&contextData=(sc.Default)2023) visited 26/4/2023

¹⁴ Model Law on Secured Transactions, published by the European Bank for Reconstruction and Development in London in 1994

¹⁵ Model Law on Secured Transactions, published by the European Bank for Reconstruction and Development in London in 1994

II.4 Unsecured creditor

Unsecured creditors have second claim to the debtor's assets because they take greater risk than secured lenders.¹⁶ An unsecured creditor is a lender that does not take any security interest in the assets of the debtor, such as through collateral. Hence, when a debtor goes bankrupt, unsecured creditors may obtain only a pro rata distribution of the debtor's assets and an amount in proportion to the size of their debt.

The effect of the application of insolvency rules is that all unsecured creditors must provide proof of their debts and all such debts are to be paid *pari passu*¹⁷. However, it has to be noted that the unsecured creditors, unlike the secured creditors, have to prove their debts before the liquidator and only to the satisfaction of the liquidator can claim their due amount. The *pari passu* rule of the even distribution of the property of a company between unsecured creditors on its winding up applies equally to winding up by the court and voluntary winding up.

II.5 Creditor protection

The need of protection of creditors arises at the time of winding up of a company. This concept is given much importance during winding up in order to protect the interest of the creditors that lends their money to the company. It is the creation of credit that gives rise to the debtor-creditor relationship and makes insolvency possible in the first place.

Creditor protection refers to legal measures designed to protect the interests of creditors and ensure that they are able to recover the debts owed to them by debtors. Creditor protection laws and regulations vary by country and jurisdiction, but they generally aim to provide a fair and efficient process for creditors to collect their debts while also balancing the rights of debtors.

¹⁶ https://www.law.cornell.edu/wex/chapter_7_bankruptcy visited: 6/13/2023

¹⁷ *Pari-passu* is a Latin phrase meaning "equal footing" that describes situations where two or more assets, securities, creditors, or obligations are equally managed without preference.

One common form of creditor protection is the use of security interests or liens. A security interest gives a creditor the right to seize or sell specific assets of the debtor if they fail to repay the debt. For example, a mortgage lender may have a security interest in the borrower's property, which allows them to foreclose on the property if the borrower defaults on the loan. Similarly, a car finance company may have a lien on the vehicle until the loan is paid off.

According to Malcolm Tatum, “Creditor protection is a collective term that is used in two different ways. ¹⁸One common use has to do with the various resources that provide debtors with an equitable amount of protection from creditors in the event that the debtor is unable to pay off an existing obligation according to the terms and conditions related to the transaction. The other application of this term has to do with the protection of creditors, in terms of limiting the loss incurred when a debtor defaults on an outstanding debt. When creditor protection is used to describe laws, procedures, or regulations that are aimed at protecting the debtor from action by the creditor, the term usually refers to prohibitions that keep the creditor from acquiring all the debtor’s financial assets. The idea is to make sure the debtor does retain control of enough income and assets to live what is considered to be a basic standard of living. This prevents the debtor from becoming dependent on the local government for necessities such as food, clothing, and shelter”.

Creditor protection rights have also been shown to be associated with cheaper debt¹⁹. The debt is likely cheaper because it carries less risk for the lender. In contrast, HLLM argue that creditor rights are associated with increased lending risk, since increased creditor protection expands credit access to larger sections of the economy, which can, in turn, spur economic growth. While expanded lending is certainly possible in regimes with enhanced creditor protection, it is counter-intuitive how, in equilibrium, bottom-line bank lending risk would increase,

¹⁸ <https://www.smartcapitalmind.com/what-is-creditor-protection.htm> visited: 5/5/2023

¹⁹ Qian and Strahan, books creditor protection, 2007

especially given the association with cheaper debt. A possible reconciliation of this incongruity can be that the increase in a bank's risk comes from its non-lending activities and has been incorrectly attributed to lending by HLLM.

II.6 Debtor

In economic sector a” debtor is one of the major terms of accounting.²⁰ A debtor is a person or an entity that owes money to another, which could be any individual or institution (including the government).

In most cases, the debtor has to pay interest on debt along with the principal debt. A debtor is commonly known as a borrower, but when a company's debt is in the form of securities, it is called an issuer. The relationship of a debtor is completed with the Creditor, where the Creditor is the entity to whom the debtor owes the money”. For example, 'A' borrows money from the Bank. A is the debtor, and Bank is the Creditor. But, if 'A' deposits money in the Bank, then, A is the Creditor, and Bank is here debtor.

II.7 Collateral

Collateral refers to property or assets that borrowers pledge to lenders as security for a loan. Lenders can take possession of the collateral if the borrower does not repay the loan according to the terms of the agreement.²¹ Collateral is used in various contexts, including loan agreements, legal proceedings, and financial markets. It is an important concept in finance and law, and understanding its various uses and implications is valuable for a wide range of professions and individuals.

²⁰ <https://economictimes.indiatimes.com/definition/debtor> visited: 5/5/2023

²¹ https://www.financestrategists.com/mortgage-broker/collateral/?gclid=Cj0KCQjwu-KiBhCsARIsAPzUF3NRzhGWnwm6k8h6zufsgs96_L1VTrJjizyxqHU32_S5DjEiWzcBoQaAh IEALw_wcB#collateral-in-legal-proceedings visited: 5/5/2023

It also serves as a form of security for the lender, who can seize and sell the collateral if the borrower defaults on the loan.²² Collateral can take many forms, such as real estate, vehicles, stocks, bonds, or other valuable possessions²³. The amount of collateral required may vary depending on the type of loan, the borrower's creditworthiness, and other factors.

The use of collateral allows lenders to take on more risk when lending money, as they have a way to recoup their losses if the borrower is unable to repay the loan. In general, the more collateral a borrower can provide, the more favourable the terms of the loan will be, as it reduces the lender's risk.

For example, if someone wants to take out a loan to buy a car, the lender may require the car to serve as collateral. This means that if the borrower fails to make payments, the lender can repossess the car and sell it to recover the outstanding balance on the loan.

Similarly, when a business applies for a loan, the lender may require the company's assets, such as equipment, inventory, or real estate, to serve as collateral. This provides the lender with a way to recover its losses if the business fails to repay the loan.

In loan agreement, Collateral is used to reduce the lender's risk when making a loan. By pledging an asset as collateral, borrowers give lenders a way to recoup their losses if the borrower fails to repay the loan. This makes it easier for lenders to offer loans to borrowers who may not have strong credit histories or other forms of security.

In financial markets Collateral is used in derivatives trading and other financial transactions to mitigate counterparty credit risk. In these transactions, one party may be required to make a payment to the other party at a later date.

²² Cornell Law School Legal Information Institute. (n.d.). Collateral. Retrieved from <https://www.law.cornell.edu/wex/collateral>

²³ <https://www.investopedia.com/terms/c/collateral.asp> visited: 5/5/2023

Collateral is used as a guarantee that the payment will be made if the party that owes the payment defaults²⁴. The use of collateral helps to reduce the risk of default and ensure that both parties are protected. Collateral plays a key role in reducing credit risk and increasing market efficiency. By requiring parties to provide collateral, financial institutions can reduce the risk of default and ensure that trades are settled in a timely manner.

In legal proceeding collateral is often used in debt collection, bankruptcy, and other legal cases as a way to secure payment. For example, if a borrower defaults on a loan, the lender may be able to seize the collateral to recover their losses.

Similarly, in bankruptcy cases, creditors may be able to seize the collateral to satisfy outstanding debts. Collateral can also play a role in securing judgments or settlements in legal cases. For example, in a personal injury lawsuit, the plaintiff may be awarded damages, but the defendant may not have the funds to pay.

In this case, the plaintiff may be able to secure the judgment by placing a lien on the defendant's property, which serves as collateral.

However, some scholars explained that, in insolvency or bankruptcy proceedings, collateral refers to assets that a borrower has pledged as security for a loan.²⁵ These assets can include real estate, equipment, inventory, accounts receivable, and other valuable items.

In the event of insolvency, the lender can sell or liquidate the collateral to recover some or all of the money owed.²⁶ The priority of the claims to the collateral will depend on the type of security interest that the lender has in the collateral.

²⁴ https://www.financestrategists.com/mortgage-broker/collateral/?gclid=Cj0KCQjwu-KiBhCsARIsAPztUF3NRzhGWNwm6k8h6zufsgs96_L1VTrJjizyxqHU32_S5DjEiWzcBoQaAh IEALw_wcB#collateral-in-legal-proceedings visited: 5/5/2023

²⁵ <https://www.investopedia.com/terms/c/collateral.asp> Last visited: 5/5/2023

²⁶ Cornell Law School Legal Information Institute. (n.d.). Collateral. Retrieved from <https://www.law.cornell.edu/wex/collateral> visited: 6/5/2023

II.8 Fraud

To be able to give a clearer definition of fraud, it is necessary for the concept of the word "fraud" to be examined from several perspectives and jurisdictions.

Under India code, section (17) define "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent,²⁷ with intent to deceive another party thereto or his agent, or to induce him to enter into the contract: the suggestion, as a fact, of that which is not true, by one who does not believe it to be true; the active concealment of a fact by one having knowledge or belief of the fact; a promise made without any intention of performing it; other act fitted to deceive; any such act or omission as the law specially declares to be fraudulent.

Explanation Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

In addition Clause One of article 174 of the law determining offences and penalties in general in Rwanda, defines fraud as deception, obtaining another person's property, whole or part of his/her finance by use of false names or qualifications, or offering positive promises or threats of future misfortunes. One of case example found under²⁸ Rwanda policies report on the case of fraud in Rwanda, where two individuals, Hammed Nkurunziza and Salomon Birikunzira, were arrested for posing as organizers of a young entrepreneurs' conference in Qatar. They contacted victims, introducing themselves under false identities and asking for payment to secure travel documents, promising that the visa and air tickets would be covered by the

²⁷ Cf. s. 238, *infra*.

²⁸ Rwanda policies report on the case of fraud in Rwanda, where two individuals, Hammed Nkurunziza and Salomon Birikunzira, were arrested for posing as organizers of a young entrepreneurs' conference in Qatar.

organizers. One victim, Claudine Uwamahoro, became suspicious and contacted law enforcement, which led to the arrest of the two suspects. Rwanda National Police (RNP) and Rwanda Investigation Bureau case of Hammed Nkurunziza and Salomon Birikunzira on fraud July 2014.

From above said by obtaining another person property by fraudulent so far the under section 7 of Organic-Law-Instituting-the-Penal-Code-Rwanda-2012 of Article 318 which says that ²⁹“any person who, intentionally obtains a property belonging to another person fraudulently or by using false names or qualities, to give rise to hope or fear of harm and obtains a part or whole of a fortune shall be liable to a term of imprisonment of three (3) years to five (5) years and a fine of three million (3,000,000) to five million (5,000,000) Rwandan francs”. In this point we find the word fraud goes from different perspectives.

According to the Turkish dictionary, the word "fraud" means "Goal with a view to gaining an unlawful or unfair advantage; artifice by which the right or interest of another is injured".³⁰ Under another definition, the Turkish encyclopaedia says “fraud is pointing to something when one knows it is false, in order to be accepted as true by someone else”. Meanwhile, according to the Albanian linguistic dictionary, the word fraud means "a ploy, a false vow or promise that someone uses to trick another". According to the Albanian encyclopaedia dictionary, "fraud is the expression of something when one knows that it is false, in order to be accepted as true by the other". Another definition of fraud comes from Derry vs Peek, in which fraud is a false statement of “knowing, without belief in its true or does not care if it’s true or false.

²⁹ Organic-Law-Instituting-the-Penal-Code-Rwanda- of Article 318 which says that “any person who, intentionally obtains a property belonging to another person fraudulently or by using false names or qualities, to give rise to hope or fear of harm and obtains a part or whole of a fortune shall be liable to a term of imprisonment of three (3) years to five (5) years and a fine of three million (3,000,000) to five million (5,000,000) Rwandan francs”.2012

³⁰ Fraud is considered to occur, for example, if a gold-plate copper bracelet is sold as if it was the quality of pure gold, by proclaiming it as a good price.

Fraud is not limited to the criminal context. For example, one can find references to fraud in contract and tort law. In its widest sense, fraud is a term that has never been consistently and exhaustively been defined, and this is not limited to issues of conduct, but also can be seen when the term is used to describe the mens rea. Fraud is a concept that seems to have a perfectly obvious meaning until we try to define it. Fraud is a deep concept, and few use common definitions. Arlidge and Parry (1996) argues that there is a bewildering variety of offences that might be committed in the course of what a layman or a lawyer would describe as a fraud. The difficulty of giving an adequate definition of fraud has been felt at all times. There has always been a great reluctance amongst lawyers to attempt to define fraud, and this is very natural when we consider the number of different kinds of conduct to which this word is applied (Stephen 1883).³¹ All too often fraud is confused with other activities (e.g. theft or espionage). Fraud differs from theft in that the fraud's victim voluntarily parts with his or her property, but does so because she has been deceived by material false representations made by the fraudster (Brenner 2001).

According to Brenner (2001), someone commits fraud if the following four elements are proved beyond a reasonable doubt:

- Actus reus: The perpetrator communicates false statements to the victim;
- Men's rea: The perpetrator communicates what she knows are false statements with the purpose of defrauding the victim;
- Attendant circumstances: The perpetrator's statements are false; and
- Harm: The victim is defrauded out of property or something of value.

³¹ 7th Pacific Asia Conference on Information Systems, 10-13 July 2003, Adelaide, South Australia
Page 974

Intent should not be confused with motive, which is what prompts a person to act.³² Intent refers only to the state of mind with which the act is done. There is no scientific measurement or yardstick for gauging a person's intention, and an inference has to be drawn from all available evidence as to what was in the offender's mind at the material time (Justice Ackner in Goldstein, Dershowitz & Swartz 1974). The element of the intent to defraud connotes the intention to produce a consequence that is in some sense detrimental to a lawful right, interest, opportunity or advantage of the person to be defrauded, and is an intention distinct from and additional to the intention to use the forbidden means (King CJ in Waller and Williams 2001). Fraud is not a crime in itself in certain jurisdictions, however, it is an integral aspect of several criminal statutes. In legal terms, fraud is a generic category of criminal conduct that involves the use of dishonest or deceitful means in order to obtain an unfair advantage or gain over another, in order to secure something of value or deprive another of a right (Smith 2001).

According to Smith (2001, pp. 1-2), in legal terms, fraud is a generic category of criminal conduct that involves the use of dishonest or deceitful means in order to obtain in some unjust advantage or gain over another.³³ In business terms, fraud is sometimes difficult to define as it extends, for example, from conduct as trivial as an employee having an extended lunch break without permission, to large-scale misappropriation of funds by a company accountant involving many millions of dollars. Zervos argues (1992, p. 199) that, in simple terms, fraud is the art of deception for gain. Dishonesty is an essential ingredient. Fraud varies in type, size and complexity. It is encountered in many different contexts. It is very much a creature of its time; it changes as society changes, with all its different attitudes and technological advancements

³² 7th Pacific Asia Conference on Information Systems, 10-13 July 2003, Adelaide, South Australia
Page 975

³³ 7th Pacific Asia Conference on Information Systems, 10-13 July 2003, Adelaide, South Australia
Page 974

II.9 Security agreement

To grow faster an economics, the secured transactions are vital. Nearly all individuals and organizations need to take on debt at some point, but getting creditors on board can be a struggle.³⁴ A security agreement is a legal contract between a borrower and a lender that outlines the terms and conditions of a loan, as well as the collateral that the borrower is required to provide to secure the loan. The purpose of a security agreement is to protect the lender's financial interest in the collateral if the borrower defaults on the loan.

The security agreement typically identifies the collateral that will secure the loan, which can include personal property such as equipment, inventory, and accounts receivable, or real property such as land and buildings. The agreement will also outline the terms of the loan, including the interest rate, payment schedule, and any penalties for late payments.

In addition to outlining the terms of the loan, a security agreement will also include provisions related to the borrower's obligations to maintain and protect the collateral. For example, the borrower may be required to maintain insurance on the collateral and notify the lender of any damage or loss.

If the borrower defaults on the loan, the lender may take possession of the collateral and sell it to recover the outstanding debt. The security agreement will typically include provisions outlining the lender's rights and responsibilities in the event of a default, as well as the borrower's rights and responsibilities if they wish to cure the default and avoid repossession of the collateral.

³⁴ Understanding-The-Terms-Of-Security-Agreements by Cindy J. Chernuchin is special counsel in the Corporate and Financial Services Department of Willkie Farr & Gallagher LLP in New York. She specializes in banking and institutional finance with an emphasis on issues regarding Article 8 and Article 9 of the U.C.C. Ms. Chernuchin represents borrowers, issuers, banks, institutional lenders, hedge funds, and trustees in a wide array of financings, including asset-based lending, high-yield bonds, project financing, acquisition financing, letter-of-credit facilities, debtor-in-possession financing, equipment financing, industrial development bonds, telecom financing, mutual fund financing, and workouts, 2021

A security interest arises when, in exchange for a loan, a borrower agrees in a security agreement that the lender (the secured party) may take specified collateral owned by the borrower if he or she should default on the loan. A security interest also provides the secured party with the assurance that if the debtor bankrupts, he or she may be able to recover the value of the loan by taking possession of specified collateral instead of receiving only a portion of the borrower's property after it is divided among all creditors. See Bankruptcy.

Security agreements are contracts. Article 9 of the Uniform Commercial Code governs security interests in personal property. It has been adopted, with some modifications, by every state. A security agreement must comply with other state laws governing contracts. Article 9 of the Uniform Commercial Code covers most types of security agreements for personal property that are both consensual and commercial³⁵. This includes fixtures, personal property that is "fixed" to real property such as a water heater. Statutory liens (e.g. a mechanic's lien) are generally not governed by Article 9 but by the individual statute that creates them. Article 9 contains a statute of frauds which requires a security agreement to be in writing unless it is pledged.³⁶ A pledged security agreement arises when the borrower transfers the collateral to the lender in exchange for a loan (e.g., a pawnbroker). The "perfection" of a security agreement allows a secured party to gain priority to the collateral over any third party. To perfect a security agreement, the filing of a public notice is usually required.

Article 9 also provides for the resolution of conflicts if there are multiple security interests or liens on specific collateral. Part 5 of Article 9 deals with the procedures to be followed when a borrower defaults.

According to “Cindy J. Chernuchin is special counsel in the Corporate and Financial Services argued that a “security agreement” is an agreement that creates or provides for an interest in

³⁵ Article 9-102(2) and 9-104 of the uniform commercial code

³⁶ Supra 9-203(1) of the code

personal property that secures payment or performance of an obligation.³⁷ As with other exercises in contract drafting there can be a temptation to reach for ready-made language, if not for the sake of relying on a tested model, for the sake of satisfying clients who keep reminding their attorneys not, as they often put it, “to reinvent the wheel.”³⁸ But security agreements don’t really lend themselves to boilerplate. Although quite a few provisions of security agreements fall under familiar headings just like other contracts the security agreements themselves are by necessity as different as every underlying transaction also like other contracts. So the purpose of this article isn’t to set forth off-the-shelf language, but to discuss how each provision fits into the overall picture of the transaction. The examples are for general reference only; as always, the transaction comes first, and the best way to approach the agreement is to make sure that both sides are perfectly clear about the terms of the deal.

II.10 Insolvency

Insolvency is a term for when an individual or company can no longer meet their financial obligations to lender as debts become due.³⁹ Before an insolvent company or person gets involved in insolvency proceedings, they will likely be involved in informal arrangements with creditors, such as setting up alternative payment arrangements. Insolvency can arise from poor cash management, a reduction in cash inflow, or an increase in expenses.

In addition Insolvency is a state of financial distress in which a business or person is unable to pay their bills. It can lead to insolvency proceedings,⁴⁰ in which legal action will be taken against the insolvent person or entity, and assets may be liquidated to pay off outstanding debts.

Business owners may contact creditors directly and restructure debts into more manageable

³⁷ Uniform Commercial Code (§9-102(a)(73); §1-201(b)(35 hereof.)

³⁸ 7th Pacific Asia Conference on Information Systems, 10-13 July 2003, Adelaide, South Australia
Page 973

³⁹ [Insolvencies: Definition, How It Works, and Contributing Factors \(investopedia.com\)](#) visited 7/27/23.

⁴⁰ [insolvency | Wex | US Law | LII / Legal Information Institute \(cornell.edu\)](#) visited 7/27/23.

instalments. Creditors are typically amenable to this approach because they desire repayment, even if the repayment is on a delayed schedule.

If a business owner plans on restructuring the company's debt, they assemble a realistic plan showing how they can reduce company overhead and continue carrying out business operations. The owner creates a proposal detailing how the debt may be restructured using cost reductions or other plans for support. The proposal shows creditors how the business may produce enough cash flow for profitable operations while paying its debts.

However insolvency Law refers to a financial situation where an individual or entity is unable to meet their financial obligations and liabilities. It involves the inability to pay debts as they become due or having liabilities that exceed the value of assets. The insolvency framework in Rwanda provides a legal framework for addressing and resolving insolvency situations.

The Rwandan insolvency framework typically recognizes two main types of insolvency, there is Bankruptcy proceedings apply to individuals, including natural persons engaged in business activities. Bankruptcy involves the distribution of the debtor's assets to creditors in an orderly and fair manner. Secondly Winding-up proceedings apply to legal entities, such as companies or organizations. Winding-up involves the orderly liquidation of the entity's assets to repay creditors.

II.11 Security Interest

A security interest refers to a legal claim or right granted to a creditor over a borrower's property or assets to secure the repayment of a debt or obligation. It is a means for a lender or creditor to protect themselves against the risk of default by the borrower.

A security interest is typically form of property interest in real or collateral interest. ⁴¹ It is given by the owner of the property to provide assurance to a third party that the property owner will perform an obligation or pay a debt. Generally a security interest arises when one party loans money to another party. The borrower provides a security interest in property to give assurance that she will repay the loaned funds. Often the money borrowed is used to purchase the property securing the loan. If the borrower fails to repay the loan, the lender may seek to take possession of and sell the property securing the loan. The proceeds from sale of the property are then used to repay the debt. The security interest is typically created through a legal agreement called a security agreement or a loan agreement, which outlines the terms and conditions of the loan, the rights and obligations of both parties, and details about the collateral. The agreement must comply with applicable laws and may require specific documentation or registration to establish the security interest's validity. Security interest makes secured creditors comfortable as it has security in the mortgages. ⁴²The creditor's ability to seize and sell the collateral securing the debt provides a great deal of security to the creditor. The secured creditor can feel more comfortable that she will be repaid for the loan or extension of credit made to the debtor. An unsecured creditor cannot directly repossess assets of the debtor who fails to repay the loan or extension of credit; rather, they have to sue the debtor and attempt to recuperate their money through the judicial system. Taking a security interest in collateral to secure a debt reduces the risk to the creditor. It dissuades the creditor from defaulting on the loan for fear of losing the collateral. Also, it provides the secured creditor the ability to recuperate some or all of the debt by repossessing and selling the collateral. A security interest in property entails the secured party's right to repossess and foreclose upon the collateral in the

⁴¹ https://thebusinessprofessor.com/en_US/122296-law-transactions-amp-risk-management-commercial-law-contract-payments-security-interests-amp-bankruptcy/security-interest-defined Last visited: 6/8/2023

⁴² What is a Security Interest? Written by Jason Gordon Updated at June 21st, 2023

event of default. Foreclosure is the use of the property to satisfy the outstanding debt. The most common types of security interest are mortgages of land and security interests in personal good

CHAPTER THREE. THE LEGAL RIGHTS AND PROTECTIONS AFFORDED TO CREDITORS UNDER LAWS AND REGULATIONS IN RWANDA AND IN CHAD AND PROTECTIONS AFFORDED TO CREDITORS FOR SECURED AND UNSECURED DEBT

This chapter was focused on the legal rights and protection afforded to creditors by Rwanda and Chadian legal system and protections afforded to creditors for secured and unsecured debt.

The rights and protection of creditors are a crucial core in fostering a healthy economic environment and development of country that makes an attractive investors in a country. The importance of creditors' rights and protection plays a big role in the society for example ensuring fairness, stability, and confidence in financial transactions, Encouraging lending and investment, Promoting contract enforcement. When creditors can rely on the legal system to uphold the terms of their agreements, borrowers are more likely to honour their obligations. This enhances trust and stability in business relationships, enabling efficient financial transactions and fostering long-term economic partnerships.

III.1 The legal rights and protections afforded to creditors under laws and regulations in Rwanda and in Chad

Obviously under Rwanda law, the parliaments have implemented laws and measures to ensure the rights of creditors in order to enhance the trust between creditors and debtors. The legal framework established for creditors rights under Rwanda legal system are those mechanism that provide efficient, transparent, and reliable method for recovering debt.⁴³

A creditor's ability to take possession of a debtor's property and to sell it to satisfy the debt is the simplest, most-effective means of ensuring prompt payment. It is far more effective than

⁴³ Chapter 9: Assessing the Legal Infrastructure for Financial Systems

the threat of an insolvency proceeding, which often requires a level of proof and a prospect of procedural delay that in all but extreme cases make it not credible to debtors as leverage for payment.

There is among others insolvency and bankruptcy law, banking law, company law, contract law and security and interest law they are comprehensive legal framework for secured transactions and creates a system for registering security interests. It governs the creation, perfection, priority, and enforcement of security interests in movable assets, such as inventory, equipment, and accounts receivable. The law introduces the concept of security interests and allows for the creation of various types of security, including pledges, assignments, and retention of title arrangements. Various provisions within Rwanda's commercial laws, such as the Law on Companies, the Law on Contracts, and the Law on Bankruptcy and Insolvency of Financial Institutions, also impact creditor rights in specific contexts. These laws address issues related to commercial transactions, corporate governance, and financial institutions. Therefore there are laws that give creditors standing rights and protection which will be detailed in the following paragraphs. Creditors' rights and protections under the laws and regulations in Chad are primarily governed by the Chadian legal system, which include the Commercial Code, Civil Code, and other relevant statutes.

Creditors in Chad have the right to enter into legally binding contracts with debtors. These contracts specify the terms and conditions of the debt, including repayment terms, interest rates, and collateral. However Chadian legislation did not provide any national mechanism on protection of creditors apart from Regional institutions.

III.1.1 Creditor right to payment of debt

Creditor rights to debt payment generally refer to the legal protections and remedies available to creditors when seeking repayment of debts owed to them and yet when the loan is due, then

the creditor is entitled to receive his/her payment back. Most of time recovery a debt it is based on the consent of the parties where we can find under Rwandan Law this stipulated under Article ⁴⁴64 of the Law of contracts which provides that; ‘*Contracts made in accordance with the law shall be binding between parties. They may only be revoked at the consent of the parties or for reasons based on law. They shall be performed in good faith*’. This is to show that once secured credit or loan is made in accordance with the law, that agreement allows creditors right to repayment. The creditor has right to debt payment once the payment is due and when the consent is bound by the contract between the parties.

Under Chadian contract law, creditors have the right to payment of debts that are legally established through valid contracts. Creditors' rights to payment of debt are based on enforceable contracts. In Chad, a contract is considered legally binding when there is an offer, acceptance, a clear intention to create legal relations, and consideration (something of value exchanged between the parties). Once a contract is established, it creates a legal obligation for the debtor to fulfill the terms of the agreement, including the payment of debts.

However the creditors has rights to payment of debt under contract law when the contract made between them on loan with the consent of the debtor to pursue his/her right to payment of debt.

III.1.2 Creditors rights to access to information

Creditors have certain rights to information in order to protect their interests and make informed decisions regarding their loans or debts. Under law N° 075/2021 of 06/12/2021 Law relating to insolvency,⁴⁵ *Article 6 articulates that Creditors' right to access information during insolvency, every creditor is entitled to request the insolvency practitioner to provide him or her with any information relating to the conduct of the insolvency proceedings.*

⁴⁴ Law n°45/2011 of 25/11/2011 governing contracts (Official Gazette n° 04bis of 23/01/20120

⁴⁵ Law relating to insolvency, Article 6 articulates that Creditors' right to access information during insolvency law N° 075/2021 of 06/12/2021

Under Rwandan insolvency law creditors within the same class are offered equal rights which means that whether they are secured or unsecured creditors they have same rights in proceeding. Therefore that law provides creditors rights to seek for information when the debtor is unable to pay the debt especially when it comes to insolvent.

Moreover obtaining information it may depend on request that the creditor needs for specific subject in order to proceed. For example, creditors have the right to obtain copies of credit applications and agreements signed by the debtor. These documents contain important information about the terms of the credit, such as interest rates, repayment schedules, and any collateral provided. Creditors may request financial statements from the debtor, especially in cases where the debt is significant or involves a business. Financial statements provide a snapshot of the debtor's financial health, including assets, liabilities, income, and expenses.

In addition under article 15 para 2, creditors have rights to obtain information on the progress of activities of the general assets after applying to the administrator.

III. 1.3 Creditors rights to enforce security interests

A security interest is created when someone who is in debt gives a creditor the legal right over certain property in the event the debtor breaches an agreement. Most of the time this occurs in a financial situation. The property is referred to as collateral.

A common example of a security interest is when someone obtains a mortgage to buy a house. If the purchaser fails to make the expected payments on the house, the bank can take the property away from them. In this situation, the bank has a security interest in the home if the purchaser does not meet their payment obligations. If the debtor defaults on the agreement, the creditor can take legal action to enforce their security interest.⁴⁶ In the mortgage scenario, if the homeowner defaults and continues to stop making payments, oftentimes the bank will place

⁴⁶ <https://www.legalmatch.com/law-library/article/enforcing-security-interests.html> Last visited: 6/8/2023

the property in foreclosure and try to sell it at an auction or sheriff's sale. After the creditor takes possession of the collateral and sells it, the creditor can sue the debtor for a deficiency judgment or the creditor can ignore the security interest seek a judgment against the debtor for the amount owed under the agreement.

Creditors have rights to enforce security interests as a means to protect their financial interests and recover outstanding debts. When a borrower defaults on a loan or fails to fulfil their repayment obligations, the creditor can take various actions to enforce their security interest.

According to ⁴⁷Rwandan law of security interests in *its Article 15 says 'In case of sale of the collateral to pay the secured creditor, the first deduction shall be of reasonable maintenance costs of the collateral, followed by the payment of the secured creditor and the balance, if any, shall be given to the debtor''*.

The provision emphasizes the payment of the secured creditor as the next step after deducting the maintenance costs. Article 15 appears to strike a balance between protecting the creditor's interests and providing a fair outcome for the debtor in the event of collateral sale to repay a secured debt and the same law under its Article 16 which says that secured creditor has rights in secured collateral in case default of debtor'' which means that the creditors have rights for applying in collateral only after default. A secured creditor shall be entitled to apply the collateral to the satisfaction of the obligation secured by the security interest if the debtor is in default.

⁴⁷ Rwandan law of security interests its Article 15 says "In case of sale of the collateral to pay the secured creditor, the first deduction shall be of reasonable maintenance costs of the collateral, followed by the payment of the secured creditor and the balance, if any, shall be given to the debtor".

III. 1.4 Right to participate in insolvency proceedings

Creditor rights to participate in insolvency proceedings has been widely seen as an essential feature of any well-developed insolvency administration system that could allow them in which measure they shall have rights in proceeding.

As we have said in above definition, there are different types of Creditors; among them we can mention secured creditors and unsecured ones. A secured creditor is any creditor or lender associated with an issuance of a credit product that is backed by the collateral and in case debtor defaults on the payment of a secured loan, the collateral is forfeited to the secured creditor. While an unsecured creditor is an individual or institution that lends money without obtaining specified assets as collateral. This type puts a higher risk to the creditor because he or she will have nothing to take when the borrower defaults on the loan.

Under Rwandan insolvency law creditors within the same class are offered equal rights except when all members of that class consent otherwise. Mostly the rights of creditors are protected by the creditors committee which is established by the first general creditors' meeting with an old number of three (3) members.⁴⁸ But under Rwandan law the secured claims in other words rights of secured creditors are the ones which are mostly favoured during insolvency proceedings. That is at large extent evidenced by the provisions of the current law relating to the insolvency where its article 11 provides that in principle upon the commencement of insolvency proceedings all claims shall be stayed, while article 12 comes in and only allows or provide the exception to the principle and provide that only secured claims will be the one not to be stayed by the commencement of insolvency proceedings. The article 12 keeps on

⁴⁸ rw-government-gazette-dated-2021-12-30-no-Special.pdf. visited6/8/2023

providing that the secured claims shall only be stayed when the debtor shows the intention to submit a reorganization plan along with the application to commence insolvency proceedings.

However, the law also allows those secured creditors to petition the court to lift that stay where there is a justifiable cause, which expressly shows us that the law favours and protect to the large extent the secured creditors.

III. 1.5 Forced sell of a collateral

A creditor's right to force the sale of collateral is typically associated with secured loans or debts where the borrower pledges an asset as security. This type of arrangement is commonly seen in mortgages, car loans, or business loans where the lender holds a lien on the property or asset being financed. If the borrower defaults on the loan, the creditor may have the right to initiate a forced sale of the collateral to recover the outstanding debt.

However under Rwanda law *particularly the Mortgage law, ⁴⁹in its Article 2 which says: **The mortgage contract shall contain clauses that grant the mortgagee the power to manage, lease, sell or take over the mortgage in case of the mortgagor's default. However this is not self-executory, it means that before these rights are exercised, the creditors or mortgagee must inform the debtor on the choice selected among the three options granted, this is pursuant to the same article paragraph 2 and 3.***

Additionally this is not self-executor, it means that before these rights are exercised, the creditors or mortgagee must inform the debtor on the choice selected among the three options granted, this is pursuant to the same article paragraph 2 and 3.

This law permits the creditors rights to force sell of a collateral after that one has gotten the permission by the Registrar General that shall issue a permit allowing the sale of the mortgage.

⁴⁹ Article 2 of Law n°13/2010 of 07/05/2010 modifying and complementing law n°10/2009 of 14/05/2009 on mortgages (Official Gazette n° special of 14/05/2010) (Law on mortgages herein after)

This implies that this right is evoked by the secured creditor only after the registrar general has approved the permit to sell.

This is where the creditor, must get the authorization of the registrar general such as to sell the mortgage.⁵⁰ Then upon receiving the notification, the registrar general may approval the terms of sell and his/her decision shall be notified to the both the mortgagee and the mortgagor within 24 working hours from the time the document has been approved.⁵¹ Upon approval then, the announcement shall be published in the newspapers 15 days before the auction at least three times.⁵² The receiver is tasked with obligation to sell the mortgage with a reasonable price according to the changes on the market and its value stated in the selling terms and conditions document which must be affected at least when they are five (5) bidders.

After analysing this case of Kamali Alphonse vs. BBPR⁵³. The claimant contested the public auction that occurred concerning his property by filing a challenge with the Commercial Court, seeking its cancellation. In doing so, the claimant argued that the Receiver had failed to specify the property's value. The commercial court based on the instruction of the registrar general and overruled the petition asserting that the permit to sell is not required to indicate the price at which the mortgage shall be sold.

The plaintiff was not satisfied with the decision so he appealed before the High Commercial court evoking article 11 of instruction of registrar general; ***the receiver has the responsibility to sell the mortgage with a reasonable price according to the changes on the market and its value state in the selling terms and conditions document, thus claiming that the receiver should not allow bidders to bid a price lower than the value registered at registrar general's office.*** The court's decision was based on the interpretation that Article 11 confers the authority

⁵⁰ Article 10 of Registrar general instruction

⁵¹ Article 11 of Registrar general instruction

⁵² Article 12 of Registrar general instruction

⁵³ Kamali Alphonse vs BPR And Others, Case no. RCOM 02080/2017/TC/NYGE, Judgment of 9th March 2018

to the receiver to initiate the sale of the mortgaged property only when it begins from a reasonable price, and Article 12 allows the highest bidder to assume ownership of the mortgaged property. Consequently, the court ruled against the plaintiff's favour.

Forced Sale of moveable or immovable under OHADA law provide in its article ⁵⁴***120 The sale shall be carried out by public auction by an auxiliary officer of justice empowered to do so by the national law of each State Party.*** It shall either be carried out in the place of the attached property, or in a hall or in a marketplace whose geographical location is most appropriate to attract competitive bidding at minimal cost. Where there is a disagreement between the creditor and the debtor over the place where the sale shall take place, the competent court, ruling in urgent matters, shall adjudicate over the dispute within five days of the complaint being filed by the most diligent party. The sale of the attached property is to be conducted through a public auction. This means that the sale process is open to interested buyers who can submit bids to purchase the property.

In cases where there is a disagreement between the creditor and the debtor regarding the location of the sale, the article outlines a dispute resolution process. Specifically:

- The competent court, which has jurisdiction over the matter, is responsible for resolving the dispute.
- This dispute is to be addressed in an expedited manner, and the court is required to adjudicate within five days of the complaint being filed by the party that is most diligent in pursuing the resolution of the dispute.

⁵⁴ ARTICLE 120 The sale shall be carried out by public auction by an auxiliary officer of justice empowered to do so by the national law of each State Party. It shall either be carried out in the place of the attached property, or in a hall or in a marketplace whose geographical location is most appropriate to attract competitive bidding at minimal cost.

III. 1.6 Right to sell the security

Selling security is the way that creditor has attempted to collect his/her debts but unsuccessfully recovered or after the debtor defaults loan or unable to pay the debts and for the agreement it allows him some right on that security so that he might be able to sell it.

Under Rwandan law, a creditor has the right to sell the security if the debtor defaults on the loan.⁵⁵The creditor can sell the security after giving notice to the debtor and after obtaining a court order. The sale must be conducted in a commercially reasonable manner and the proceeds of the sale must be applied to the debt owed by the debtor.

In that same law explained in above section on forced of sell security which is argued as; ***The mortgage contract shall contain clauses that grant the mortgagee the power to manage, lease, sell or take over the mortgage in case of the mortgagor's default.*** The first pre-condition under the above clause , it can be deducted that for secured creditors to evoke the right to sell upon debtor's default, there must have been a clause in the security agreement that provided for the same.

Indeed, to summarize up conditions that allow creditors to force the sale of security set by Rwandan law for a secured creditor to sell a security they are as follows;

- There must be a clause in the contract providing for sell as an option upon debtor's default to pay.
- The security must have been registered with the Registrar general at Rwanda Development

⁵⁵ [The sale must be conducted in a commercially reasonable manner and the proceeds of the sale must be applied to the debt owed by the debtor](#) . Last visited: 6/8/2023

- The sell must be preceded by notice for defaulting and communication to sell where and when.

The opposite under Chadian law which is the debtor whose property is the subject of distraint may voluntarily, under the conditions defined below, sell the attached property and use the proceeds to pay the creditors. ⁵⁶Distraint is a legal process by which a creditor seizes or takes control of a debtor's property as a means of enforcing the payment of a debt. This process is typically used when a debtor has not fulfilled their financial obligations.

The primary purpose of allowing the debtor to sell the attached property is to facilitate the satisfaction of the creditor's claims. By selling the property and using the proceeds for this purpose, the debtor can potentially resolve their debt obligations.

Article 115 appears to provide a mechanism for debtors to take a proactive role in resolving their financial obligations when their property is subject to distraint.

III. 1.7 Right to sell collateral

The right to sell collateral is typically granted to a creditor in situations where a borrower defaults on a loan secured by the collateral. When a borrower fails to fulfil their obligations, the creditor may exercise their right to sell the collateral to recover the outstanding debt. The right to sell collateral is generally governed by the terms outlined in the loan agreement and relevant laws in the jurisdiction. Under Rwanda law and regulation especially in insolvency law provide that right to the creditor in case of default on a loan secured by the collateral.

This rights it could be found *under article 17 Sale of collateral stipulated that* ⁵⁷*“a secured creditor with priority over other secured creditors may take possession of and sell collateral when the debtor is in default under the security agreement. In such a case, the Registrar*

⁵⁶ UNIFORM ACT ORGANIZING SIMPLIFIED RECOVERY PROCEDURES AND ENFORCEMENT MEASURES

⁵⁷ LAW N° 11/2009 OF 14/05/2009 ON SECURITY INTERESTS IN MOVABLE PROPERTY

General shall issue a certificate authorising possession and sale of the collateral by the secured creditor. ⁵⁸In case of sale of collateral, the secured creditor in agreement with the debtor shall bear the duty to obtain the reasonable best price. Collateral may be sold by public auction, public tender, ordinary sale, or another method to the satisfaction of both parties. Upon receipt of the request for sale of collateral by both parties, the Registrar General shall, without delay, issue a notice of sale to be effective in ten (10) working days.

This provision recognizes and give the rights to secured creditors to protect their interests when the debtor fails to fulfil their obligations as agreed upon in the security agreement. By allowing the secured creditor to take possession of the collateral, the article grants them the ability to recover the outstanding debt by selling the collateral.

However Article 17, which addresses the sale of collateral, states that a secured creditor who priority over other has secured creditors is permitted to take possession of and sell the collateral in the event of the debtor's default under the security agreement.

The inclusion of the phrase "secured creditor with priority over other secured creditors" implies that if multiple secured creditors are involved, the one with higher priority, as determined by the terms of the security agreement or relevant laws, has the first right to take possession and sell the collateral.

So far with this case of⁵⁹ Rudacyahwa Alfred and AB Bank regarding a loan agreement. BAMURANGIRWA Leatitia borrowed 12,000,000 Frw from AB Bank and pledged two cars,

⁵⁸ Article 17: Sale of collateral A secured creditor with priority over other secured creditors may take possession of and sell collateral when the debtor is in default under the security agreement. In such a case, the Registrar General shall issue a certificate authorising possession and sale of the collateral by the secured creditor.

⁵⁹ AB Bank vs. Bamurangirwa Leatitia, case no. RCOM01139/2016/TC/NYGE, Commercial Court of Nyarugenge , Judgment of 23rd February 2017

valued at 6,562,500 Frw and 9,625,000 Frw, as collateral. She used a power of attorney from her husband, Rudacyahwa, who was separated from her under a property regime.

However, Leatitia defaulted on the loan, and the bank sold the pledged cars but couldn't recover the full loan amount. As a result, the bank sought to recover the remaining amount through legal action. The court ruled in favor of AB Bank and awarded them a total of 14,303,559 Frw. This case mentioned above show the right of creditor to enforce their rights in cases of default, providing them with a legal mechanism to mitigate their financial risk and recover their investment.

III. 1.8 Creditors Rights to redeem the collateral

When it comes to the rights of creditors to redeem⁶⁰ collateral, it's important to note that the concept of redemption pertains to the debtor's ability to reclaim the collateral.

In some cases, a creditor may have the right to redeem collateral if they hold a prior lien or security interest on the property. This can occur when multiple creditors have a claim on the same collateral, and the creditor with a superior lien or priority wishes to redeem the collateral by paying off the debt or obligations associated with it.

The ability of a creditor to redeem collateral is typically contingent on the terms and conditions outlined in the security agreement or applicable laws. It's crucial to review the specific provisions governing the rights and remedies available to creditors in the event of default or non-payment.

It's worth noting that the right of a creditor to redeem collateral is often secondary to the debtor's right to redeem.

⁶⁰ **Collateral Redemption** means, for any reason whatsoever, any of the Collateral becomes repayable or becomes capable of being declared due and payable prior to the stated date of maturity in accordance with its terms;

It is stipulated by the law of security and interest in Rwanda under its ⁶¹*Article 18 which considers the rights to redeem collateral ‘At any time before the secured creditor sells the collateral or is deemed to have taken the collateral in satisfaction of the obligation secured by it, any person who is entitled to receive a notice may redeem the collateral by: tendering fulfilment of the obligations secured by the collateral; and paying a sum equal to the reasonable expenses of seizing, and repossessing the collateral and any other reasonable expenses incurred by the secured creditor in enforcing the security agreement’*

Article 18 ⁶²outlines the rights of individuals to redeem collateral before the secured creditor sells it or is considered to have taken the collateral as satisfaction for the debt secured by it. This provision grants a specific person, entitled to receive a notice, the opportunity to redeem the collateral by fulfilling two conditions.

The first condition requires the person to tender the fulfilment of the obligations that are secured by the collateral. This means that they need to provide the necessary payment or performance to satisfy the debt or obligations associated with the collateral.

The second condition involves the payment of a sum equal to the reasonable expenses incurred by the secured creditor in seizing, repossessing, and enforcing the security agreement. This covers the costs the creditor has incurred in taking control of the collateral and enforcing their rights under the agreement.

⁶¹ Article 18: Rights to redeem collateral At any time before the secured creditor sells the collateral or is deemed to have taken the collateral in satisfaction of the obligation secured by it, any person who is entitled to receive a notice may redeem the collateral by: 1 o tendering fulfillment of the obligations secured by the collateral; and 2 o paying a sum equal to the reasonable expenses of seizing, and repossessing the collateral and any other reasonable expenses incurred by the secured creditor in enforcing the security agreement; The debtor’s right to redeem the collateral has priority over any other person.

⁶² LAW N° 11/2009 OF 14/05/2009 ON SECURITY INTERESTS IN MOVABLE PROPERTY

However, Article 18 emphasizes that the debtor's right to redeem the collateral takes priority over any other person. This means that the debtor, assuming they meet the specified conditions, has the first and foremost right to redeem the collateral before any other party.

III. 1.9 Creditors preferential rights

By its definition a preferential right, also known as a pre-emptive right or right of first refusal, is a legal concept that grants certain individuals or entities the right to have the first opportunity to purchase or acquire a particular asset or investment before it is offered to others. This right is often found in corporate and shareholder agreements, where it gives existing shareholders the chance to maintain their proportional ownership in the company by purchasing additional shares before they are offered to new investors.

The purpose of a preferential right is to protect the existing shareholders from dilution of their ownership stake in the company. When new shares are issued or a company decides to sell a specific asset, such as real estate, existing shareholders with preferential rights have the option to purchase the newly issued shares or acquire the asset at the same price and terms as the potential new investors. By exercising this right, shareholders can maintain their proportional ownership in the company or protect their investment.

Additionally; in terms of creditor preferential right, we refer to a legal concept that grants certain creditors priority or preference in the distribution of assets or payments in the event of a debtor's insolvency or bankruptcy. The purpose of this preferential right is to ensure that certain creditors receive payment before others, based on the priority established by law. So far this preferential right it is asserted in insolvency law of Rwanda under its *Article 63208 which says a secured creditor or the holder of right of retention of secured movable or immovable property shall be entitled to separate satisfaction or retention of secured assets in*

⁶³ OG_n___Special_of_30.12.2021__INSOLVENCY_LAW Official Gazette n° Special of 30/12/2021

*accordance with the relevant Laws...in paragraph two **The preferential right to payment from a secured asset depends on the date of registration of the security and not on the date upon which the debt came into existence. The proceeds from the sale of immovable or movable property, after deduction therefrom of the costs of insolvency proceedings, are applied in satisfying the claims secured by the said property, in their order of preference among creditors and other debts incumbent on the property. If the value of the security is less than the amount of the secured claim, the secured creditor may claim as unsecured creditor for any balance due. If a secured creditor decides to surrender his or her security, he or she is included in the body of unsecured creditors and is included on the list of creditors.***

The specific circumstances and extent of a creditor's preferential right, the Rwandan applicable laws is based on the condition of registration date where the creditor may have that preferential right as it is mentioned above.

However, as it is concerned with debtor, it implied that the creditors shall have rights over assets, pledge or mortgages if there is an implication of debtor fail to pay. Under Rwanda law and regulation system, creditor before starting evoking his/her right over the pledge or mortgage, they first seek authorization to sell or lease the property from the Registrar General.

III.1.10 Creditors rights in Bankruptcy

In bankruptcy is not all creditors are treated equally. All creditors are entitled to share in payment from the bankruptcy estate, but only according to the priority of their claims. Bankruptcy law favours priority claims like child support, as well as secured claims. Secured claims are those claims in which collateral secures the debt and the creditor can repossess and sell the property if the debtor defaults in payments. If a debtor files for bankruptcy, creditors have the right to participate in the bankruptcy proceedings. They can submit claims for the debts owed to them and may receive a portion of the debtor's assets or future income through

the bankruptcy process. When a debtor becomes unable to repay their debts, they may file for bankruptcy, which is a legal process overseen by the court. The primary goal of bankruptcy is to provide the debtor with a fresh financial start while ensuring fair treatment for all creditors involved.

Under Rwanda insolvency or bankruptcy law provides mechanism for creditor's protection in order to have meeting once the creditors have the right to file a proof of claim with the bankruptcy court to assert their claim for the debts owed to them by the debtor. This claim should include details about the debt, the amount owed, and any collateral held by the creditor.

As Section 4 stipulates on rights of creditors during bankruptcy and ⁶⁴*article191 says A trustee calls a creditors' meeting if so requested in writing by creditors whose debts constitute at least ten percent (10%) of the value of the bankrupt's estate to vote on a proposal that a committee of inspection be appointed to act with the trustee. The trustee gives not less than five (5) working days' notice of the meeting before it takes place and the meeting is chaired in accordance with the provisions of this Law.*

During the meeting the creditors have a voice in the bankruptcy process by allowing them to request a meeting if their combined debts make up at least 10% of the bankrupt's estate. This provision helps protect the rights of creditors and enables them to have a say in important decisions. This committee represents the interests of all creditors and collaborates with the trustee to oversee the administration of the bankrupt's estate. Having a committee can bring transparency and a diverse perspective to the process. The provision that the meeting is chaired in accordance with the provisions of the law helps ensure that the meeting is conducted fairly and in compliance with the relevant legal requirements. A properly conducted meeting promotes transparency and confidence in the bankruptcy process. However during bankruptcy

⁶⁴ Section 4 stipulates on rights of creditors during bankruptcy and article191 Official Gazette n° Special of 30/12/2021

proceedings, unsecured creditors hold specific rights and play a significant role in the distribution of assets to repay outstanding debts.

However under Chadian law the adoption of OHADA law ARTICLE 325 Where there are many creditors concerned in the attachment of the movable property or many registered and preferred creditors concerned in the attachment of immovable property they may agree on a consensual sharing of the proceeds of the sale. In such case, they shall forward a copy of their private agreement or authenticated deed to the registry or to the auxiliary of justice holding the funds. The creditors shall be paid within a period of fifteen days as soon as the agreement is received. The balance shall be paid to the debtor within the same period. Interest shall accrue at the legal rate upon the expiry of the said period, for any sums owed.

In summary, Article 325 reflects a pragmatic approach to handling multi-creditor scenarios, aligning with principles of fairness, efficiency, and transparency in resolving financial disputes involving the attachment and sale of property."

III.2 The legal rights and protections afforded to creditors for secured and unsecured debt

For ongoing of the study, this chapter will be divided in two sections: section one will clarify the legal rights and protections afforded to creditors vary cross types of debt in case of secured vs unsecured and section two on common challenges faced by creditors when attempting to collect debts.

III.2.1 Legal rights and protections afforded for creditors in secured debt under Rwanda laws

Secured debt refers to a type⁶⁵ of loan or credit that is backed by collateral or security. In other hands secured debt is that loan which is granted by something or collateral in case of debtor is unable to pay back the money. In secured debt arrangements, the borrower pledges assets, such as real estate, vehicles, inventory, or other valuable property, to the lender as collateral for the loan. This collateral serves as a form of security for the lender, reducing the risk of lending and providing the lender with recourse in case the borrower defaults on the debt.

To focus on the area of secured debt, secured creditor have right to claim and the rights to sell the collateral because of secured debt is more favourable repayment terms compared to unsecured debt. They have the right to be paid out of the proceeds of the sale of the collateral before unsecured creditors can claim any remaining assets.

According to Samuel TUYISENGE on his arguments on secured debt ‘’secured creditors have rights based on a deed of trust, a mortgage, a security agreement on personal property like a car, or a judgement lien. Under Rwandan law, the secured rights are the ones which are mostly favoured where for example up on the commencement of the insolvency proceedings other rights shall be stayed except the secured rights. This also applies in payment the secured claims are given priority than unsecured claims, even in case those claims are stayed the period of stay on secured claims does not exceed six (6) months, also on the other hand the secured creditors are given the rights to petition the court to lift the stay where there is a justifiable cause even during those six months of the stay.

Further under Rwandan insolvency law, secured debt is recognized and generally treated differently from unsecured debt. When a debtor becomes insolvent, meaning they are unable

⁶⁵ <https://www.investopedia.com/terms/s/secureddebt.asp> visited 7/23/2023

to pay their debts as they become due, secured creditors have specific rights and protections in relation to their collateral.

III.2.2.2 The ability to seize and sell collateral to recover debts

The ability to seize and sell collateral when a debtor fails to make a promised payment reduces the creditor's expected losses upon default. With the same law under Rwandan law based on Mortgagee's with remedies in case of default of payment Article 14 of Law n° 10/2009 of 14/05/2009 on mortgages is modified and complemented⁶⁶ as ***“The mortgage contract shall contain clauses that grant***

The mortgagee the power to manage, lease, sell or take over the mortgage in case of the mortgagor's default. The mortgage contract shall also specify the time, place and terms of sale and the procedure to be followed in case of default. Where the mortgagor is in default, the mortgagee shall notify the mortgagor in writing of his/her choice to use one of the remedies specified in the preceding paragraph and transmit a copy thereof to the Registrar General. The notice shall be issued thirty (30) working days prior to taking action and these days shall be counted as from the day the copy of the notice is received by the Registrar General”.

A lien provides a creditor with the legal right to seize and sell the collateral property or asset of a borrower who fails to meet the obligations of a loan or contract. So far it is provided under law of law n° 11/2009 of 14/05/2009 on security interests in movable property its article 16 which allows creditors with ability to apply for and sell collateral.

In the case of MUDISA AND ANOTHER v. UNGUKA BANK LTD at Rwanda HIGH COMMERCIAL COURT RCOMA 00114/2020/HCC on November 09, 2020 Guarantee

⁶⁶ LAW N°13/2010 OF 07/05/2010 MODIFYING AND COMPLEMENTING LAW N°10/2009 OF 14/05/2009 ON MORTGAGES

agreement on loan addressed a dispute regarding a guarantee agreement.⁶⁷ Unguka Bank had provided loans to Mudisa Ltd and Munana, with one party acting as a guarantor for the other to pay the debt. Both borrowers failed to make the agreed-upon payments, and the bank sued them in the Commercial Court to recover the outstanding debts. Mudisa and Munana argued that they should not be held liable for the remaining debt of 145.756.414 frw. Because they had provided a guarantee, and the bank had sold the collateral for a minimal amount, leaving the debt unpaid.

The court ruled that when a guarantee provided to the bank does not result in full payment, the borrower cannot be exempted from the remaining debt.

The bank has the right to sell the collateral to collect the payment, as it is a legal procedure according to their consent in the contract. The court referred to Decree No. 10/2009, specifically Article 14, which governs the pledge of immovable property.

In the trial court, it was determined that the debt owed by Mudisa and Munana was not fully paid, and the court ordered Mudisa's debt was reduced to 40,975,304 frw and it will be paid on Munana's debt, leaving 94 078 227 frw. The court also stated that the collateral would be sold, and the proceeds would be used to pay the debt. The court reduced Mudisa's debt and allocated it towards Munana's debt⁶⁸.

Mudisa and Munana appealed the decision, arguing that the trial court had disregarded the loan agreement and the agreed-upon terms. They claimed that they should not be held responsible

⁶⁷ MUDISA AND ANOTHER v. UNGUKA BANK LTD at Rwanda HIGH COMMERCIAL COURT RCOMA 00114/2020/HCC on November 09, 2020

⁶⁸ Where the mortgagor is in default, the mortgagee may request the Registrar General to use any of the following remedies: 1° appoint a receiver for the mortgage and proceeds ; 2° lease the mortgage in agreement with the mortgagor ; 3° possess the mortgage in agreement with the mortgagor ; 4° sell the mortgage in agreement with the mortgagor.

for the remaining debt as the bank had received a guarantee that exceeded the loan amount. They further contended that the bank had not acted diligently in selling the collateral.

The High Commercial Court examined the appeal and found that the trial court had considered the loan agreement and the applicable laws. It emphasized that the bank had the right to sell the collateral and was not obligated to do so for a specific price. The court concluded that the bank's actions were in accordance with the law and that the appellants' claims were unfounded.

The decision of the High Commercial Court upheld the trial court's decision, ruling in favour of Unguka Bank. The court confirmed that the bank had the right to sell the collateral and collect the remaining debt. It dismissed the appellants' arguments regarding the loan agreement and the bank's actions.

Moreover with stipulated abovementioned article 14: ⁶⁹ "The mortgage contract shall contain clauses that grant that, the mortgagee the power to manage, lease, sell or take over the mortgage in case of the mortgagor's default". When a debtor provides collateral to secure a debt, such as a loan or credit agreement, creditors may have certain rights regarding the collateral, including the ability to lease it under certain circumstances. The specific rights of creditors to lease collateral can be outlined in the loan or security agreement between the parties. The security agreement typically outlines the rights and remedies of the creditor in case of default. As law provides that the secured creditor may lease the collateral depending upon the agreement. It may include provisions that explicitly grant the creditor the right to lease the collateral if the debtor fails to fulfil their obligations.

Therefore OHADA ratified in Chadian legislation in its article 54 stipulated that⁷⁰ ***Any person whose claim appears to be founded may, apply to the competent court of the residence or***

⁶⁹ Kamali Alphonse vs. BPR and Others, Case no. RCOM 02080/2017/TC/NYGE, Judgment of 9th March 2018

⁷⁰ <https://www.droit-africain.com/tchad-recouvrement-de-creances-et-voies-dexecution-2/> visited 2023

place of abode of the debtor for leave to take protective measures on all the tangible or intangible personal property of his debtor, without prior summons to pay, where he can show proof of circumstances likely to jeopardize the recovery of the debt. Moreover article 54 provides a legal mechanism for creditors to seek protective measures to safeguard their interests when they believe there are circumstances that could hinder the collection of a debt. It is intended to offer a legal remedy to creditors to address potential risks to their claims without the need for prior summons to pay. However, the specific procedures and requirements for seeking protective measures would typically be defined by the laws and regulations of the relevant jurisdiction.

III.2.2.3 Creditor rights to take action to enforce claim

Before taking action against a debtor, a creditor must provide a reasonable time for payment on a demand loan or term loan. That time begins to run from the date of the demand for payment and not the date of the loan. An action to enforce a claim denied by the debtor is a legal process that allows a creditor to collect money owed by a debtor who has refused to pay. The process involves obtaining a court order that requires the debtor to pay the debt owed

According to Article 62 highlighted that:⁷¹ *If the debtor denies a claim during the verification meeting or when he does it in a written manner, the creditor may bring an action against the debtor in order to determine such a claim. If an action concerning such a claim was under examination on the date when the insolvency proceedings were commenced, the creditor may continue with such an action.*

This Article 62 recognizes the importance of protecting the rights of the creditor when their claim is denied by the debtor. By allowing the creditor to bring an action or continue with an

⁷¹ N°12/2009 of 26/05/2009 Law relating to commercial recovery and settling of issues arising from insolvency

ongoing action to determine the validity of the claim, the law ensures that the creditor has a fair opportunity to assert their rights and seek proper resolution.⁷² By allowing the creditor to bring an action or continue with an ongoing action provides a mechanism for resolving disputes between the debtor and creditor in a fair and transparent manner. By giving the creditor the opportunity to present evidence and arguments supporting their claim, the law ensures that due process is followed and that both parties have an opportunity to be heard before a determination is made. It gives the creditor possibility to bring an action or continue with an ongoing action concerning a denied claim, the law promotes the efficient resolution of claims in insolvency proceedings. It recognizes that some claims may require further examination and adjudication to determine their validity and the amount owed. Allowing these actions to continue helps prevent delays in the insolvency process and ensures that the claims are properly addressed.

This is particularly important in insolvency proceedings where the creditor's ability to collect on their claims may be at risk. Allowing the creditor to continue with an ongoing action ensures that their rights are not extinguished or unfairly limited due to the commencement of the insolvency proceedings.⁷³

The provision of this article also encourages cooperation and negotiation between the debtor and creditor. The debtor's denial of the claim may prompt the parties to engage in discussions or mediation to resolve the dispute before proceeding with a formal action. This can potentially lead to a mutually agreeable settlement or resolution, avoiding the need for further litigation.

A comparison with Chadian law.⁷⁴ The OHADA Uniform Act on the organization of simplified recovery procedures and enforcement routes (AURVE) has been applicable since July 10,

⁷² Kamali Alphonse vs. BPR and Others, Case no. RCOM 02080/2017/TC/NYGE, Judgment of 9th March 2018

⁷³ Nevertheless, the creditor may exercise rights and claims owned by his/her debtor towards third parties unless such a right is exclusively personal to the debtor. The creditor may also personally oppose any acts performed by his/her debtor which adversely affect the creditor's rights.

⁷⁴ <https://www.droit-africain.com/tchad-procedures-collectives-2/>

1998. The AURVE provides for an order for payment procedure, applicable when the debt is certain, liquid and payable and has a contractual clause. This procedure can allow the creditor to obtain, upon simple request, a judicial decision ordering the debtor to pay within a specified period. Unless the debtor objects, the decision becomes enforceable. It must be served on the debtor within three months. The AURVE also provides for a procedure for an order to deliver or return a specific piece of furniture, under the same conditions as the procedure for an order for payment.

Execution routes

Preservative seizure of movable property and securities allows a creditor, to preserve his rights, to make movable property of his debtor unavailable with a view to continuing its sale or allocation.⁷⁵ Thus, the creditor provided with an enforceable title can request the conversion of the precautionary seizure into an attribution seizure, which takes place retroactively to the day of the precautionary seizure and exempts the garnisher from the rule of competition with the other garnishing creditors. Therefore, the garnishee cannot refuse to make payment for the reasons for the seizure when he has been presented with a definitive enforceable title and a certificate from the registry attesting that no dispute has been filed within the required time limit against the garnishee.⁷⁶ judgment ordering payment (Court of Appeal of N'Djamena, n°RG 005/CC/NDJ/2019, July 4, 2019) .

The seizure attribution is however limited only to the sums for which the creditor has been authorized to carry out the protective seizure, or for the amount for which he has a title. The

⁷⁵ <https://www.droit-africain.com/tchad-recouvrement-de-creances-et-voies-dexecution-2/visited> 02/10/2023

⁷⁶ Court of Appeal of N'Djamena, n°RG 005/CC/NDJ/2019, July 4, 2019) .

seizure of real estate follows a specific formality and must be preceded by a published land conservation order.

In the presence of several seizing creditors, the distribution terms are provided for by articles 324 and 334 of the AURVE. In the absence of consensual distribution of the sale price, the most diligent creditor may contact the President of the Court of the place of sale, in order to carry out this distribution.

III.2.2.4 Priority rights in the collateral

The priority is generally determined by the order in which the security interests were created or registered. For example, a first-ranking mortgage holder may have priority over subsequent mortgage holders. Priority rights in collateral refer to the order in which creditors are entitled to recover their debts or claims against a particular asset or property. When multiple creditors have a claim on the same collateral, priority determines the sequence in which they will be paid from the proceeds of the collateral's sale or liquidation.

The concept of priority is crucial in situations where the debtor defaults on their obligations or becomes insolvent, leading to the liquidation of their assets to satisfy outstanding debts. The priority of rights ensures that creditors with higher priority receive payment before those with lower priority. The lender with priority over other lenders may take possession of the assets when the borrower fails to pay the loan as agreed in the loan agreement. The process begins with a lender giving the borrower a final demand notice. If the borrower does not pay within the time specified in the final demand notice, the lender may then request the Registrar General to issue a certificate of possession. This request must be accompanied by documents showing

the closing balance of the outstanding loan including interests and penalties plus the loan history showing the borrowers failure to pay off the outstanding loan.⁷⁷

Moreover with same article 17 explained previously on Sell of collateral that give the priority to a secured creditor has right to sell the collateral. That article 17 says that ***‘A secured creditor with priority over other secured creditors may take possession of and sell collateral when the debtor is in default under the security agreement. In such a case, the Registrar General shall issue a certificate authorising possession and sale of the collateral by the secured creditor. In case of sale of collateral, the secured creditor in agreement with the debtor shall bear the duty to obtain the reasonable best price. Collateral may be sold by public auction, public tender, ordinary sale, or another method to the satisfaction of both parties. Upon receipt of the request for sale of collateral by both parties, the Registrar General shall, without delay, issue a notice of sale to be effective in ten (10) working days’***.⁷⁸

Under Rwandan law, Secured creditors have a higher priority over unsecured creditors because they hold a security interest or lien on specific collateral for example car, house. This collateral provides them with a right to seize and sell the asset to satisfy the debt in case of default. For instance, a national bank of that holds a mortgage on a property has a priority claim on the proceeds from the sale of the property. Any collateral that has been taken over or acquired

⁷⁷ That article 17 says that ***‘A secured creditor with priority over other secured creditors may take possession of and sell collateral when the debtor is in default under the security agreement. In such a case, the Registrar General shall issue a certificate authorising possession and sale of the collateral by the secured creditor. In case of sale of collateral, the secured creditor in agreement with the debtor shall bear the duty to obtain the reasonable best price. Collateral may be sold by public auction, public tender, ordinary sale, or another method to the satisfaction of both parties. Upon receipt of the request for sale of collateral by both parties, the Registrar General shall, without delay, issue a notice of sale to be effective in ten (10) working days’***

⁷⁸ LAW N°13/2010 OF 07/05/2010 MODIFYING AND COMPLEMENTING LAW N°10/2009 OF 14/05/2009 ON MORTGAGES

through auctioning by a bank (available for sale) must be disposed of within a period of one (1) year from the date of default.

III.2.5 Legal rights and protection afforded for creditor in unsecured debt under Rwanda and Chadian laws

Generally, when we talk about unsecured debt, we refer to opposite of secured debt it could be explained that unsecured debt ⁷⁹refers to debt created without any collateral promised to the creditor. In many loans, like mortgages and car loans, the creditor has a right to take the property if payments are not made. Unsecured debt like credit cards or medical bills do not have any connection to property, and the creditors risk losing all their returns if the debtor becomes insolvent.⁸⁰ Because of this, unsecured debt is very expensive, carrying often more than double the interest rates of secured debt. In these cases, the lender does not have a claim to any particular asset in the event of default. If the borrower fails to repay the debt, the lender may take legal action to collect the amount owed, but they do not have a direct right to seize any specific property.⁸¹

Because unsecured debt carries a higher risk for lenders, interest rates tend to be higher compared to secured debt. Lenders rely heavily on the borrower's credit history, income, and other factors to assess the likelihood of repayment. In some cases, lenders may require a co-signer or guarantor to provide additional security for unsecured loans. The modern farmer establishes ongoing relationships with many businesses for the purchase and payment of necessary supplies in the normal course of business. These transactions usually do not involve

⁷⁹https://www.law.cornell.edu/wex/unsecured_debt#:~:text=Unsecured%20debt%20refers%20to%20debt,if%20payments%20are%20not%20made .visited 725/2023

⁸⁰ LAW N°13/2010 OF 07/05/2010 MODIFYING AND COMPLEMENTING LAW N°10/2009 OF 14/05/2009 ON MORTGAGES

⁸¹ legal process by which a creditor obtains a court order directing the debtor's third party anyone who owes money to the debtor) to pay directly to the creditor a certain portion of until the debt is paid.

https://www.law.cornell.edu/wex/unsecured_debt#:~:text=Unsecured%20debt%20refers%20to%20debt,if%20payments%20are%20not%20made .visited 725/2023

the farmer granting the supplier any special protections to secure the repayment of the debt, such as a security interest. These suppliers are considered unsecured creditors; because the debt that is owed to the supplier is not secured by any property of the farmer. This fact sheet discusses the legal remedies and issues surrounding unsecured creditors.

III.2.3.1 The ability to initiate legal action to collect unsecured debts

When a borrower defaults on an unsecured loan, the creditor will initiate communication with the borrower to remind them of the outstanding debt. This can be done through letters, phone calls, or emails, urging the borrower to fulfil their repayment obligations. If the borrower fails to respond or make payment arrangements after the initial communication, the creditor may send a formal demand letter. This letter outlines the details of the debt, including the amount owed, the due date, and any additional charges or penalties. It also serves as a final notice to the borrower, giving them a specific period usually 15-30 days to settle the debt. If the borrower still does not comply with the demand letter, the creditor may initiate legal action. This involves filing a lawsuit against the debtor in a court of law. The court will review the case and, if it determines that the debt is valid, may issue a judgment in favour of the creditor. With a court judgment in hand, the creditor can proceed with various legal enforcement measures to recover the debt. After obtaining a judgment by the court, an unsecured creditor may then utilize the collection procedures authorized by law.⁸² Under civil code procedure its *article 215 says any person with a final judgement or an enforcement order may request a court bailiff to proceed to the seizure of his/her creditor's property in accordance with relevant laws. However, even if the final judgement is not rendered, the party who fears that the movable property of the respondent would be dissimulated or damaged may request its seizure by the way of summary*

⁸² Law No 22/2018 of 29/04/2018 relating to the civil, commercial, labor and administrative procedure, Official Gazette n° Special of 29/04/2018.

procedure. The owner of the seized property loses all the power on it as long as it remains seized.

In some cases, creditors may enlist the services of debt recovery agencies or collection ⁸³agencies to assist in the collection process. These agencies specialize in locating debtors, negotiating payment plans, and recovering debts on behalf of creditors. However, it's important to note that debt collection agencies in Rwanda are regulated by the Central Bank and must adhere to specific guidelines and ethical practices.

In addition unsecured creditors may initiate legal actions against those who owe them money on accounts.⁸⁴ They are at a disadvantage when compared to secured creditors because they must, in most cases, obtain a court determination that they are legally entitled to the amount of money they claim.

To sum up the ability to initiate legal action, in Rwanda, creditors can pursue legal action to obtain judgments against debtors. They must file a lawsuit, present evidence, and go through court proceedings. If the court rules in their favour, a judgment is issued stating the debt owed. Creditors can then enforce the judgment by seizing and selling assets, garnishing wages, or freezing bank accounts. It's crucial to adhere to Rwandan laws and seek legal advice for specific procedures and requirements in each case.

Under Chadian which use OHADA law as national law in its article 16 says ⁸⁵“the creditor may request the insertion of the executory formula on the ruling where no opposition is filed within fifteen days from notification of the mandatory injunction to pay or, where the debtor

⁸³ No 22/2018 of 29/04/2018 Law relating to the civil, commercial, labour and administrative procedure...

⁸⁴ L. Kunkel, Jeffrey A. Peterson Attorneys, Gray Plant Mooty, Rights of Unsecured Creditors Phillip, June 2015

⁸⁵ <https://www.droit-afrique.com/uploads/OHADA-Uniform-Act-1998-simplified-recovery-procedures.pdf> visited 02/10/2023

withdraws his opposition. The effect of such insertion shall be that of a decision taken after an adversary hearing and shall not be liable to appeal’.

The article allows the creditor to request the insertion of an executory formula on a ruling. This request can be made in specific circumstances outlined in the article.

Article 16 appears to outline a mechanism that streamlines the enforcement of judgments and provides a specific process for creditors to follow when certain conditions are met. It aims to expedite the resolution of cases when there is no opposition from the debtor or when the debtor withdraws their opposition. However, it's important to consider the broader legal context and any potential implications this article may have for the legal system in which it applies

III.2.3.2 Unsecured creditors participation in bankruptcy proceedings

Unsecured creditor or unsecured debt come with lower priority in hierarchy. ⁸⁶Unsecured creditors are usually required to file a proof of claim with the insolvency or bankruptcy court within a specified timeframe. ⁸⁷This document provides details of the debt owed, including the amount and supporting evidence. Failing to file a proof of claim within the designated period may result in the creditor's claim being disregarded.

Under Rwandan law, when the insolvency proceedings commence the rights of unsecured creditors also shall be stayed, due to the fact that those unsecured creditors do not have the collateral securing their debt. The law does not allow those creditors to request the court to lift the stay of their rights. In general, unsecured debts, such as medical debt or most credit card debt, are given the lowest priority. As an unsecured creditor, you can file a proof of claim, attend the first meeting of creditors, and file objections to the discharge. You can review the bankruptcy papers that were filed to determine whether there are any inaccuracies. In some

⁸⁶ Types of creditors, available at “<https://www.rkillen.ca>” accessed 23/06/2023

⁸⁷ Creditor’s rights for secured claims, available at “www.justicia.com” accessed on 10/05/2023

cases, you can get the court's approval to take the debtor's deposition if you want to make sure that you are getting paid back the full amount possible, given the debtor's assets and other debts.

Further under Rwandan insolvency law on its ⁸⁸*article 212 stipulates on distribution of sale proceeds* ‘*The administrator settles all claims immediately after receipt of the distribution record, in the following order of preference in that preference it is included unsecured claims. After confirmation of the final plan of distribution, the administrator submits the surplus to the debtor.*’ In case of liquidation or sale of the debtor's assets, unsecured creditors participate in the distribution of proceeds after the satisfaction of secured creditors, administrative expenses, and certain privileged claims. The distribution to unsecured creditors is generally made on a pro-rata basis, where each creditor receives a proportionate share of the available funds based on their claim amount.

However during the insolvency proceedings, creditors' meetings may be convened to discuss the debtor's financial situation, proposed restructuring plans,⁸⁹ or liquidation proceedings. Unsecured creditors have the right to participate in these meetings and express their views and concerns regarding the distribution of assets and the treatment of their claims. This provides them with an opportunity to protect their interests and ensure fair treatment in relation to competing claims and unsecured creditors have the right to evaluate and vote on the plan. The approval of the plan may require a certain majority of votes from the unsecured creditors.

⁸⁸ N° 075/2021 of 06/12/2021 Law relating to insolvency article 212 stipulates on distribution of sale proceeds ‘*The administrator settles all claims immediately after receipt of the distribution record, in the following order of preference in that preference it is included unsecured claims. After confirmation of the final plan of distribution, the administrator submits the surplus to the debtor.*’

⁸⁹ N° 075/2021 of 06/12/2021 Law relating to insolvency article 212 stipulates on distribution of sale proceeds ‘*The administrator settles all claims immediately after receipt of the distribution record, in the following order of preference in that preference it is included unsecured claims. After confirmation of the final plan of distribution, the administrator submits the surplus to the debtor*’

Once bankruptcy is filed, an automatic stay is triggered, which prevents creditors, including unsecured creditors, from taking any further collection actions against the debtor outside of the bankruptcy process. As we know under Rwandan insolvency law unsecured creditors have no specific claim to the debtor's assets and are lower in priority compared to secured creditors. Secured creditors, who hold specific collateral, are paid first from the proceeds of the collateral before any distribution is made to unsecured creditors.

Therefore, a repayment plan is proposed, which may require the debtor to repay a portion of the unsecured debts over a certain period. The bankruptcy court will review and approve the plan, and unsecured creditors will receive payments according to the terms outlined in the plan. This voting process helps protect unsecured creditors by allowing them to have a say in the outcome and potential distribution of assets.

III.2.3.4 The potential for obtaining garnishment

Garnishment is a judicial proceeding in which a creditor asks the court to order a third party who is indebted to the debtor to turn over to the creditor any of the debtor's property.⁹⁰ The creditor is the garnishor. The third party is the garnishee.⁹¹

A legal procedure by which a creditor can collect what a debtor owes by reaching the debtor's property when it is in the hands of someone other than the debtor.

Garnishment is a drastic measure for collecting a debt. A court order of garnishment allows a creditor to take the property of a debtor when the debtor does not possess the property. A garnishment action is taken against the debtor as defendant and the property holder as garnishee.

⁹⁰ Edited by Manraj Khurana With the Assistance of Mishaal Gill of Fasken Martineau DuMoulin LLP
CREDITORS' REMEDIES AND DEBTORS' ASSISTANCE Current as of June 30th, 2021

⁹¹ <https://www.michaelmaschambers.com/insight-page.php?i=15&a=garnishee-proceedings-its-meaning-and-procedure> visited 7/20/2023

Garnishment is regulated by statutes, and is usually reserved for the creditor who has obtained a judgment, or court order, against the debtor.

A debtor's property may be garnished before it ever reaches the debtor. For example, if a debtor's work earnings are garnished, a portion of the wages owed by the employer go directly to the Judgment Creditor and is never seen by the debtor.

Indeed, the above court can also be used by the creditor in what is known as garnishment. Under the Law governing contracts in Rwanda, it is enumerated *in Article 113 that a creditor does not only have power to execute against the third party but also to halt any disposal of any property that might adversely affect his/her interests.*⁹² Once a creditor obtains a court judgment against debtor, it can proceed with collection remedies. According to the Rwanda commercial law, unsecured creditor have the rights to file a claim against debtor in court and obtain a judgement before proceeding with collection through wage garnishment and other types of liquidated borrower owned assets.

The Law relating civil, commercial, labour and administrative procedure provides that; within thirty (30) days from the day when the judgment or any other enforcement act is final, the party that lost the case may contact the winning party in order to make an agreement on the execution of the court decision or the enforcement order. By virtue of this even if the law is not particular to creditor debtor relationship, but if a creditor has won against the debtor, then she/she is legally allowed to evoke this clause, in that case the defaulting and losing debtor will have 30 days to execute voluntarily lest forceful execution shall be implemented.

⁹² Under the Law governing contracts in Rwanda, it is enumerated *in Article 113 that a creditor does not only have power to execute against the third party but also to halt any disposal of any property that might adversely affect his/her interests.*

Therefore,⁹³ under Chadian law, *ARTICLE 153 Any creditor in possession of a writ of execution in proof of a debt certain and due immediate payment may in order to secure payment, attach any sum of money owed the debtor by a third party subject to the special provisions relating to the attachment of earnings.* The garnishee cannot refuse to make payment for the reasons for the seizure when he has been presented with a definitive enforceable title and a certificate from the registry attesting that no dispute has been filed within the required time limit against the garnishee.⁹⁴ Judgment ordering payment (Court of Appeal of N'Djamena, n°RG 005/CC/NDJ/2019, July 4, 2019).

⁹³ Therefore, the garnishee cannot refuse to make payment for the reasons for the seizure when he has been presented with a definitive enforceable title and a certificate from the registry attesting that no dispute has been filed within the required time limit against the garnishee. ⁹³ judgment ordering payment (Court of Appeal of N'Djamena, n°RG 005/CC/NDJ/2019, July 4, 2019) .

⁹⁴ Court of Appeal of N'Djamena, n°RG 005/CC/NDJ/2019, July 4, 2019) .

CHAPTER FOUR. CHALLENGES FACED BY CREDITORS ATTEMPTING TO COLLECT DEBTS AND IMPROVEMENT TO BETTER PROTECT FOR THE INTEREST IN BOTH COUNTRIES

Debts collection is step or process that creditors use to pursue the payment from a business or individuals who owes money to creditors in order to get back their money. The role of creditors in debt collection is to recover the outstanding debts owed to them. When borrowers fail to make timely payments, creditors initiate the debt collection process to retrieve the money owed. Therefore it is a burden for creditors to collect debts due to lack of engagement of debtors. This involves various actions such as contacting debtors, negotiating payment terms, and taking legal measures if necessary

Creditors may handle debt collection activities internally or may hire specialized debt collection agencies to assist them. Their objective is to maximize the chances of recovering the owed funds while adhering to legal and ethical guidelines. Successful debt collection allows creditors to maintain their financial stability, manage cash flow, and minimize potential losses. Therefore there is still a challenge for creditors when they attempt to collect debts. In debt collecting most of analysis creditors always face challenges when they attempt to collect debts. Those challenges are among others that will be outline.

IV.1 Challenges in non-payment or Delays

Creditors are often frustrated to hear a corporate customer announce that it is going “out of business” and will be unable to pay its debts.⁹⁵ Soon thereafter, the same people that ran the old business are operating a new business with a similar name out of the same business address

⁹⁵ Chapter 17- Enforcement of Judgment. <https://www.citizensinformation.ie/en/money-and-tax/personal-finance/debt/enforcement-of-debt-judgments> visited this page on 6/28/23.

and they try to avoid or not pay or making delays payment that is why most Creditors often feel that this is fraudulent and that there must be a way to force this new business and the people running it to pay the debts of the old business.

The primary challenge is when borrowers fail to make payments or consistently delay payments. This can be due to financial difficulties, poor money management, or a lack of willingness to repay the debt. Creditors like bank, entities or individuals, they suffer most from delays payment. According to conducted research most of challenges faced by creditors in Rwanda are due to non-payment and delays.

Further it is a challenge for creditor when a debtor has the power to object and cause delay in enforcement that can result to frustrate the creditor that is depending on that asset to recovery his money in most practice case in chad.

The negative outcomes of late payments are identified by S. Grzelczak,⁹⁶ who claims that untimely payment or non-payment induces business community to think that they should not trust other entrepreneurs, even their long-term business partners. Hence, it is safer and more convenient to request cash prepayments for products or services or to consider moving the business abroad where payment morality is higher. As a result, there is an overall mistrust, positive relationships and economic links decay and they get replaced with suspicion and mistrust, which instigate safeguard clauses and intensive legal assistance. That, in turn, increases the cost of doing business and, in extreme cases, leads to a growing wave of bankruptcies. All these factors impede growth. As abovementioned cases debtors try to delay payments of loan and some debtors acting for non-payment. This strongly lead creditors in weaknesses of recovery the debts.

⁹⁶ The negative outcomes of late payments are identified by S. Grzelczak, who claims that untimely payment or non-payment induces business community to think that they should not trust other entrepreneurs, even their long-term business partners.

IV.2 Lack of Communication

One of among challenges is where the creditors can't get in touch with debtor or when the debtor himself avoid to communicate with creditor. Under Rwanda law, many creditors face challenges in establishing and maintaining effective communication with borrowers. The borrower's unresponsiveness, avoidance, or changes in contact information can hinder the creditor's ability to reach them and discuss repayment options. When creditors go through the process by filling a claim or demand the payment the debtors avoid to respond until when it comes to enforcement.

Let us look at this case between Guaranty Trust Bank Rwanda Plc (GT Bank) entered into a loan agreement with Kigali Ceramica & Furniture Ltd.⁹⁷ When it did not pay, the bank gave it a notice to pay the outstanding debt. The borrower started to transfer his money to other banks, which made the bank ask the Professional Court to confiscate the money Kigali Ceramica & Furniture Ltd had deposited in KCB Rwanda Plc.

Guaranty Trust Bank Rwanda Ltd then filed an urgent claim in the Nyarugenge Commercial Court asking to confirm that it owes a debt equal to 797,601,959 Frw and order that the debt be paid, and says that it has now reached the Court 803,745,468.45. Kigali Ceramica & Furniture Ltd filed an objection stating that GT Bank's complaint should not be accepted because the bank had to sell the collateral and pay it, that it filed an urgent complaint and there is no basic complaint, and that the bank should not appeal to confirm the debt. Therefore when the collateral did not pay off all the debts the creditor still have right to claim. This shows that debtors refuse to collaborate with creditors.

⁹⁷ Guaranty Trust Bank Rwanda Plc (GT Bank)vs Kigali Ceramica & Furniture Ltd. Nyarugenge Commercial Court asking 2019

One of the major roadblocks in the process of debt recovery is the absence of real-time collaboration between the borrower and the collector in Chad.⁹⁸ This is a huge industry-wide challenge faced by all collection agents. Every debtor's repayment abilities are unique owing to differences in their financial backgrounds, which requires collectors to create customised collection plans. But due to frequent communication breakdowns, this is made very difficult. All of this not only results in a long, complicated and incomplete collection process but also hinders them from offering smooth customer experience. The details of the lending agreement such as repayment plans, document exchanges, calculations etc. should be instantly shared between collectors and debtors, in order to build a relationship of trust between the two parties from the very start. If debtors refuse to show up with collaboration it won't be easy for creditors to come up easy way to attempt collect his/her loans.

IV.3 Limitation of creditors rights in Bankruptcy or insolvency

The creditor rights during bankruptcy protect creditor interests in the event of default and ensure the availability of debt capital. If a borrower has insufficient funds to repay the debt or declares bankruptcy, creditors may face difficulties in recovering the full amount owed. Nevertheless under insolvency law stipulate that in case of debtor fill for bankruptcy upon the commencement proceeding all rights are automatically stayed once a company, an entities or individuals have filed a bankruptcy. This means that creditors cannot continue with or initiate lawsuits, foreclosures, repossessions, or other forms of debt collection while the bankruptcy case is pending. According to UWASE patience⁹⁹ where debtors have power to object and cause delay in enforcement. Debtors are bestowed with inordinate power to object and cause delay during enforcement proceedings out of proportion to the need to protect their rights. Such

⁹⁸ How Data-backed Strategies Help with Profitable Loan Collections - Finezza - Blog says: December 26, 2019

⁹⁹ UWASE patience, on Critical Analysis Of Protection Of Secured Creditors Against Debtor's Fraud In Commercial Recoveries Under Rwandan Law, 2021

power leads to delay of sale of the assets leading to many of the inefficiencies and delays faced by the creditors'' and if secured creditor takes an action against a debtor taken in violation of the stay is void and can result in a judgment of contempt against the offending creditor, possibly including costs and advocate's fees.

However, where the debtor shows the intention to submit a reorganisation plan along with the application, all claims including secured claims and rights of retention are stayed effective from the date of application to commence insolvency proceedings. This brings challenges to creditors when their rights to claim and recover their debt are stopped by debtor once he/she apply for reorganisation plan. Additionally when it comes to evaluation that the disputes may arise between the debtor and the secured creditor regarding the valuation of the collateral. The bankruptcy court ultimately determines the value of the collateral, and this valuation may not always align with the creditor's expectations.

On other side Rwandan law does provide specific provision on unsecured creditors because on abovementioned on limitation of creditor's rights it is found that an unsecured creditors that do not have the collateral that could secure their debt. The law does not allow those creditors to request the court to lift the stay of their rights when debtors submit for commencement of proceeding. They are allowed before and after the insolvency proceeding or bankruptcy proceeding to fill a claim to obtain recovery of their debts.

IV.4 Insolvency law challenge in creditor's protection

The major problem in insolvency law is that when debtor become insolvent and submit for reorganisation plan in insolvency proceeding, the numbers of creditors in competing claims to the debtor's assets could be a challenges for some creditors. ¹⁰⁰The challenge for creditors is to

¹⁰⁰ upon the date of commencement of the insolvency proceedings, the following is stayed:

establish the priority of their claims and ensure that they receive a fair distribution of the debtor's assets. Insolvency laws typically outline a hierarchy of claims and prioritize certain types of creditors, such as secured creditors or employees, over others. Insolvency law can bring frustration for creditor in insufficient assets of debtors in such case creditors may not receive all recovery and satisfy their fully claims of debts and in most cases creditors face that issues of recovering only a portion of their outstanding debts when debtor applied for insolvency proceeding. This can result in financial losses for the creditors, especially if they are unsecured or lower in priority. Insolvency proceedings can be complex and time-consuming, often involving multiple stakeholders, court hearings, and negotiations. Creditors may face challenges due to delays in the proceedings, which can further impact their ability to recover their debts promptly.

Thereafter Creditors may face challenges when their claims are disputed by the debtor or other parties involved in the insolvency proceedings. Disputes over the validity, amount, or priority of claims can prolong the process and result in additional legal expenses for the creditors.

Rwanda Insolvency law has the provisions that enable the avoidance or recovery of certain transactions that occurred before the insolvency filing. Creditors may face challenges if their claims are affected by the avoidance or clawback of payments or transactions that are deemed preferential or fraudulent. On the same law which says in article 11 that¹⁰¹ *upon the date of commencement of the insolvency proceedings, the following is stayed:*

- 1. the commencement or continuation of individual actions or proceeding concerning the debtor's assets, rights, obligations or liabilities;*

the commencement or continuation of individual actions or proceeding concerning the debtor's assets, rights, obligations or liabilities; the execution of judgments related to the assets of the debtor's property; the right of counterparty to terminate any contract with the debtor; The right to transfer, mortgage or otherwise dispose of any assets of the debtor.

¹⁰¹ Law n° 075/2021 of 06/12/2021, supra note 8, art. 11

2. *the execution of judgments related to the assets of the debtor's property;*
3. *the right of counterparty to terminate any contract with the debtor;*
4. *The right to transfer, mortgage or otherwise dispose of any assets of the debtor.*

It is clearly showing that rights of secured creditors and the holders rights retention or taking possession of collateral are not affected during the beginning of proceeding when debtor attempt to submit the reorganisation plan according to this insolvency law, but obviously worth noted that under law of security interest provides that a security interest is only valid if that security interest has been registered by Registrar General.

As said above all rights of secured and unsecured creditors are stayed, once the debtor intends to submit a reorganization plan along with the application to initiate insolvency proceedings, all claims, including secured claims and rights of retention, are put on hold. This stay remains in effect until the debtor presents a restructuring plan to the court within three months of the case being filed.

For secured claims, the stay period is limited to six months. If no judicial ruling is made within the specified time frame, the secured creditor has the immediate right to enforce the security based on relevant laws. An unsecured creditor refers to an individual or company that lends money without requiring specific assets as collateral. In the event of a default on an unsecured debt, the creditor cannot seize any of the borrower's assets until they successfully obtain a judgment in their favour.¹⁰² A debenture holder is an example of an unsecured creditor.

¹⁰³Secured creditors, on the other hand, can seize assets to satisfy a debt owed to them by the borrower.

¹⁰² Ibid.

¹⁰³ Law N° 23/2018 of 29/04/2018 relating to insolvency and bankruptcy, Official Gazette n° Special bis of 29/04/2018.

Secured loans carry less risk for lenders compared to unsecured loans due to the potential loss faced by the borrower in case of default. In contrast to unsecured creditors, secured creditors do not have to go through the process of filing a legal case in court and obtaining a judgment before they can take actions such as wage garnishment or liquidating assets owned by the borrower. This is because the lender already holds a security interest in specific assets that can be used to recover the outstanding debt.

IV.5 Fraud in debts collection

Fraud is one of challenges that creditors may face in loan recovery. Before highlighted this problem it is important to know term of fraud. ¹⁰⁴In civil litigation, allegation of fraud might be based on a misrepresentation of fact that was either intentional or negligent. For a statement to be an intentional misrepresentation, the person who made it must either have known the statement was false or been reckless as to its truth. The speaker must have also intended that the person to whom the statement was made would rely on it. The hearer must then have reasonably relied on the promise and also been harmed because of that reliance.

Creditors must understand the purpose of limited liability entities, such as corporations, limited partnerships and limited liability companies. ¹⁰⁵Every modern society in the world has created these types of limited liability entities to allow insulation or protection for personal assets. People would not be willing to start new business ventures, creating jobs and opportunities for vendors, if business failure meant that creditors could pursue individual assets for the rest of the debtor's natural life. Limited liability entities promote economic growth.

¹⁰⁴ <https://www.law.cornell.edu/wex/fraud> visited 25/7/2023

¹⁰⁵ *McCarthy v. Giron*, 2014 U.S. Dist. LEXIS 79007, Case No. 1:2013cv01559 (E.D. Va. June 6, 2014).

A claim for fraud based on a negligent misrepresentation differs in that the speaker of the false statement may have actually believed it to be true; however, the speaker lacked reasonable grounds for that belief.

A promise that goes unfulfilled may give rise to a claim for fraud only under particular circumstances. For example, in California law, a false promise is only fraudulent if the promisor intended both not to perform on the promise and also that that the promise would rely on the promise; and, the promisee must have reasonable relied on the promise and been harmed as a result of that reasonable reliance.¹⁰⁶ When the promise was made as part of a contract, most states forbid a plaintiff from recovering under both contract law and tort law.

Mostly in Rwanda, creditors meet that hug of burden when debtors lead them by fraud which means that a debtor can provide false information on collateral or detail about his/her address. When debtor provides such false promises the creditor immediately can find himself in struggle in recovering his/her money. The biggest problem with filing debtor's interrogatories is that there is plenty of notice to the debtor. This may cause a debtor to simply pay the judgment, but it also gives a debtor plenty of time to hide assets.

IV.6 Intentional and unintentional misleading creditors

Apart from fraud we can find also bad faith is one of critical element that debtor can use to fail creditor into challenges in recovery because by signing the contract the borrower can pretend to act on his economic future and repayment because thus loan is given merely depending on the future repayment of the debtor, while lender has not much information on borrower economic circumstances.

¹⁰⁶ Banque populaire du Rwanda vs. Kamali Alphonse, case No; RCOM 01868/2018/TC, Commercial Court, Judgment of 18th January 2019

The most common form of bad faith is when debtors intentionally refuse to make payments or default on their loans despite having the means to do so.¹⁰⁷ This behaviour can result in financial losses for lenders and may disrupt their cash flow and financial stability. By providing false or misleading information during the loan application process is another form of bad faith. This can include misrepresenting income, employment status, or other critical details to secure a loan under false pretence. In some cases, debtors may try to hide their assets to avoid repayment. They may transfer property, money, or other valuable assets to relatives or associates to keep them out of the reach of creditors. In asset-based lending, debtors may engage in bad faith practices by intentionally devaluing or disposing of collateral that secures the loan, making it difficult for the lender to recover the outstanding debt.

Yet about bad faith that could lead creditor in situation of recovering his money is where debtors attempt to abuse the legal system by filing false or fraudulent bankruptcy claims to avoid repaying their debts. This is also a factor that can delay the collection process and add additional costs for lenders.

Debtors may engage in delaying tactics or frivolous legal actions to prolong the debt collection process and increase the burden on the lender¹⁰⁸.

Most of cases above-mentioned show that Debtors acting in bad faith by avoiding communication with the lender or refuse to cooperate in finding a mutually agreeable solution to resolve the debt. It lead creditors to seek the recovery through procedure of force sell collaterals or appeal against the debtor in court.¹⁰⁹

¹⁰⁷ Law N° 23/2018 of 29/04/2018 relating to insolvency and bankruptcy, Official Gazette n° Special bis of 29/04/2018.

¹⁰⁸ Banque populaire du Rwanda vs. Kamali Alphonse, case No; RCOM 01868/2018/TC, Commercial Court, Judgment of 18th January 2019

¹⁰⁹ 4M. Marinc and R. Vlahu, *The economics of Bank Bankruptcy Law*, Springer, Verlag Berlin Heidelberg, 2014, p .15

Debtors acting in bad faith can create significant challenges for lenders, affecting their financial health and ability to provide credit to other borrowers. To protect themselves from such situations, lenders often employ rigorous credit assessment processes, conduct background checks, and include clauses in loan agreements that deter or penalize bad faith actions. Additionally, lenders may seek legal recourse to recover outstanding debts and hold debtors accountable for their actions.

IV.2 IMPROVEMENT TO BETTER PROTECT FOR THE INTEREST

To protect creditors interest and making improvement on creditors interest, there shall be conducted comprehensive due diligence on potential borrowers before extending credit. This includes examining their financial history, creditworthiness, business plans, and management team. A more in-depth understanding of the borrower's financial health can help mitigate the risk of future payment issues. As most of struggle of debts recovery in Rwanda comes from non-payment or delaying paying come out due to lack of strong mechanism to enforce against debtors to delay the payment.

The Rwanda¹¹⁰ mortgage law has a better comprehensive method of debts recovery however there shall implement and improve a system for ongoing monitoring of borrowers' financial health and business operations. This can help identify signs of distress early on, allowing creditors to take appropriate actions to protect their interests.

After analysing law of security interest and mortgage on movable and unmovable in Rwanda the improvement on implementing early warning systems that alert creditors when borrowers show signs of financial distress or default risk. This would enable creditors to take proactive measures and engage in constructive discussions with borrowers before the situation worsens.

¹¹⁰ LAW N°13/2010 OF 07/05/2010 MODIFYING AND COMPLEMENTING LAW N°10/2009 OF 14/05/2009 ON MORTGAGES

This measure could enable creditors to be aware of defaulting by debtors before they find out that debtors are not able to pay the debts due.

One of improvement that is necessary is to promote financial education and credit counselling programs for both creditors and debtors so that this can help borrowers understand their financial responsibilities and assist creditors in offering more tailored repayment solutions.

After more Rwanda law should undertake the work on creating a more efficient legal framework for debt recovery that balances creditor rights and debtor protections and simplifying legal procedures can expedite the recovery process and reduce delays. We found that creditor can sell the mortgage or collateral only if the registrar general gives the permission to sell it otherwise the cannot be able to sell the mortgage, in this point we suggest the improvement of better to Strengthen enforcement mechanisms for secured creditors, ensuring that they have more effective tools to recover their debts in cases of default including self-execution which means once debtor runs through default the creditors can proceed in legal way to sell the security.

The need of better protecting creditor interest is improve and modernize the collateral registry system to make it easier for creditors to register and verify collateral, enhancing their confidence in extending credit specially mortgage law shall modernize well the verification of collateral in order to avoid fraud or misleading creditor.

These improvements, when implemented collectively or individually, can create a more balanced and efficient environment for creditors to protect their interests while respecting the rights of debtors in Rwanda. It's important to involve relevant stakeholders, including creditors, debtors, legal experts, and government authorities, in the discussions and decisions related to these improvements.

IV.2.1 Improvement to better protect creditor interest in insolvency law

First of all, creditors are absent in the formulation of the reorganization plan, and can only vote on whether the reorganization plan is approved.¹¹¹ The inability to participate in the planning in the early stage and relying only on the voting behaviour in the later stage makes it difficult for creditors to maintain their own rights and interests. Second, after bankruptcy proceedings are initiated, creditors must declare their claims within the reporting period, but the issue of the existence of claims beyond the deadline has not been clearly defined, which affects the protection of creditors' rights and interests.¹¹² Insolvency law must improve to require debtors to promptly notify creditors of financial distress or the intent to file for insolvency. This enables creditors to take timely actions to protect their interests and engage in meaningful negotiations. Ensure that secured and unsecured creditors have representation in insolvency proceedings, allowing them to participate in decisions related to reorganization plans, asset distribution, and other critical matters. Simplify and digitize the process for creditors to file claims, reducing administrative burdens and potential delays in submitting and verifying claims. Set clear time limits for debtors to submit reorganization plans, providing creditors with certainty and preventing unnecessary delays in the resolution process. There shall be mechanism on allowing creditors participate in reorganisation plan before they can vote because under Rwanda insolvency is absence in this point.

Debtors are required to pay the full amount of the debt, but in practice, creditors have not been able to recover the full amount of their claims for a number of reasons ranging from low market price of the mortgaged asset, absconding of debtors,¹¹³ the failure on the part of the competent court to seize and safely keep the property of the debtor and insufficiency of assets.

¹¹¹ Ibid at page 34

¹¹² LAW N° 075/2021 OF 06/12/2021 RELATING TO INSOLVENCY

¹¹³ DN International Ltd Judgment Rcom 0189/12/TC/ Nyge rendered on 15 February 2013. In this case, the debtor absconded for fear of being arrested by the government. The case is still ongoing, and the major creditor Kenya Commercial Bank (KCB) has been authorized by the RG to dispose of the company's assets via auction for settlement of its claims and that of others (KCB has a right of retention

A secured creditor with an asset involved in the insolvency proceedings may apply for retention of such an asset and shall not be considered among creditors. In case a secured creditor decides to surrender the security, he/she shall be included on the list of creditors and be paid like other creditors. Where a secured creditor decides to retain its security, it will be required to sell the security and distribute the proceeds in accordance with article 22 of the Mortgage Law. Therefore it is important to note that the improvement on full payment to creditors after proceeding shall be strength so that creditor can recovery full of his among especially in practice.

IV.2.2 Loan Contract Enforcement

Loan contract enforcement is a crucial aspect of maintaining the integrity of lending agreements and ensuring that both parties fulfil their obligations. Ensure that the loan agreements are drafted clearly and comprehensively, outlining all terms, conditions, repayment schedules, interest rates, collateral, and any other relevant provisions. A well-drafted agreement minimizes potential disputes. In absence of well drafted contract agreement could lead to unsuccessful debtor recovery. However the improvement on drafting contract are still need to be improved to better protect creditors.

A burgeoning literature suggests that speedy and effective contract enforcement is essential to the development of the credit market,¹¹⁴ since the efficiency and honesty of the judiciary determine the real degree of creditor protection.

Creditor rights have been considered either in terms of legal rights in bankruptcy¹¹⁵, or in terms of information sharing about debtors.¹¹⁶ In this area as well, there has been a great deal of

over his securities). See also T Jean de la Croix 'DN International saga: Suppliers turn on KCB' The New Times 14 October 2013 at 1 (hereinafter referred to as T Jean de la Croix).

¹¹⁴ <https://www.sciencedirect.com/topics/economics-econometrics-and-finance/creditor-protection> visited 9/8/2023

¹¹⁵ (LLSV, Djankov et al. 2008a)

¹¹⁶ Rafael La Porta, ... Andrei Shleifer, in Handbook of the Economics of Finance, 2013

empirical research consistent with the view that the legal rights of creditors encourage debt markets.¹¹⁷ Better legal protection of creditor rights has been shown that there is a need to increase the size of debt, to improve the terms on which borrowers can raise debt finance, to reduce collateral requirements¹¹⁸, to increase reliance on long-term as opposed to short-term debt or trade credit, to enable affiliates of multinationals to raise more local debt, to influence the structure of banking relationships

¹¹⁷ (Djankov et al. 2007; Djankov et al. 2008a; Pagano and Jappelli, 1993)

¹¹⁸ (Davydenko and Franks, 2008; Liberti and Mian, 2010)

CHAPTER FIVE GENERAL CONCLUSION AND RECOMMENDATIONS

In this last chapter was about general conclusion, summary of findings of previous chapters, answer to research questions, recommendations and contributions of research in the area of this research.

V.1 GENERAL CONCLUSION

This research has discussed the legal standing of creditors and their protection in general way under Rwanda law and regulations. It is of note that the result of this research provides a backup and constitutes a solid ground for understanding different paradoxical concepts of rights of creditors in collecting debt by different means available in Rwanda and in Chad. As the objectives of the study was to learn and understand the legal standing of creditors and their protection, this research has identified secured creditors rights in insolvency proceeding and their rights are not stayed in the commencement of insolvency apart from situations where a debtor demonstrates an intention to submit a reorganization plan along with the application to initiate insolvency proceedings, the study has also revealed that a secured creditor has the option to request the court to lift the stay in cases where there is a valid reason for doing so. The law provides for the orderly resolution of financial distress, and creditors' claims are handled through the insolvency process.

The Secured creditors seem have protection since the establishment of laws and regulations on creditors rights and protection in Rwanda which they have security and when debtors fall upon defaulting payment. The unsecured creditors also seem have protection and rights in debt recovery even though the risk is higher due to none security or collateral in the agreement they received the protection from state jurisdiction they can collect the assets by garnishment.

V.2 Summary of findings

Generally, this paper has concentrated primarily on legal standing of creditors and their protection under Rwandan law and Chadian law in which this paper began to establish the general introduction of the thesis which has been by the conceptual and theoretical of the research project within Rwandan context. The literature review and court cases discussed in this research have shown to some degree how creditors are likely not sufficient protected from debtors in default under Rwanda law and Chadian uniform act. Moreover, this thesis serves to be a main work under the legal analysis of standing of creditors and their protections afforded under Rwandan and Chadian where they can collect their money from debtors. From above conducted research, therefore, it flows that, the Creditors can pursue legal action against debtors in the courts to recover outstanding debts.

This research has brought about a number of challenges in which, creditors face and it indicates the needs to improve creditor's protection in debts recovery in case of default by the debtor.

From above findings in particularly chapter three, under Rwanda law, creditor's rights and protections are governed under different statutes and regulations for example¹¹⁹ under Contract law in Chad, creditors have legal standing to enforce their rights as per the terms and conditions agreed upon in the contract. If a debtor fails to fulfil their contractual obligations, the creditor can seek remedies through the courts or alternative dispute resolution mechanisms to get back the debts.

¹¹⁹ The regulation n°12/2017 of 23/11/2017 on credit classification and provisioning, official Gazette n° 49 bis of 04/12/2017 5) Law n°45/2011 of 25/11/2011 governing contracts, Official Gazette n° 04bis of 23/01/2012

To sum up, based on the preceding discussion, it can be inferred that creditors have legal standing that enhanced protection due to the implementation of new provisions in existing laws and the introduction of fresh legislation by the Government. In contrast to the past, where creditors' rights were not adequately acknowledged or safeguarded, the current legislation grants the legal standing creditors exclusive rights to reclaim their owed amounts in the event of failure to repay.

V.3 Answer to research question

The key focus of this research questions under this study have been to understand, learn and legally analyse the below issues:

1. What are the legal rights and protections afforded to creditors under laws and regulations in Rwanda and in Chad?
2. How do the legal rights and protections afforded to creditors vary across different types of debt secured and unsecured debt?
3. What are the common challenges faced by creditors when attempting to collect debts, and how can legal frameworks be improved to better protect their interests?

By providing legally and quintessence answers to these questions, chapter one has introduced the general introduction and background of the study, hence chapter two clarified the general concepts and overview on terms related to creditors rights and their protection in general. In the light of legal standing of creditors in Rwanda and in Chad, chapter three elaborated on the analysis of the legal standing of creditors and protections afforded to creditors under laws and regulations in Rwanda and how protections afforded to creditors vary across different types of debt secured and unsecured debt. Chapter four, highlighted the common challenges faced by creditors when attempting to collect debts, and how can legal frameworks be improved to better protect their interests , and chapter five combined general conclusion and recommendations which ended the research paper.

V.4. Recommendations

This recommendations are addressed to Rwanda parliament and senators:

From above analysis of conducted research about legal standing of creditors and their protections under Rwandan law, with clarity it is found that the standing of creditors are afforded in debt recovery therefore among others, there is improvement that need to be done. In this part the focus will be on some recommendations that increase or strength the mechanisms that protect creditors rights.

From above discussed sections most cases are found that creditors, the balance of recovering loan come by the delay of debtors, therefore the law should strength the measure that might be easy for creditors to cover their loan.

We recommend to senators to review on self-execution of sell of collateral or security instead of submitting to registrar general because once agreement or contract and registration are made which means creditor has right to sell the collateral in case of debtor default de process should be between creditor and debtor in order that creditor may not see it as a burden or limited rights.

We also suggest the improvement of institutions system in lend and with overrate that struggle debtors and the burdens return on creditors in lack of quick recovery of the loan.

Therefore, looking at the Rwandan legislation providing for protection of secured creditor in case of debtor's default, you find that creditors are still faced with difficulty in recovering their monies or even risking a chance of not recovering any at all.

This recommendations are addressed to Chadian legislations and parliaments:

We recommend to Chadian government to adopt new laws to provide sufficient protection and rights to creditors. The needs of considering the improvement of access to property registration

for financial institutions. This will help them determine the property's owner, location, and master plan, thereby preventing security agreements being made on properties with little or no value due to their location. By doing so, the risks associated with collusion between property values and debtors, such as falsifying valuation prices or property images during mortgage agreements, can be significantly reduced. Enhance legal provisions to expedite debt recovery proceedings. This for example setting specific timelines for debt collection actions, thus reducing delays caused by debtor objections.

We recommend Chadian senator to enact laws and adopting regulations that include specific clauses outlining the procedures for secured creditors to exercise their rights is crucial in domestic law not focusing on only regional law. These procedures should cover scenarios where creditors choose to manage the collateral, lease it, or take over its ownership

We recommend Chadian parliaments to draft and implement national Insolvency Laws in terms of reviewing and amend insolvency laws to strike a balance between protecting the rights of debtors and safeguarding creditors' interests. Clarify the rights and procedures for secured and unsecured creditors during insolvency proceedings, ensuring a fair and transparent process.

VI.2.1 Contribution of the research

The gap contribution of this research of the area of the research was to expand the understanding on and learn the legal standing of creditors and their protections under Rwandan law. This thesis has contributed to comprehensive knowledge on legal mechanism afforded to protect creditors that vary from different type secured and unsecured debts under law of Rwanda and Chad. This research contributed to blow up the understanding on challenges faced by creditors in Rwanda and Chad and the needs for improving better to protect creditor's interest. Additionally this thesis contributed to apprehend laws and regulation in Rwanda and Chad in domain of business transaction or commercial matters between creditors and debtors.

Using a techniques, analytical and exegetic method, we collected data from different sources in order to bring insight understanding

Our findings suggest that rights of creditors and their protection in debts collection should enhance legal provisions to expedite debt recovery proceedings particularly in practice. This for example setting specific timelines for debt collection actions, thus reducing delays caused by debtor objections.

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