

Resolving Insolvency Questionnaire – «DB_ri_Economy_FullName»

www.doingbusiness.org

Dear «FirstName» «LastName»,

We would like to thank you for your participation in the *Doing Business* project. Your expertise in the area of insolvency in «DB_ri_Economy_FullName» is essential to the success of the *Doing Business* report, one of the flagship publications of the World Bank Group that benchmarks business regulations in 190 economies worldwide. The resolving insolvency indicators, which measure the time, cost and outcome of insolvency proceedings involving domestic entities and the quality of the insolvency laws and regulations, are one of the 11 indicator sets published by the *Doing Business* report.

The report attracts much attention around the world. The latest edition, *Doing Business 2017: Equal Opportunity for All*, introduced improvements in the paying taxes and protecting minority investors indicators, and included a gender component in 3 out of 11 *Doing Business* indicator sets. It received over 7,000 media citations within just a week of its publication on October 25, 2016 and the report was downloaded almost 40,000 times within that same period. A record 137 economies implemented a total of 283 reforms. Low and middle income countries carried out more than 75% of these reforms, with Sub-Saharan Africa accounting for 80 of them.

Governments worldwide read the report with interest every year, and your contribution makes it possible for the *Doing Business* project to disseminate the regulatory best practices that continue to inspire their regulatory reform efforts. Since 2010, economies worldwide have implemented 121 insolvency reforms, including 24 economies in 2015/16.

We are honored to be able to count on your expertise for *Doing Business 2018*. Please do the following in completing the questionnaire:

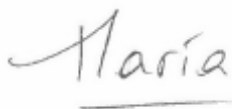
- Be sure to update your name and address if necessary, so that we can mail you a complimentary copy of the report.
- Describe in detail any reform that has affected the process for resolving insolvency since June 1, 2016.
- Review the assumptions of the case study before updating last year's information in the questionnaire.
- Kindly return the questionnaire to dbinsolvency@worldbank.org.

We thank you again for your invaluable contribution to the work of the World Bank Group.

Sincerely,



Olena Koltko
Tel: (202) 473-5211
Fax: (202) 473-5758
dbinsolvency@worldbank.org



Maria Quesada
Tel: (202) 473-3830
Fax: (202) 473-5758
dbinsolvency@worldbank.org



Faiza El Fezzazi El Maziani
Tel: (202) 473-7673
Fax: (202) 473-5758
dbinsolvency@worldbank.org

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Additional Contributor(s): If there are more people whom you would like us to acknowledge, kindly send us an e-mail.

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[title] [first name] [last name]	[firm] [position] [profession]	[]	[phone] [mobile]	[street] [state/province] [city/country]
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Referrals: Please help us expand our list of contributors by referring us to other experts in the private or public sector (lawyers, notaries, public officials or any expert on this field) who can respond to the questionnaire.

First name	Last name	Position	Firm	Address	Phone	E-mail
[]	[]	[]	[]	[]	[]	[]
[]	[]	[]	[]	[]	[]	[]

1. DEFINITIONS OF TERMS USED IN THIS QUESTIONNAIRE

In completing sections 4 and 5 of the questionnaire, please keep in mind the following definitions:

“Foreclosure” is a process through which a secured creditor brings a claim in court demanding to recover the balance of a secured loan when the debtor fails to make payment. The claim is satisfied through sale of the assets used as collateral. For the purpose of this study, *foreclosure* refers to a substantive review by a court of the merits of the creditor’s claim and the debtor’s possible defense in formal court proceedings, as well as the subsequent enforcement of the judgment through sale of the assets. *Foreclosure* includes enforcement of security interests other than real estate mortgages.

“Insolvency” means that a debtor is generally unable to pay its debts as they mature and/or that its liabilities exceed the value of its assets.

“Insolvency representative” is a person or body (including one appointed on an interim basis) authorized in insolvency proceedings to administer, supervise, oversee or monitor the reorganization or the liquidation of the insolvency estate.

“Liquidation” is a process of assembling and selling the assets of an insolvent debtor in order to dissolve it and distribute the proceeds to its creditors. *Liquidation* may include the piecemeal sale of the debtor’s assets or the sale of all or most of the debtor’s assets as a going concern. For the purpose of this study, the term *Liquidation* refers only to formal in-court proceedings and does not include voluntary winding up of a company.

“Post-commencement credit” refers to new funding provided to an insolvent company after the start of insolvency proceedings by existing or new creditors to finance the on-going operations of the insolvent company during the insolvency process. For the purpose of this study, the term *post-commencement credit* does not include new loans offered as part of a reorganization plan.

“Receivership” is the process of appointment by a court, a contract or a government official of a receiver to take custody of the property, business, rents and profits of a debtor that has breached the terms of its borrowing from a creditor with an enterprise charge. A receiver may be authorized to continue the debtor’s business before selling the business as a going concern or before selling the assets separately to satisfy the debt. For the purpose of this study, the term *receivership* refers only to formal in-court proceedings.

“Reorganization” is a process through which the financial well-being and viability of a debtor's business may be restored based on a reorganization plan, so that the business can continue to operate through means that may include debt forgiveness, debt rescheduling, debt equity conversions and sale of the business (or parts of it) as a going concern. For the purpose of this study, the term *reorganization* refers only to formal in-court proceedings available to all commercial debtors and does not include schemes of arrangement, out-of-court agreements with creditors or reorganization before administrative bodies.

“Reorganization plan” is a plan by which the financial well-being and viability of the debtor’s business can be restored.

2. REFORMS AND STATISTICS

2.1. Have there been any reforms in the area of corporate insolvency between June 1, 2016, and now, including any developments in the laws or practices relating to foreclosure, liquidation or reorganization? Please describe.

Response	Description
-Click to Select-	

2.2. Are any reforms in the area of corporate insolvency expected to come into effect prior to June 1, 2017, or in the longer term? Please describe.

Response	Description
-Click to Select-	

2.3. How many insolvency cases involving commercial entities did you or your firm handle in 2016? Please count all foreclosure, liquidation and reorganization proceedings completed between January 1 and December 31, 2016, or pending as of December 31, 2016.

Response	Precise number or approximate estimate
-Click to Select-	

2.4. How many insolvency cases against commercial entities were filed in your economy in 2016? Please provide the estimates for foreclosure, liquidation and reorganization proceedings separately. Please note that we do not consider cases that involve unincorporated sole proprietorships.

Response	Precise number or approximate estimate
-Click to Select-	

2.5. In your opinion, what proportion of distressed businesses filing for insolvency continued to operate as a going concern upon completion of insolvency proceedings in 2016, including sale as a going concern through liquidation as well as through reorganization? Please provide details in the comments section, if any, or reference to available statistics.

Response	Comment
-Click to Select-	

3. CASE STUDY ASSUMPTIONS

Please answer the questions in section 4 of this questionnaire on the basis of the case study assumptions below.

(a) Mirage is a local limited liability company that runs a hotel in «DB_ri_DBCity»; its only asset and source of income is the hotel property. The value of the hotel is «DB_ri_Currency_Code» «DB_ri_Hotel_Value». On January 1, 2011, Mirage signed a 10-year loan agreement with BizBank, a local bank. The loan was secured by the hotel property and/or by a universal business charge (an enterprise charge) in those economies where this type of collateral is allowed. BizBank's outstanding credit is «DB_ri_Currency_Code» «DB_ri_Hotel_Value», which represents 74% of Mirage's total outstanding debt. The outstanding amount owed to BizBank is exactly equal to the market value of the hotel business.

(b) Unsecured creditors (e.g. suppliers, tax authorities and employees) hold the remaining 26% of Mirage's debt, which is equivalent to «DB_ri_Currency_Code» «DB_ri_Unsecured_debt». Among unsecured creditors, the largest group is Mirage's suppliers (50 in total), all of which are owed payment for their last deliveries.

(c) Mirage's founder owns 51% of the company and is the chairman of its board of directors (or equivalent supervisory body). No other shareholder holds more than 5% of the voting power. The company has a professional general manager and 201 employees. All parties in this scenario are local entities or citizens. The founder and Mirage's management both want to keep the firm operating.

(d) Today is January 1, 2017. Since the execution of the loan agreement with BizBank, Mirage has met all conditions of its loan and made all payments on time. However, at the end of 2016, Mirage experienced an unexpected operating loss due to worsened market conditions. As a result, Mirage will default on its next loan payment to BizBank, which is due tomorrow, January 2, 2017. Mirage can neither obtain a new loan from another financial institution nor renegotiate its current loan with BizBank.

(e) The company expects to have negative net worth and operating losses in both 2017 and 2018. The company's expected 2017 cash flow will cover all operating expenses, including supplier payments, salaries, maintenance costs and taxes. It will not cover principal or interest payments to BizBank.

(f) If Mirage is sold as a going concern (i.e. as a business that has the resources needed in order to continue to operate in the foreseeable future), it would fetch 100% of its current market value. But if Mirage's assets are sold piecemeal, they would fetch only 70% of Mirage's current market value.

4. CHOICE OF PROCEDURE, APPLICABLE LAWS AND GENERAL ESTIMATES

Please update the data in this section on the basis of the case study assumptions in section 3. For your convenience, we have included, where available, a summary of the responses provided by our contributors last year to the same questions. Because they represent the responses from all *Doing Business* contributors in your economy, they may not match the specific answers that you or colleagues in your firm provided last year.

4.1. According to common practice in «DB_ri_DBCity», which in-court procedure is most likely to apply in Mirage's case? Please explain why, in your opinion, this would be the most likely procedure. Please refer to definitions of possible procedures in section 1.

Last Year		This Year	
Procedure	Comment	Procedure	Comment
«DB_ri_Insolvency_Proceeding»	«DB_ri_Procedure_Official_exp_FL»	-Click to Select-	

4.2. Which court will be involved in Mirage's case? For example, Mirage's management applies to a city court for reorganization or BizBank commences judicial foreclosure proceedings in a commercial court.

Last Year	This Year
«DB_ri_Court_involvement»	

4.3. Based on the procedure you selected in question 4.1, will the hotel be able to continue operating upon completion of the entire insolvency process? Please explain why, in your opinion, this would be the most likely outcome. Please note that the hotel may survive as a going concern either through continuation of its operations or through a sale as an operating whole. **Going concern means that a business has the resources and viability needed in order to continue to operate in the foreseeable future.**

Last Year		This Year	
Response	Comment	Response	Comment
«DB_ri_Outcome_text»	«DB_ri_Outcome_official_comment_FL»	-Click to Select-	

4.4. Based on the procedure you selected in question 4.1, how long will the entire insolvency process take? Please provide the most likely estimate based on your experience. Please, indicate the main procedural steps required to complete the entire process and how much time each procedural step will take in practice. The time begins at the moment of Mirage's default and ends when BizBank is repaid all or some of the money owed to it. If the procedure is reorganization, the timeframe ends when the reorganization plan is approved. If the initial procedure is converted from one to another, please take into account the time of the second procedure as well.

Last Year		This Year	
Response	Comment	Response	Comment
«DB_ri_LikelyTime» months	«DB_ri_LikelyTime_Official_exp_FL»	months	
Based on your experience and the same case study assumptions, what can be the fastest time in practice to complete the applicable procedure?		months	
Based on your experience and the same case study assumptions, what can be the longest time in		months	

practice to complete the applicable procedure?

If there is a difference between the fastest and longest time estimate, what is the main reason behind the difference?

4.5. Based on the procedure you selected in question 4.1, how much will the entire process cost? Please provide the most likely estimate based on your experience. The estimate below should be expressed as percentage of the value of Mirage's estate, which is «DB_ri_Currency_Code» «DB_ri_Hotel_Value». Please indicate the applicability of and the estimates for the following cost components: court fees, fees of lawyers, insolvency representatives, auctioneers and other professionals involved in the proceedings, and all other applicable fees and costs. Not all of the fee categories listed below may be applicable in your country. If the initial procedure is converted from one to another, please take into account the cost of the second procedure as well.

	Last Year		This Year	
	Response	Comment	Response	Comment
Total Cost	«DB_ri_Costinp ercentage»%	«DB_ri_Cost_official_exp_ FL»	%	
Court fees			%	
Attorney's fees			%	
Fees of insolvency representative or receiver			%	
Auctioneer's fees			%	
Fees of accountants and other professionals			%	
Other (please specify)			%	

4.6. What laws and supporting regulations/rules will apply in Mirage's case?

Last Year	This Year
«DB_ri_Laws_applicable»	

5. LEGAL FRAMEWORK

This section focuses on the legal framework applicable to judicial REORGANIZATION and LIQUIDATION of commercial entities (personal insolvency excluded) in your economy. When answering the questions in this section, please keep in mind the applicable legal framework and specify the relevant article of the law for each answer. If the legal framework has no provisions explicitly addressing the questions below, please indicate so in your answers. For your convenience, we have included a summary of the responses provided by our contributors last year to the same questions. Because they represent the responses from all *Doing Business* contributors in your economy, they may not match the specific answers that you or colleagues in your firm provided last year. Please refer to section 1 for definitions of legal terms used below.

5.1. COMMENCEMENT OF PROCEEDINGS

5.1.1. What insolvency procedures are available to a DEBTOR when commencing insolvency proceedings?

Last Year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
«DB_ri_Commence_Debtor»	«DB_ri_Commence_Debtor_LB_FL»	-Click to Select-	

5.1.2. Does the insolvency framework allow a CREDITOR to file for insolvency of the debtor?

Last Year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
«DB_ri_Commence_Creditor»	«DB_ri_Commence_Creditor_LB_FL»	-Click to Select-	

5.1.3. What basis for commencement of insolvency proceedings is allowed under the insolvency framework? *If different tests are available in your economy for different proceedings, please explain the distinctions in the comment section.*

Last Year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
«DB_ri_Commence_Condition»	«DB_ri_Commence_Condition_LB_FL»	-Click to Select-	

5.2. MANAGEMENT OF DEBTOR'S ASSETS

5.2.1. Does the insolvency framework explicitly provide for the continuation of existing contracts supplying essential goods and services to the debtor (goods and services necessary for the survival of the business)?

Last Year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
«DB_ri_Essential_Contracts»	«DB_ri_Essential_Contracts_LB_FL»	-Click to Select-	

5.2.2. Does the insolvency framework explicitly provide for the rejection by the debtor (or by insolvency representative or by court on debtor's behalf) of overly burdensome contracts (the

cost of performance is greater than the benefit to be received), where both parties have not fully performed their obligations?

Last Year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
«DB_ri_Burdensome_Contracts»	«DB_ri_Burdensome_Contracts_LB_FL»	-Click to Select-	

5.2.3. Does the insolvency framework explicitly provide for the avoidance (invalidation) of the following transactions concluded before the filing for insolvency/commencement of insolvency proceedings?

	Last Year		This year	
	Response	Comment/Legal Basis	Response	Comment/Legal Basis
(a) Preferential transactions, which resulted in a creditor obtaining more than its pro rata share of the debtor's assets and which occurred when the debtor was insolvent or resulted in the debtor becoming insolvent	«DB_ri_Preferential_Transactions»	«DB_ri_Preferential_Transactions_LB_FL»	-Click to Select-	
(b) Undervalued transactions, which were made as a gift or in exchange for less than equivalent value and which occurred when the debtor was insolvent or resulted in the debtor becoming insolvent	«DB_ri_Undervalued_Transactions»	«DB_ri_Undervalued_Transactions_LB_FL»	-Click to Select-	

5.2.4. Does the insolvency framework explicitly provide for the possibility of the debtor obtaining credit after commencement of insolvency proceedings (post-commencement credit) to finance its on-going needs during the proceedings? *The term post-commencement credit does not include new loans offered as part of a reorganization plan, but includes loans issued after commencement of insolvency proceedings and before approval of a reorganization plan.*

Last Year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
«DB_ri_Postcommence_Credit»	«DB_ri_Postcommence_Credit_LB_FL»	-Click to Select-	

5.2.5. Does the insolvency framework assign priority to post-commencement credit?

Last Year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
«DB_ri_Postcommence_Priority»	«DB_ri_Postcommence_Priority_LB_FL»	-Click to Select-	

5.3. REORGANIZATION PROCEEDINGS

5.3.1. Which creditors vote on the proposed reorganization plan?

Last Year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
«DB_ri_Creditor_Vote_Plan»	«DB_ri_Creditor_Vote_Plan_LB_FL»	-Click to Select-	

5.3.2. Does the insolvency framework require that the following provisions must be followed in order for the reorganization plan to be approved?

	Last Year		This year	
	Response	Comment/Legal Basis	Response	Comment/Legal Basis
(a) Creditors entitled to vote on the reorganization plan are divided into classes according to their respective rights	«DB_ri_Class_division»	«DB_ri_Class_division_LB_FL»	-Click to Select-	
(b) Each class of creditors votes separately	«DB_ri_Class_vote_separate»	«DB_ri_Class_vote_separate_LB_FL»	-Click to Select-	
(c) Creditors of the same class receive the same treatment under the reorganization plan	«DB_ri_Class_same_treatment»	«DB_ri_Class_same_treatment_LB_FL»	-Click to Select-	

5.3.3. Does the insolvency framework require that a reorganization plan must specify that the anticipated return to dissenting creditors will be at least equal to the return that they would obtain in a liquidation?

Last Year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
«DB_ri_Dissenting_Equal_Return»	«DB_ri_Dissenting_Equal_Return_LB_FL»	-Click to Select-	

5.4. CREDITOR PARTICIPATION

5.4.1. Does the insolvency framework explicitly require that creditors (through either a decision of the creditors' meeting or a decision of the creditors' committee) appoint the insolvency representative or approve/ratify/reject the appointment of the insolvency representative?

Last Year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
«DB_ri_Approve_insolv_rep»	«DB_ri_Approve_insolv_rep_LB_FL»	-Click to Select-	

5.4.2. Does the insolvency framework explicitly require that creditors (through either a decision of the creditors' meeting or a decision of the creditors' committee) approve the sale of substantial assets of the debtor, if such sale is made in the course of the insolvency proceedings?

Last Year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
«DB_ri_Approve_sale_assets»	«DB_ri_Approve_sale_assets_LB_FL»	-Click to Select-	

5.4.3. Does the insolvency framework explicitly provide that an individual creditor has the right to request at any time information from the insolvency representative on the debtor's business and financial affairs?

Last Year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
«DB_ri_Request_inform»	«DB_ri_Request_inform_LB_FL»	-Click to Select-	

5.4.4. Does the insolvency framework explicitly provide that an individual creditor has the right to object to the decision accepting or rejecting its own claims AND claims of other creditors?

Last Year		This year	
Response	Comment/Legal Basis	Response	Comment/Legal Basis
«DB_ri_Object_credit_claims»	«DB_ri_Object_credit_claims_LB_FL»	-Click to Select-	

Thank you very much for completing the Resolving Insolvency questionnaire!

We sincerely appreciate your contribution to the Doing Business project.
 The results will appear in *Doing Business 2018* and on our website: www.doingbusiness.org.
 Your work will be gratefully acknowledged in both, if you wish.