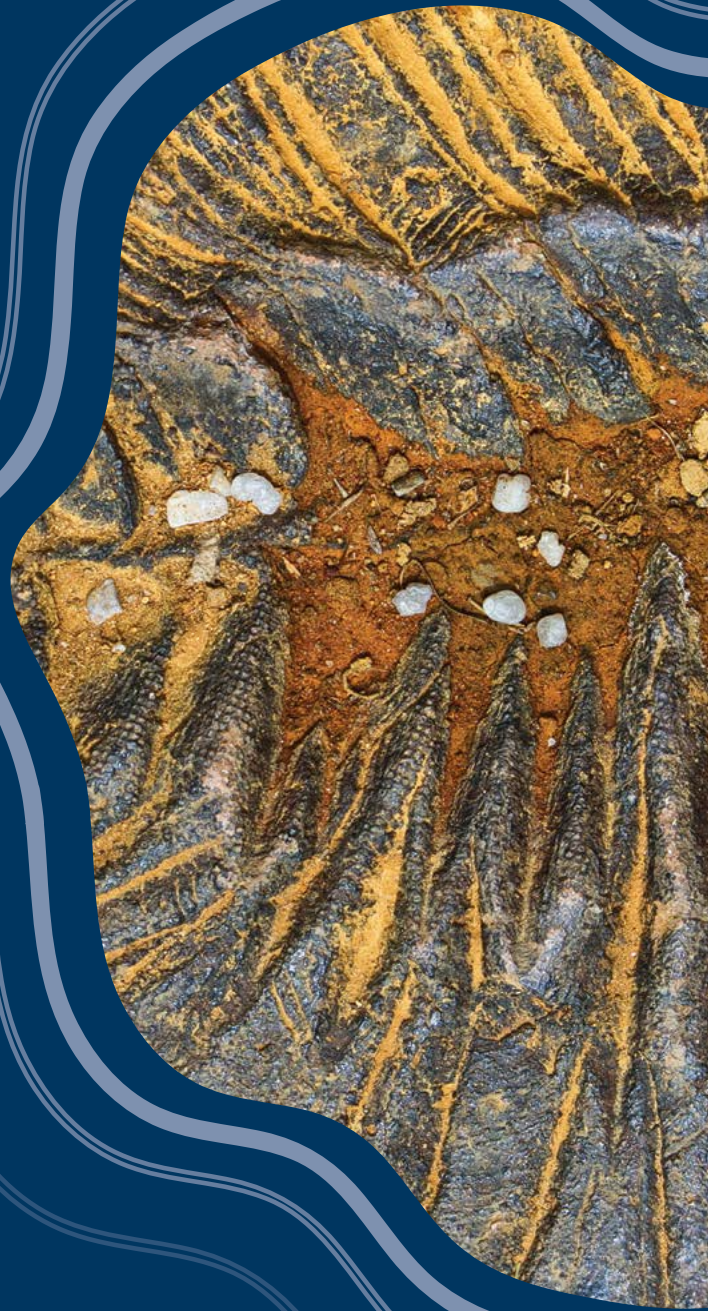




**BOWMANS**  
THE VALUE OF KNOWING



**AFRICA GUIDE –  
RESTRUCTURING  
AND INSOLVENCY**



# Contents

- 04** Foreword
- 06** Landscape from a Creditor Perspective
- 08** Landscape from a Debtor Perspective
- 10** Payment Waterfall in Liquidation
- 12** Our Firm
- 13** Our Presence in Africa
- 14** Key Contacts



## Foreword

This guide provides an overview of the restructuring and insolvency landscape in the major economies in eastern, western and southern Africa, being Ethiopia, Ghana, Kenya, Mauritius, Nigeria, South Africa, Tanzania, Uganda and Zambia.

It has been compiled to assist companies with operations in one or more of these markets, or lenders to, or investors in, such companies. However, ultimately, sound legal advice is critical when considering the options available to deal with a financially distressed company so the contents of this publication are for reference purposes only and are not a substitute for detailed legal advice. The information is correct as at September 2022.

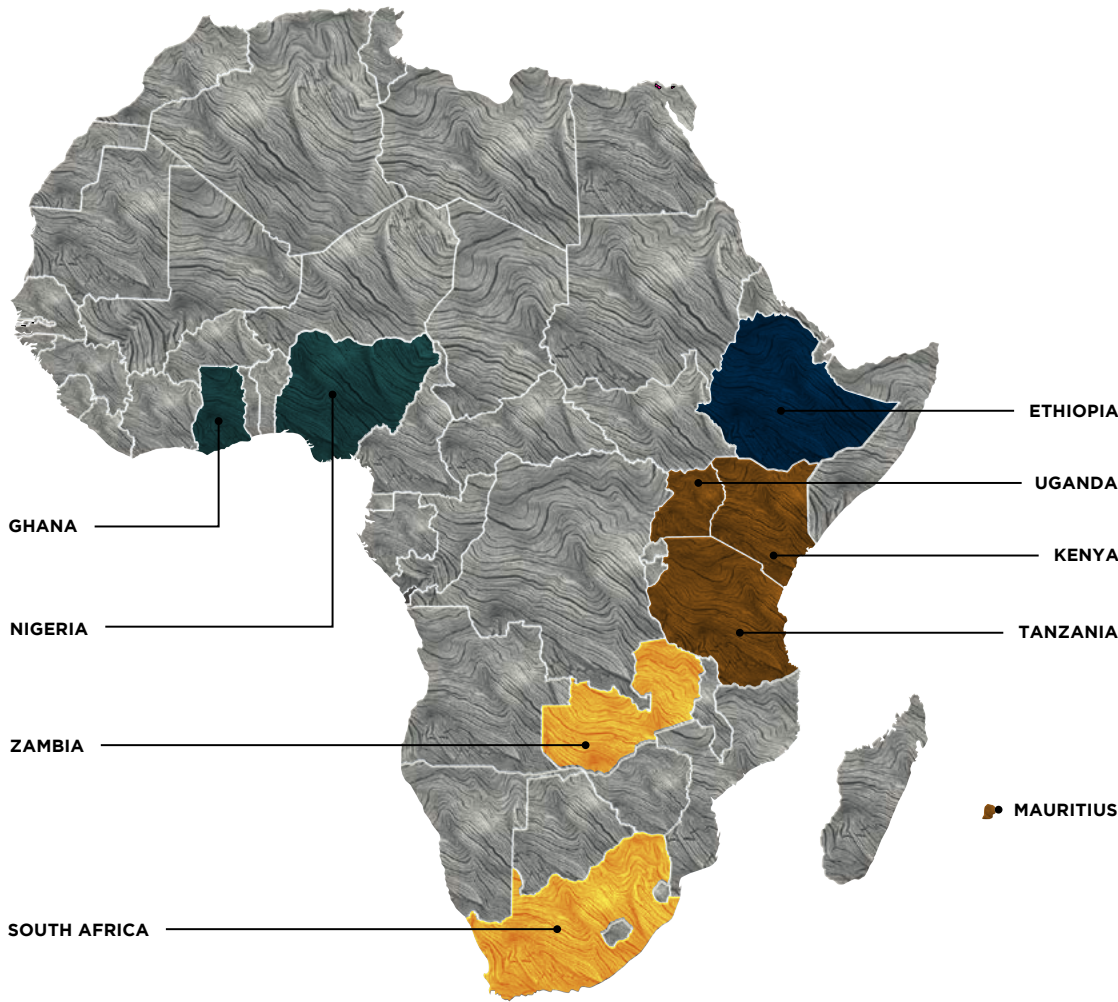
For further information, please contact any one of the key contacts included at the end of this guide.

Richard Harney  
Senior Partner, Kenya

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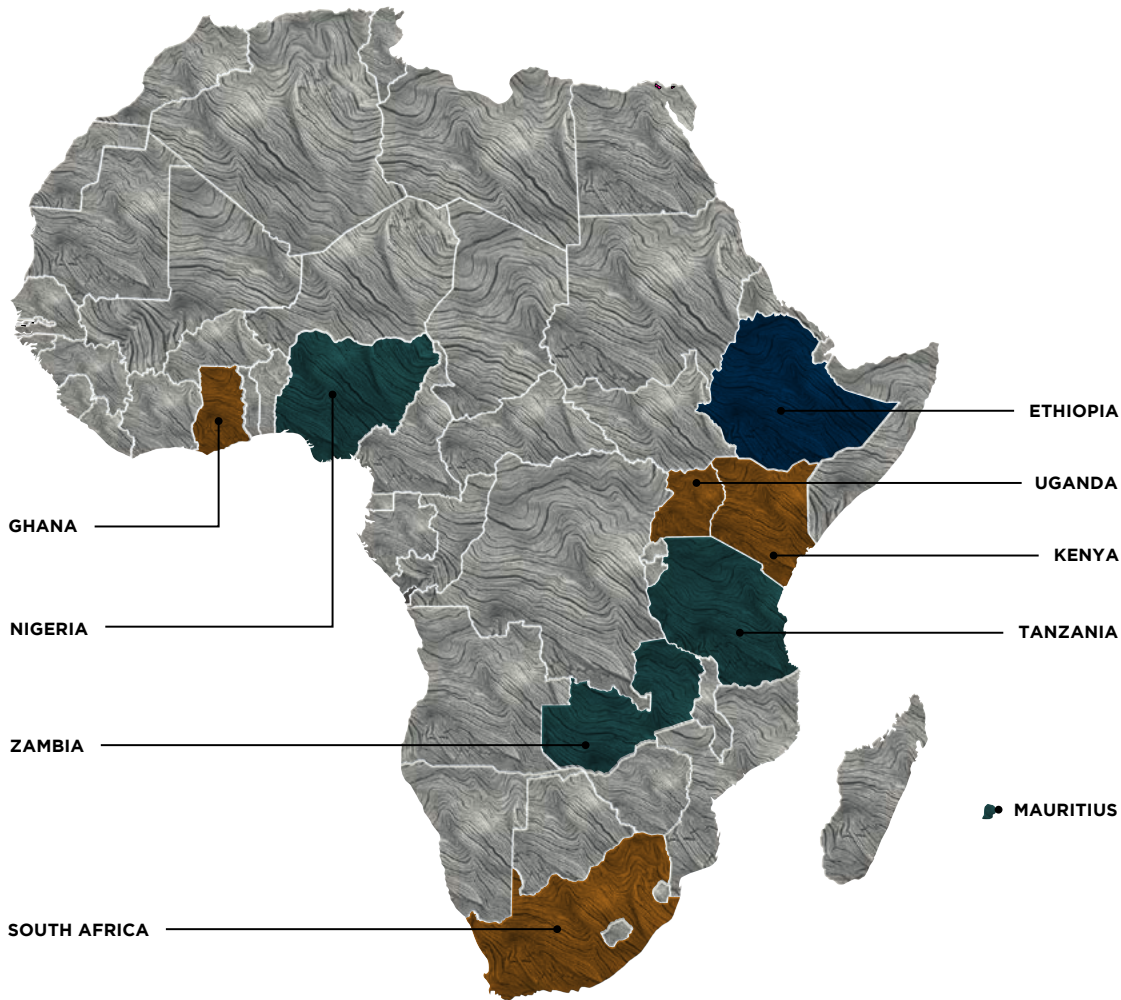


# Landscape from a Creditor Perspective



	●	●	●	●
TEST FOR INSOLVENCY	<p>The test for insolvency in all jurisdictions save for Uganda is a cash flow and balance sheet test.</p> <p>In Uganda there is only a cash flow test for insolvency.</p>	<p>The test for insolvency in Ethiopia is a cash flow test where a company is unable or is deemed unable to pay its debts as and when they fall due.</p>	<p>The test for insolvency in these countries is a cash flow test.</p>	<p>The test for insolvency in Zambia is a cash flow test whereas the test for insolvency in South Africa is a cash flow and balance sheet test.</p>
ADMINISTRATION	<p>All countries provide for administration as a business rescue process. Pre-pack Administrations are possible in all jurisdictions, although there are no laws that govern pre-pack administrations specifically.</p>	<p>Ethiopia is an outlier in the East in that it has its own rescue processes as follows:</p> <ul style="list-style-type: none"><li>• preventive restructuring proceedings, where there is no court involvement; but this requires unanimous creditor consent;</li><li>• and reorganisation proceedings, where there is court involvement and consent from a qualified majority of creditors is required.</li></ul>	<p>In these countries, administration is available as a business rescue process. Pre-pack administrations are possible, although there are no laws that govern pre-pack administrations specifically.</p>	<p>These countries have a process known as business rescue which is used to save distressed companies. Business rescue has a few similarities with the process of administration found in the eastern and western countries.</p>
INFORMAL WORKOUTS	<p>Informal workouts are possible in all jurisdictions and are commonly used in all except for Mauritius and Tanzania where they are not commonly used in practice.</p>	<p>Informal workouts are possible and commonly used.</p>	<p>Informal workouts are possible and occasionally used in Ghana to restructure company debts.</p> <p>In Nigeria, informal workouts are commonly used to restructure company debts.</p>	<p>Informal workouts are possible in these jurisdictions and commonly used in practice.</p>

Landscape from a Debtor Perspective



	●	●	●
<b>UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY (MODEL LAW)</b>	These countries have adopted the Model Law.	Ethiopia has not adopted the Model Law. However, the Ethiopian Commercial Code provisions on cross-border insolvency are drawn from various sources including the Model Law.	These countries have not adopted the Model law. However, the Mauritian and Zambian cross-border insolvency provisions are borrowed heavily from the Model Law.
<b>VOLUNTARY ARRANGEMENTS</b>	Out of all the countries, company voluntary arrangements are only available in Kenya.	Ethiopia does not have company voluntary arrangements.	All countries save for Zambia have company voluntary arrangements as a restructuring tool. This is a process that allows a company to reach a compromise or arrangement with its creditors and to cram down dissenting creditors.
<b>SCHEMES OF ARRANGEMENT</b>	All these countries have schemes of arrangement as a restructuring tool which allows a company to reach a compromise or arrangement with its creditors or members and to cram down dissenting creditor or member groups in the same class.	Ethiopia does not have schemes of arrangement.	All these countries have Schemes of Arrangement as a restructuring tool which allows a company to reach a compromise or arrangement with its creditors or members and to cram down dissenting creditor or member groups in the same class.
<b>LIQUIDATION</b>	Liquidation can be done voluntarily (by creditors or members) or by court action.	A company can only be liquidated via court action.	Liquidation can be done voluntarily (by creditors or members) or by court action.
<b>AUTOMATIC MORATORIUM</b>	In Ghana, Kenya and Uganda through administration, and in South Africa through business rescue, a company can obtain an automatic moratorium that protects the company from enforcement action by creditors.	Ethiopia has a process known as reorganisation proceedings, which enable a company to obtain an automatic moratorium. This protects the company from enforcement action by creditors.	In Mauritius, Nigeria and Tanzania, through administration, and in Zambia through business rescue, a company can obtain an automatic moratorium that protects the company from enforcement action by Creditors.

## Payment waterfall in liquidation

When a company is being liquidated, the liquidator is required to realise its assets and distribute them to creditors in a specific manner laid out by law. The following diagram shows how payments are made in each country in order of priority - the top-most being the highest priority.

## SOUTH AFRICA

- Secured Creditors
- Costs of the liquidation  
(including the liquidators' remuneration)
- Preferential Creditors (such as the claims of employees, taxes, claims of the holder of an unperfected general notarial bond);
- Concurrent Creditors
- Shareholders

## GHANA

- Post-insolvency process financing
- Preferential Creditors (such as expenses of liquidator/ administrator, payment of employee dues, certain taxes amongst others)
- Secured Creditors
- Debts owed to directors in the year preceding insolvency (with some limitations)
- Debts comprising excess benefits restored to the liquidator or excess interest disallowed by the liquidator because of it being more than 5% above the Bank of Ghana policy rate
- Unsecured debt
- Shareholders

## MAURITIUS

- Cost of liquidator, including expenses of the liquidation and refund for any funding received since the start of an insolvency procedure
- Wages or salaries due to employees, amount due to the MRA in respect to taxes that are due and unpaid for a period not exceeding 4 years
- Costs of compromise with creditors, if any
- Payments made *pari passu* with first ranking fixed and floating charges and mortgages (*hypothèque conventionnelle*) inscribed for more than three years
- Rent: Landlord's special privilege
- First ranking, fixed and floating charges and mortgages (*hypothèque conventionnelle*) inscribed for less than three years
- Claims of victims of an accident
- Other privileges, securities and creditors
- Amounts due to Government and its agencies in relation to amounts due and unpaid for over three months
- All other unsecured creditors

**LOW** < < < < PRIORITY > > > > **HIGH**

## KENYA

- Secured Creditors (fixed charges)
- Preferential Creditors (such as expenses of liquidator/ administrator, payment of employee dues, certain taxes amongst others)
- Prescribed Part (20% of floating charge holders entitlement to go to unsecured creditors)
- Floating charge holders
- Unsecured Creditors
- Shareholders

## ETHIOPIA

- Secured Creditors
- Costs and expenses of the proceedings
- New financing in the context of preventive restructuring, reorganisation or bankruptcy
- Post-bankruptcy creditors, including creditors of new and ongoing contracts
- Employee claims and claims of social security authorities
- Taxes and duties ordered to federal, regional and local government authorities, other than those which can be claimed from the debtor holding taxes and duties on behalf of the government (but excluding interest and penalties)
- Other preferred creditors
- Unsecured Creditors
- Penalties and fines imposed upon the debtor

## UGANDA, NIGERIA, ZAMBIA

- Secured Creditors
- Preferential Creditors (such as expenses of liquidator/ administrator, payment of employee dues, certain taxes amongst others)
- Unsecured Creditors
- Shareholders

## TANZANIA

- Statutory Creditors – all revenues, taxes and levies due to the Government of the United Republic of Tanzania or to a local authority
- Secured Creditors
- Unsecured Creditors
- Shareholders



## Our Firm

We help our clients manage legal complexity and unlock opportunity in Africa.

We have an enviable track record of providing legal services to the highest professional standards in Africa. We work for clients across numerous African jurisdictions on corporate, finance, competition, taxation, employment, technology and dispute resolution matters.

With eight offices in six African countries and over 400 specialist lawyers, we draw on our unique knowledge of the business and socio-political environment to advise clients on a wide range of legal issues.

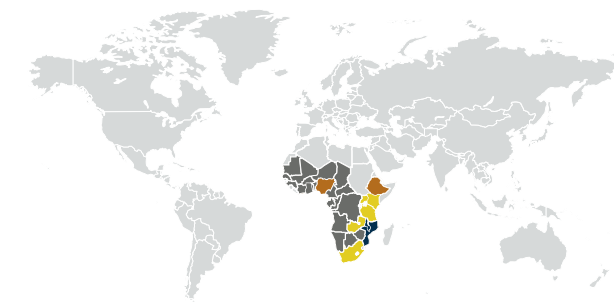
Everywhere we work, we offer clients a service that uniquely blends expertise in the law, knowledge of the local market, and an understanding of their businesses. Our aim is to assist clients to achieve their objectives as smoothly and efficiently as possible while minimising the legal and regulatory risks.

Our clients include domestic and foreign corporates, multinationals, funds and financial institutions, across almost all sectors of the economy, as well as state-owned enterprises and governments.

Our expertise is frequently recognised by independent research organisations. Most recently, our Kenyan practice won the 2022 Chambers Africa Award for Law Firm of the Year in Kenya. In 2021, Bowmans won three IFLR Africa Awards including National Firm of the Year for South Africa and for Zambia. At the 2021 Africa Legal Awards, we won five practice awards, more than any other law firm.

In the 2021 DealMakers Africa Awards we ranked first in East Africa for both deal value and deal flow, with a 52% and a 40% share of the market respectively. We also advised on the deals named East Africa Deal of the Year and East Africa Private Equity Deal of the Year. In the 2021 DealMakers Awards we placed first by deal flow and second by deal value in the Unlisted M&A Transactions category; first by deal flow and third by deal value in the BEE Deals category; third and fourth by value and flow respectively, in the Listed Company M&A Transactions category; and fourth by deal value and deal flow in the General Corporate Finance category.

## Our Presence in Africa



Recognising the size and enormous diversity of Africa, our approach to providing legal services across the continent is intended to offer on-the-ground advice in the countries that matter for our clients. Our presence in Africa is always evolving to meet the changes that are shaping the future of this vast continent.

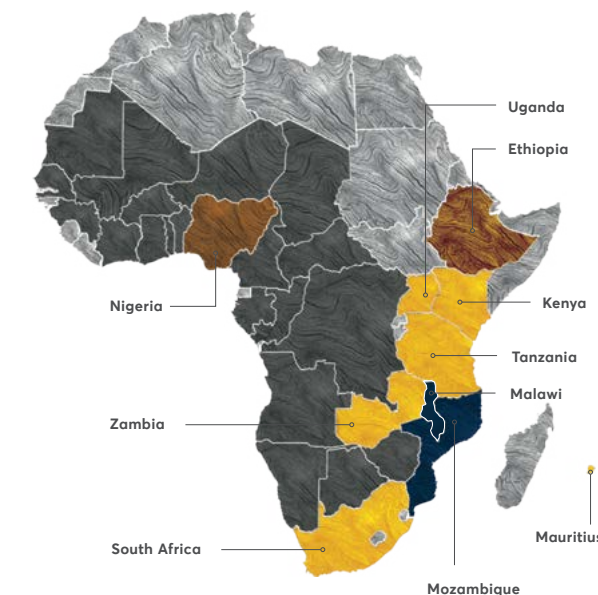
Currently, we have our own offices in six African countries: Kenya (Nairobi), Mauritius (Moka), South Africa (Cape Town, Durban, Johannesburg), Tanzania (Dar es Salaam), Uganda (Kampala) and Zambia (Lusaka).



We work closely with our Bowmans Alliance firms in Ethiopia (Aman & Partners LLP) and Nigeria (Udo Udoma & Belo-Osagie). These are two of the leading corporate and commercial law firms in their jurisdictions.

We have special relationships with competent practitioners in Malawi and Mozambique. We also have a non-exclusive co-operation agreement with French international law firm Gide Loyrette Nouel that provides our clients access to assistance in francophone west and north Africa. The arrangement provides complementary access for Gide's clients and lawyers to markets in central, southern and eastern Africa.

We ensure that, whenever our clients need legal advice in other parts of Africa, we can assist them by tapping into our comprehensive database of contacts of the best firms and practitioners across the continent.

On the global front, Bowmans has long-standing and excellent relationships with a range of international law firms with whom we often work on Africa-focussed client mandates. We are also a member firm of Lex Mundi, a global association of more than 160 independent law firms in all the major centres across the globe. Lex Mundi gives us the ability to connect our clients with the best law firms in each of the countries represented.



-  Bowmans offices
-  Alliance firms
-  Special relationships
-  Significant transaction or advisory experience

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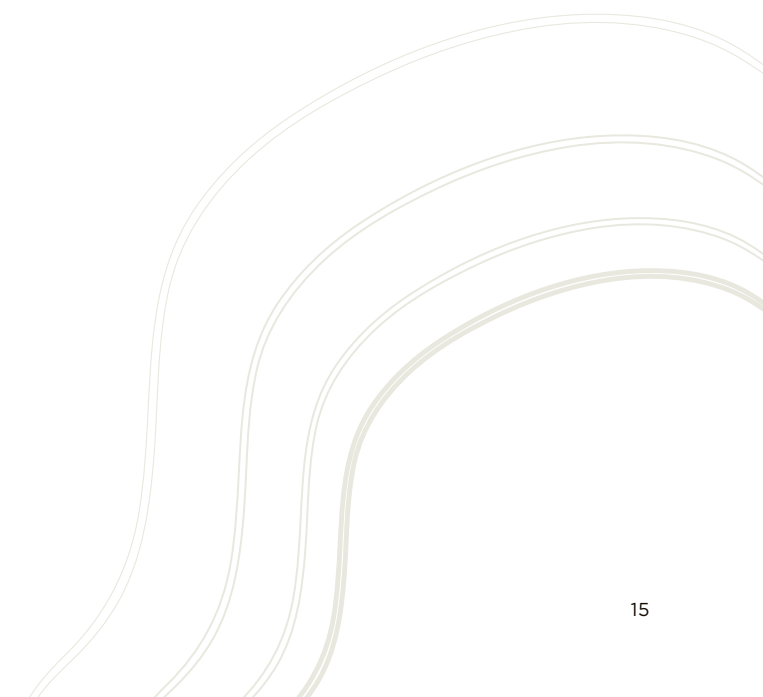


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