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Insolvency 2022

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Ghana: Law & Practice and Ghana: Trends & Developments

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GHANA

Law and Practice

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1. State of the Restructuring Market

1.1 Market Trends and Changes

The restructuring market in Ghana has made significant strides within the last four years, particularly in terms of regulatory and legal changes.

In August 2019, the Bank of Ghana (BoG) announced that it had undertaken a fresh round of closures of financial institutions, revoking the licences of 23 savings and loans companies that had been operating while insolvent. Since the launch of the clean-up of the financial sector, the BoG has revoked the licences of around 420 institutions, including banks, microfinance institutions, finance houses and non-bank financial institutions. Some banks were placed in receivership while others were selected for a merger with other banks.

The underlying causes of the shutdown of these institutions was that most of them faced severe challenges with solvency, liquidity and asset quality. Some of these challenges were a direct result of the slow pace of economic growth in Ghana, the lack of effective supervision by the regulatory body and the bad management and corporate practices that were prevalent in these affected institutions.

The impact of the COVID-19 pandemic on businesses cannot be underestimated, with the pandemic placing many companies in financial distress, making them unable to meet their liabilities. The BoG's mid-year report on Banking Sector Developments for 2021 noted that non-performing loan (NPL) ratios inched up from 15.7% in 2020 to 17% by June 2021. This increase was largely due to the pandemic-induced loan repayment challenges, sluggish credit growth and bank-specific loan repayment challenges. The NPL ratio improved to 14.1% at the end of June 2022, reflecting some moderation in the growth of the stock of NPLs, and a rebound in credit growth.

The most notable development in corporate restructuring in Ghana is the enactment of the Corporate Insolvency and Restructuring Act 2020 (Act 1015), repealing the old Bodies Corporate (Official Liquidations) Act 1963 (Act 180). Act 1015 aims to facilitate the administration of the business, property and affairs of a distressed company in a manner that provides an opportunity for the company to continue as a going concern.

2. Statutory Regimes Governing Restructurings, Reorganisations, Insolvencies and Liquidations

2.1 Overview of Laws and Statutory Regimes

The legislative and legal framework governing financial restructuring, insolvency and liquidation in Ghana is made up of the following Acts:

- the Corporate Insolvency and Restructuring Act 2020 (Act 1015);
- the Companies Act 2019 (Act 992); and
- the Insolvency Act 2006 (Act 708).

The Corporate Insolvency and Restructuring Act 2020 (Act 1015)

The provisions of Act 1015 apply to all companies, except those carrying on the business of banking, insurance or any other business that is subject to special legislation, unless the special legislation does not provide for a rescue provision.

The Act is categorised into four main parts:

- administration and restructuring;
- official liquidation;
- insolvency services; and
- cross-border insolvency.

The highlights of the new Act include the provision of administration or restructuring as an essential tool for companies in distress to continue as a going concern, provide temporary management of the affairs, business and property of a distressed company, and place a temporary freeze on the rights of creditors and claimants against the company. These remedies were previously not available under the Bodies Corporate (Official Liquidations) Act 1963 (Act 183), which only permitted the initiation of winding-up procedures once a company's liabilities exceeded its assets or it became insolvent.

The new Act introduces an administrative process to be applied in situations where a company is insolvent or is likely to be insolvent, or where the company has a negative net worth. A company is insolvent if it is unable to pay its debts or meet its obligations, or if it is determined that the company is likely to be insolvent. A company has a negative net worth where its total liabilities, including contingent or prospective liabilities, exceed the total assets of the company. This provision was introduced to afford a distressed company protection from threats of liquidation from creditors, and enables it to reorganise its affairs to return to solvency, if at all possible.

The primary responsibilities of an appointed administrator are to have control of the business and property of the company, investigate the affairs of the company and explore how to salvage the business of the company in the best interests of the creditors, employees and shareholders. To facilitate these objectives, the new law empowers the administrator to begin, continue, discontinue and defend legal proceedings concerning the company, and gives it the power to carry on the business of the company and to appoint any other person to act on behalf of the company. In this way, the administrator acts as an agent of the company.

When appointed, an administrator must convene a meeting of creditors of the company to determine whether the company should enter or execute a restructuring agreement. Once the decision to restructure is agreed by the creditors, the company executes a restructuring agreement with the administrator, who is then designated as the restructuring officer. The restructuring officer is responsible for implementing the restructuring agreement and providing appropriate notifications to the creditors and the Registrar of Companies.

The restructuring agreement provides for the terms and conditions of the restructured debt, including payment to creditors. The terms of the agreement would typically set out the restructured debt, the nature of the moratorium period, and payment plans.

Under the new Act, the Registrar of Companies is required to create the Insolvency Services Division within the newly created Office of the Registrar of Companies, which was launched on 22 July 2022. The Insolvency Services Division's functions include regulating insolvency practice, overseeing the administration, restructuring and insolvency proceedings of companies, and making recommendations to the Registrar on any changes deemed necessary to the relevant laws on insolvency within Ghana.

Act 1015 provides mechanisms for cross-border insolvency proceedings, including rules and pro-

cedures (to be introduced). The main purposes of this provision are to:

- promote co-operation between a court and other competent authorities of Ghana and foreign states involved in cases of cross-border insolvency;
- provide legal certainty for trade and investment;
- provide for the fair and efficient administration of cross-border insolvencies that protect the interests of creditors and debtors and other interested persons;
- provide protection over the value of assets of a debtor; and
- protect and preserve investment and employment.

The scope of application of these mechanisms for cross-border insolvency proceedings is to assist when required, as follows:

- in Ghana by a foreign country or a foreign representative in connection with a foreign proceeding;
- by a Ghanaian court or a Ghanaian representative in a foreign state in connection with an insolvency proceeding under this Act;
- in respect of a foreign insolvency proceeding and a proceeding under this Act, relating to the same company that is taking place concurrently; or
- by a creditor or other interested person of a foreign state in commencing proceedings or requesting the participation of proceedings commenced in Ghana in connection with the insolvency proceedings of a company under the Act.

The Companies Act 2019 (Act 992)

Act 992 also contains provisions on insolvency, liquidation, receivership, statutory management and bankruptcy. It provides for rescue tools for the turnaround of distressed companies, including voluntary variation of the rights of shareholders' and creditors' arrangements. This entails the reorganisation of the shares of a company by consolidating shares of different classes or dividing shares into different classes. An arrangement of a company is largely limited to changes in the rights and liabilities of members of a company.

Other tools include the use of a compromise agreement between a distressed company and its creditors to cancel all or part of the debts of the company, vary the rights of creditors or alter the constitution of the company. Act 992 also allows for the appointment of a receiver or a manager over a company in distress, and provides for private liquidation (ie, voluntary liquidation) and involuntary liquidation.

The Insolvency Act 2006 (Act 708)

Essentially, Act 708 provides for the protection of creditors and debtors in insolvency proceedings and for related matters such as the work of the Official Trustee appointed under the Act.

Insolvency proceedings in respect of a debtor shall be initiated by the presentation of a petition to the Official Trustee in the prescribed manner, accompanied by the prescribed fee, for the making of a protection order, enabling the debtor's assets to be conserved for the protection of the creditors until the affairs of the debtor have been considered by the High Court.

It is important to note that Act 1015 did not repeal Act 708. However, processes by which creditors and debtors can protect themselves in the event of insolvency as provided in Act 708 are provided within the meaning of Act 1015. Notwithstanding the applicability of Act 708, most insolvency proceedings are more likely

than not to rely on Act 1015 for relief as its provisions are less harsh on debtors and creditors when distress is on the horizon.

2.2 Types of Voluntary and Involuntary Restructurings, Reorganisations, Insolvencies and Receivership

The Ghanaian insolvency regime recognises voluntary and involuntary liquidation under Act 992 and Act 1015, as well as voluntary administration or restructuring. Under Act 1015, a company is placed in administration or restructuring if it is unable to pay its debt or obligations, or if it has a negative net worth.

Administration processes commence when directors of the company deem the company to be insolvent or likely to become insolvent. An administrator is then appointed to salvage the affairs of the company. A company is put into restructuring when, at a watershed meeting convened by the administrator, a restructuring agreement is adopted or approved by creditors or a class of creditors holding at least 51% of the value of the debt owed.

Voluntary liquidation is provided under Act 992. A company undergoes voluntary liquidation if it resolves by a special resolution to be wound up by voluntary liquidation. Within five weeks of the resolution, the directors of the company must swear an affidavit declaring that, after an inquiry into the affairs of the company, they deem the company to be capable of paying its debts and liabilities within 12 months from the commencement date of the winding-up.

Involuntary liquidation, on the other hand, is initiated solely by the creditors of a company, usually against the wishes of the company, when a company is unable to meet its liabilities. A company is deemed unable to pay its debts if a creditor has served a written demand on the company to pay its debt and the company has neglected or failed to do so for 30 days after the demand. A company may also undergo involuntary liquidation if the execution of a judgment or court order is unfulfilled, or if it is proven to the Registrar of Companies that the company is unable to pay its debts.

2.3 Obligation to Commence Formal Insolvency Proceedings

There is currently no obligation to commence formal insolvency proceedings within a specified timeframe. There are also no penalties for directors or officers of a company if the company does not commence insolvency proceedings. However, a company in distress must undergo either administration or restructuring if it wishes to revamp its business. Similarly, an insolvent company must be liquidated and wound up, with all claims and creditors settled accordingly.

2.4 Commencing Involuntary Proceedings

Creditors, members or a contributory of a company can commence involuntary or official liquidation proceedings against a company. Creditors commence such proceedings when a company fails or neglects to meet its debt obligations due to the creditor after several demands on the company. A creditor may also commence proceedings if the execution or any process issued on a judgment or order of the court in favour of the creditor is returned unsatisfied in whole or in part. Proof of a company's insolvency is enough to warrant a creditor initiating proceedings against it.

2.5 Requirement for Insolvency

Insolvency is required to commence either voluntary/private liquidation proceedings or involuntary/official liquidation proceedings.

2.6 Specific Statutory Restructuring and Insolvency Regimes

The Banks and Specialised Deposit-Taking Institutions Act 2016 (Act 930) regulates the insolvency regime and statutory restructuring applicable to banks and other credit institutions. Where a bank or specialised deposit-taking institution is declared insolvent by the BoG, its licence is revoked and a receiver is appointed over the bank.

Similarly, the BoG may appoint an official administrator over a bank or specialised deposit-taking institutions in Ghana when the BoG determines that the institution is engaged in any unsafe or unsound practice that could potentially weaken its condition, jeopardise the interest of depositors or dissipate the assets of the bank. A bank can also be placed under administration if its capital adequacy ratio or paid-up capital falls below 50% of the minimum required by law.

3. Out-of-Court Restructurings and Consensual Workouts

3.1 Consensual and Other Out-of-Court Workouts and Restructurings

There is currently no option to choose or explore consensual and non-judicial restructuring processes. There is a lack of statistics and data to ascertain the preferences of restructuring market participants for informal restructuring processes over statutory processes. However, a company is not precluded from resorting to an informal means of restructuring its affairs; the statutory processes as provided under the legal regime are adequate to handle administration or restructuring matters when they occur.

In addition, banks and other credit facilities in Ghana are generally supportive of companies experiencing financial challenges. It is not uncommon for banks to restructure debt or loan facilities with borrower companies to give them time to reorganise their affairs and enable them to meet their liabilities.

In 2020, as a means of mitigating the financial repercussions of the pandemic on some businesses, some banks within the country granted loan moratoriums and repayment holidays to customers or companies in default of loan repayments and those severely impacted by the pandemic, especially companies in the tourism and art industries.

The current legal regime does not mandate a consensual restructuring negotiation before the commencement of a formal statutory process.

3.2 Consensual Restructuring and Workout Processes

Being placed under administration offers a company a rest period against its creditors and other claimants in that a temporary freeze is placed on the company's assets to shield them from being repossessed by creditors. In Ghana, a restructuring agreement executed between an administrator and a company in administration is binding on all parties, including secured creditors regarding claims. The import of a restructuring agreement in insolvency proceedings is similar to a consensual standstill. Act 1015 states that a secured creditor shall not realise or enforce its secured charge unless the restructuring agreement expressly allows them to do so. Furthermore, any proposition on whether or not to waive a default on a credit agreement is included in a restructuring agreement, which creditors may adopt at a watershed meeting.

During a restructuring process, any undertakings by the debtor company must be contained in the

restructuring agreement, which must be agreed upon by the creditors and the company.

Act 1015 has laid out certain mechanisms to protect creditors and ensure their active participation in insolvency proceedings. Under the Act, creditors of the company have a right to establish a committee of creditors that will be accountable to the entire body of creditors. Such committee shall have no more than five members.

Under Act 1015, a company's debts are ranked in classes and classified based on the type of debt. A company's debts are ranked in order of priority from Class A debts to Class H debts. Class A debts are in respect of post-commencement financing and take priority over all other creditor claims, both secured and preferential class debts. Class A debts are expected to be paid in full, whilst Class H debts are debts in respect of ordinary shareholders.

3.3 New Money

Act 1015 provides for post-commencement financing, which means any financing obtained by a distressed company during administration or restructuring proceedings to enable it to carry on its activities, including trade financing and venture capital. Post-commencement financing usually consists of loans and advancements from banks or other credit facilities.

Another means of financing the business is through new or existing shareholders purchasing shares in the company. However, the creation of new shares and transfers of shares must be done with the consent of the administrator or restructuring officer. Another alternative source of funding may be from the disposal of company assets.

Funds obtained through post-commencement financing are secured to the lender by utilising an asset of the company that is not encumbered. Post-commencement financings are also ranked as Class A priority debts, so take priority over all other creditor claims, including those of secured and preferential classes, and shall be paid in full.

3.4 Duties on Creditors

Under Act 992 and Act 1015, creditors of a company are required to exercise and maintain the utmost good faith in their dealings with the company during the restructuring and insolvency proceedings. Under Act 1015, a creditor is bound by the executed restructuring agreement, and is prohibited from doing anything inconsistent with the agreement. A secured creditor who is also bound by the restructuring agreement shall not realise or enforce the secured charge, except where the agreement allows for the realisation of the secured charge or by an order of the court.

3.5 Out-of-Court Financial Restructuring or Workout

Under Ghana's insolvency laws, there is the possibility for dissenting creditors to be bound by the majority of creditors of all other classes. This is known as a cross-class cram-down. Under Act 992, a proposed arrangement or compromise becomes binding on the company if it is approved by 75% in value of each class of members and 75% in value of each class of creditors concerned. Dissenting or minority creditors affected by the majority decision may apply to the court to object to the arrangement or compromise proposition. Similarly, under Act 1015, it is possible to bind dissenting creditors during restructuring proceedings. Where 51% of a class of creditors pass a resolution for the execution of a restructuring agreement, such an agreement

is binding on all other classes of creditors of the company.

4. Secured Creditor Rights, Remedies and Priorities

4.1 Liens/Security

Creditors may take security/liens over assets of the company that are not encumbered. Security/lien interests are typically granted by way of contract, deed, debentures, mortgage or other forms of acceptable security document. A creditor may create a floating charge or a fixed charge over the whole or a specified part of the asset.

4.2 Rights and Remedies

The rights and remedies available to secured creditors include the right to enforce their security. Act 1015 enables secured creditors affected by the appointment of an administrator to apply to the court for leave to enforce their security. A secured creditor may also apply to the court after the execution of the restructuring agreement for an order to realise or enforce a secured charge. In addition, secured creditors are given priority over unsecured creditors, who must wait until all other costs and creditors have been paid before they receive any of the money they are owed from the proceeds of the liquidation of the company's assets. Secured creditors also have the right to petition the Registrar of Companies or the court for an order to wind-up the affairs of a company if said company is unable to pay its debt obligations when they fall due.

Secured creditors are not empowered by law in Ghana to initiate voluntary proceedings, nor to disrupt or block a formal voluntary or involuntary process. Secured creditors' rights, remedies and liens are subject to automatic stays or deferrals in formal or informal proceedings.

4.3 Special Procedural Protections and Rights

Secured creditors have procedural protection in statutory insolvency and restructuring proceedings. Act 1015 enables secured creditors to apply to the court for leave to enforce their security if they are of the view that the appointment of an administrator would cause them serious prejudice. In liquidation proceedings, the liquidator is required to submit a progress report to the secured creditors, to ensure that secured creditors have knowledge of the proceedings and are given the opportunity for their views to be considered on the realisation of assets of the company by the liquidator. The law also protects secured creditors from fraudulent activities of the company that are deemed to affect the rights of secured creditors.

Under Act 1015, secured creditors may apply to the court in the course of winding-up proceedings where there is credible suspicion that the manner by which the business of the company was carried out was with intent to defraud its creditors. In the event of such an application, the court may order the officers of the company who knowingly carried on the business of the company in a fraudulent manner personally responsible without limitation for the debts or liabilities of the company.

5. Unsecured Creditor Rights, Remedies and Priorities

5.1 Differing Rights and Priorities

Under Act 1015, rights are classified and prioritised as follows:

- Class A is a debt in respect of post-commencement financing and takes priority over all other creditor claims, including those of

secured and preferential classes, and shall be paid in full;
- Class B is a preferential debt that ranks equally between other preferential debts against the estate of the company and is paid in full unless the remainder of the estate is insufficient to meet the preferential debt, in which case the preferential debt shall be paid in equal proportions;
- Class C is a secured debt, secured by a fixed charge against an asset of the company;
- Class D is a debt or a part of a debt that does not fall within Class E and is, or was, owed to a director or former director of the company within the year preceding the commencement of winding-up;
- Class E is a debt or a part of a debt that satisfies any of the following conditions:
  (a) excess benefit restored to the liquidator; or
  (b) excess interest that is a portion of a debt which, whether it is stated to do so or not, represents interests at a rate in excess of 5% above the Bank of Ghana policy rate;
- Class F is an unsecured debt that is not secured by a charge of any kind over an asset of the company and does not fall into any of the other classes;
- Class G is a debt in respect of preference shareholders; and
- Class H is a debt in respect of ordinary shareholders.

5.2 Unsecured Trade Creditors

The rights of unsecured trade creditors are generally reserved or kept whole during a restructuring process in Ghana. However, such rights are subject to the rights of secured creditors where the enforcement of liens or security over any asset of the company is being contemplated.

5.3 Rights and Remedies for Unsecured Creditors

In a restructuring and insolvency context, unsecured creditors possess some rights and remedies, including a right to object to the appointment of an administrator or liquidator and to object to the sale of assets as an interested party.

They also have a right to petition the Registrar of Companies and the court for the winding-up of a company that has failed to meet its debt obligations. Unsecured creditors can exercise their right as other creditors to terminate a restructuring agreement where an information breach has occurred and/or where a material contravention of the agreement by a person bound by the agreement has occurred.

5.4 Pre-judgment Attachments

Pre-judgment attachment remedies are available under Ghanaian law. In Ghana, a creditor may apply to the court for a Mareva injunction or an interim injunction for the preservation of property pending the final determination of the suit. An order for a Mareva injunction is to prevent a genuine risk that a debtor would dissipate or distribute its assets before legal proceedings are initiated or before the trial is determined. It is intended to freeze or preserve the assets of a debtor for easy recovery for a creditor. Such orders last for a specified duration, and a repeat application can be made to the court where time lapses.

The Lenders and Borrowers Act 2020 (Act 1052) also provides for a mechanism that facilitates the realisation of a creditor's security upon default by the borrower company without a court judgment or order. However, the creditor must have a prior registered collateral security with the Collateral Registry, and a notice of default must be

served on the borrower before the realisation of the creditor's security.

5.5 Priority Claims in Restructuring and Insolvency Proceedings

Priority claims exist in restructuring and insolvency proceedings in Ghana. Under Act 1015, the priority of debts is classified and ranked in classes. New money claims or post-commencement financing debts are ranked as Class A debts and have priority over all other creditor claims, including secured credit claims. The other categories of debts that have priority over secured credit claims are office-holder fees, tax claims and remuneration owed to employees for employment during the whole or a part of the four months preceding the date of commencement of administration.

Under Act 930, assets realised in the liquidation process and secured claims have priority over all other claims.

6. Statutory Restructuring, Rehabilitation and Reorganisation Proceedings

6.1 Statutory Process for a Financial Restructuring/Reorganisation

Under Act 1015, a company may be placed in administration, leading to a restructuring agreement where it is deemed that the company is insolvent as a result of its failure to pay its debts or current obligations. This determination does not take into account whether the company's total assets exceed its total liabilities.

The process of financial restructuring/reorganisation under Act 1015 covers three stages:

- the first stage deals with the appointment of an administrator;
- the second stage focuses on the conduct of administration; and
- the last stage deals with the post-administration or restructuring stage and the implementation of the restructuring agreement.

6.2 Position of the Company

Once an administration or restructuring procedure commences, the following would apply:

- the business of the company is suspended, except where the transaction of the company during this period of administration is for the beneficial administration of the company;
- there is a temporary freeze on legal proceedings and enforcement processes against the company, except by orders of the court;
- the directors of the company are precluded from exercising powers and functions or managing the affairs of the company, except with the prior written consent of the administrator;
- the administrator assumes control of the business, property and affairs of the company;
- transactions or dealings affecting the property of the company would be void, unless they are entered into by or with the prior written consent of the administrator;
- the transfer of shares or alteration of the rights or liabilities of a shareholder are not permissible unless consented to by the administrator – where the administrator refuses consent, the court decides either way; and
- the owner or lessor of property may not be able to take possession or otherwise recover the property that is in the possession of or in use by the company, except with permission from either the administrator or the court.

6.3 Roles of Creditors

Creditors have the power to appoint a replacement administrator where a company is undergoing administration. They may also remove an administrator by passing a resolution. The creditors are vested with the power to approve the remuneration of the administrator.

The administrator is required to call the first meeting of creditors and also the "watershed meeting" and other meetings of creditors that are required by the committee of creditors. The first meeting of creditors shall consider the establishment of a committee of creditors where necessary.

The principal functions of the committee of creditors include:

- advising the administrator about matters that relate to the administration;
- receiving and considering reports from the administrator; and
- approving the remuneration and other terms of engagement of the administrator.

The administrator reports to the committee of creditors as and when reasonably required to do so by the committee.

6.4 Claims of Dissenting Creditors

Under Act 1015, at a watershed meeting the creditors of the company may resolve that the company executes a restructuring agreement. This resolution will be carried if it is supported by at least 51% of the creditors voting.

A restructuring agreement binds all creditors, including secured creditors/dissenting creditors, regarding claims that arise on or before the day specified in the agreement and/or in accordance with the terms stated in the agreement. However, a dissatisfied creditor may apply to the court for an appropriate order.

Under Act 992, the court may approve a restructuring arrangement or compromise proposal between the company (or the administrator, in cases of administration) and the creditors, or any class of the creditors, or members or any class of members of the company, where a majority in number – representing 75% in value of each class of members concerned and 75% in value of each class of creditors concerned – approve the arrangement or compromise. The court may entertain an application from dissenting creditors and, upon hearing the application, order whether or not to confirm the arrangement or compromise with or without modification. The order of the court becomes binding on the company, its members and all its creditors, and the validity thereof is not impeachable in any subsequent proceedings.

6.5 Trading of Claims Against a Company

Ghanaian law is silent on the treatment of trading or transferring claims against a company undergoing restructuring.

6.6 Use of a Restructuring Procedure to Reorganise a Corporate Group

Restructuring procedures may be adopted to reorganise a distressed company in a manner that provides an opportunity for the company to continue in existence as much as possible, and also to help in the development and implementation of a restructuring plan, including administrative measures, which ultimately results in a better return for creditors and shareholders of the company.

6.7 Restrictions on a Company's Use of Its Assets

Generally, any transaction or dealing that affects the assets of the company, including its usage, must be sanctioned by the administrator of the distressed company.

6.8 Asset Disposition and Related Procedures

The administrator of the company is vested with the power to execute agreements disposing of any assets or properties of the company. The purchaser of said assets acquires good title thereto, free from encumbrances. Sales and similar transactions that have been pre-negotiated can only be effectuated with the consent and approval of the administrator.

6.9 Secured Creditor Liens and Security Arrangements

A secured creditor may only enforce the security against the company during the administration period by applying to the High Court for leave to do so.

6.10 Priority New Money

The law provides for post-commencement financing, which may include trade financing and venture capital. The new money may be secured to the lender by utilising an asset of the company that is not encumbered.

6.11 Determining the Value of Claims and Creditors

The appointed administrator is empowered to investigate the affairs of the company, which includes ascertaining the value of claims and those creditors with an economic interest in the company.

6.12 Restructuring or Reorganisation Agreement

A restructuring agreement must not be oppressive or unfairly prejudicial to one or more creditors. A creditor who feels disgruntled about the restructuring agreement on the basis that it is unfair or inequitable may apply to the court for relief.

A restructuring officer has the general power to reject contract claims on the company for valid reason. However, a party that is dissatisfied with the decision of the restructuring officer may apply to court for a determination.

6.13 Non-debtor Parties

The relevant legislation (ie, Act 1015) does not provide for the release of non-debtor parties and their ensuing liabilities during the administration of a distressed company.

6.14 Rights of Set-Off

Creditors can exercise the right of set-off under the following conditions:

- if the set-off involves pre-application debt obligations by the creditor and debtor company;
- if the debtor company was not rendered insolvent immediately after the set-off; and
- if the transaction was in the ordinary course of business.

Creditors can exercise rights of netting where the financial contract between the creditor and the insolvent company contains provisions of a netting agreement. In such circumstances, the netting agreement is enforceable in accordance with the terms of the contract, including enforcement against an insolvent party and, where applicable, enforcement against a guarantor or

any other person who provided security for the insolvent party.

An enforcement shall not be stayed, avoided or limited by:

- an action of the liquidator;
- any other enactment relating to bankruptcy, reorganisation, composition with creditor, receivership or any other insolvency proceedings to which the insolvent party may be subject; or
- any other enactment that may be applicable to the insolvent party.

6.15 Failure to Observe the Terms of Agreements

If a company fails to observe the terms of an agreed restructuring plan, the restructuring officer is duty bound to apply to the court for leave to convert the administration of the company into official liquidation.

The restructuring officer would apply to the court for an order in relation to a creditor who fails to observe the terms of the restructuring agreement. The court will issue an order that it considers appropriate, having regard to all the circumstances for the purposes of giving effect to the restructuring agreement.

6.16 Existing Equity Owners

An existing equity owner may receive or retain any ownership or property to the extent provided in the restructuring agreement.

7. Statutory Insolvency and Liquidation Proceedings

7.1 Types of Voluntary/Involuntary Proceedings

Administration

This process enables the rehabilitation of a company that is financially distressed. A company shall be placed in administration or restructuring if it has a negative net worth or is unable to pay its debts or current obligations as they fall due, even if the total assets of the company exceed its total liabilities. Upon the commencement of administration, the company shall suspend its business, unless it is required to continue to do business for its beneficial administration.

The process is commenced when an administrator is appointed, either by the company or by the liquidator if the company is in liquidation. The court or a person holding a charge over the whole or substantially the whole of the property of the company can also appoint the administrator.

While a distressed company is undergoing administration, there is a temporary freeze on the rights of creditors and other claimants against it.

Administration does not result in the removal of the directors of the company from office. However, the directors of a company that is in administration shall not exercise any power, perform any function nor be responsible for managing the affairs of the company, except with the prior written approval of the administrator or as expressly provided for under Act 1015.

The principal role of an administrator is to have control of the business, property and affairs of the company, with the objective of salvaging the business of the company in the interests of cred-

itors, employees and shareholders. All transactions or dealings affecting the company must be approved by the administrator.

The administrator is mandated by law to furnish the creditors with a report on the business, property affairs and financial circumstances of the company, and to state whether or not they believe it is in the interest of the creditors to execute a restructuring agreement, for the administration to end or for the company to be placed in liquidation.

Administration provides an opportunity for a distressed company to be rescued and brought back to the path of profitability, if reasonably possible.

Voluntary and Involuntary Liquidation

Under Act 992, a body corporate may be wound up voluntarily. In order to commence this process, the company must demonstrate that it is able to pay its debts and liabilities in full within a period of not more than 12 months from the commencement of the winding-up.

The procedure for voluntary liquidation is as follows:

- there must be a declaration of solvency by the directors through an affidavit at a meeting of the directors;
- a members' special resolution must be passed within five weeks of the making of the declaration of solvency;
- the name of the private liquidator must be stated in the special resolution, and the proposed liquidator must give prior consent to their appointment, in writing;
- the special resolution must be sent to the Registrar of Companies to be registered and published in the Companies Bulletin, within 14 days of being passed; and
- the appointed liquidator becomes an officer of the company by virtue of the appointment.

The involuntary liquidation procedure allows for the winding-up of a body corporate in a manner that results in the maximisation of the realisation of the estate of the insolvent company and the distribution of the estate, having regard to the equitable treatment of stakeholders in the company.

The official winding-up of a company commences on the passing of a resolution for the winding-up of the company, or on the making of a winding-up order.

Official liquidation can be initiated through the following modes:

- special resolution of the company;
- petition addressed to the Registrar of Companies;
- petition to court;
- conversion from a private liquidation; or
- conversion from administration or restructuring of the company.

Please see **5.1 Differing Rights and Priorities** regarding the classification of debts.

Liquidation ultimately results in the winding-up of the company and is preferable where the underlying business is not viable and the assets of the company have to be realised so that creditors/shareholders can be repaid.

7.2 Distressed Disposals

The liquidator negotiates, executes and authorises the sale of assets or the business during such proceedings. A bona fide purchaser acquires

good title in a sale of assets during liquidation, and that title is "free and clear" of claims and liabilities asserted against the company.

Act 1015 is silent on whether secured or unsecured creditors may credit bid for company assets and act as a stalking horse in a sale process. Generally, a creditor is bound to act in a bona fide manner in its relationship with the company and not in a manner that is adverse to the interest of the company, its members or creditors. It may be possible to effectuate pre-negotiated sales transactions following the commencement of liquidation, subject to approval by the liquidator.

7.3 Organisation of Creditors or Committees

During an official liquidation, the creditors have the right to set up a committee of creditors, which would be accountable to the entire body of creditors. Such committee shall have no more than five members. The creditors shall determine the conditions for the appointment of the members of the committee. The expenses incurred in the performance of the duties of the committee shall be considered as part of the cost of the liquidation.

The committee approves transactions that substantially affect the interest of the committee, including payments out of assets, dispositions and contracts.

8. International/Cross-Border Issues and Processes

8.1 Recognition or Relief in Connection With Overseas Proceedings

Act 1015 empowers Ghanaian courts to recognise cross-border restructuring and insolvency proceedings. A foreign representative who is the official liquidator appointed by the foreign country may apply to a court in Ghana for an order of recognition of foreign proceedings. In addition, a foreign representative can apply for reliefs such as injunctions and orders for the preservation of a debtor's assets in Ghana.

The basis for such recognition is to provide effective mechanisms for cross-border insolvency proceedings where assistance is required:

- in Ghana by a foreign country or a foreign representative in connection with a foreign proceedings;
- by a Ghanaian court or a Ghanaian representative in a foreign state in connection with insolvency proceedings;
- in respect of a foreign insolvency proceeding and a proceeding under the laws of Ghana relating to the same company, which is taking place concurrently; or
- by a creditor or other interested person of a foreign state in commencing proceedings or requesting participation in proceedings commenced in Ghana in connection with the insolvency proceedings of a company under the laws of Ghana.

8.2 Co-ordination in Cross-Border Cases

The courts in Ghana are required by law to co-operate with the foreign court or foreign representatives concerned to the maximum extent possible, either directly or through an insolvency practitioner.

Having recognised foreign proceedings, a Ghanaian court is empowered to communicate directly with foreign courts or foreign representatives, or to request information or assistance directly from them.

Where foreign proceedings and Ghanaian insolvency proceedings are taking place concurrently regarding the same debtor, the court shall seek co-operation and co-ordination.

8.3 Rules, Standards and Guidelines

After recognition by the court of foreign main proceedings, a Ghana insolvency proceeding may be commenced only if the debtor has assets in Ghana.

The Ghana insolvency proceeding shall be restricted to the assets of the debtor that are located in Ghana and to the extent necessary to implement co-operation and co-ordination.

If there is more than one foreign proceeding regarding the same debtor, the court shall seek co-operation and co-ordination and apply the following rules:

- any relief granted to a representative of a foreign non-main proceeding after the recognition of a foreign main proceeding shall be consistent with the foreign main proceedings;
- if a foreign main proceeding is recognised, or after the filing of an application for recognition thereof, the court shall review any relief and modify or terminate such if it is inconsistent with the foreign main proceedings; and
- if another foreign non-main proceeding is recognised after the recognition of an initial foreign non-main proceeding, the court shall grant, modify or terminate the relief for the purpose of facilitating the co-ordination of the proceedings.

From these rules, the jurisdiction, decisions, rulings or laws of the foreign main proceedings are deemed to be paramount in Ghana. Act 1015 provides that, subject to the Rules of Court in Ghana, where a foreign court has been recognised as having foreign main proceedings, any commencement or continuation of individual actions or individual proceedings concerning the assets, rights, obligations or liabilities of the debtor is stayed, as is execution against the assets of the debtor, and the right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.

8.4 Foreign Creditors

A foreign creditor in Ghana is treated no differently in proceedings; they have the same rights as anyone else to commence and participate in proceedings.

8.5 Recognition and Enforcement of Foreign Judgments

Ghanaian courts recognise the judgments of foreign countries that have a reciprocity agreement with Ghana. However, those foreign judgments must emanate from a superior court and must be final and conclusive between the parties, and the judgments must be primarily about payments of money.

An application for the registration of a foreign judgment must be made within six years of the entry of that foreign judgment. A notice for registration must be served on the judgment debtor. The judgment creditor can enforce a judgment by way of a writ of fieri facias, garnishee proceedings, a charging order, attachment and sale of immovable property, an order for committal to prison or a writ of sequestration.

Ghanaian courts would not recognise a foreign judgment that is deemed to have been obtained by fraud or to be against public policy.

9. Trustees/Receivers/Statutory Officers

9.1 Types of Statutory Officers

Administrator

An administrator is appointed during the administration of a company. The appointment may be made by a company or by the court. The BoG may also appoint an administrator for a deposit-taking institution.

Receiver

A receiver may be appointed by the Registrar General or by the court.

Official Trustee

An Official Trustee is appointed in insolvency proceedings where a debtor is seeking a protection order to enable the debtor's assets to be conserved for the protection of the creditors until the affairs of the debtor have been considered by the High Court. In addition, they can bring bankruptcy proceedings against a debtor before they are discharged from an insolvency order. An Official Trustee is appointed by the President of Ghana.

Liquidator

A company can appoint a liquidator to wind it up by way of resolution. In addition, a court or the creditors can appoint a liquidator, who would be under the direction of the appointing party.

9.2 Statutory Roles, Rights and Responsibilities of Officers

Administrator

The administrator's role is to take control of and manage the affairs of the company, investigate the affairs of the company and take steps to salvage the company. They are responsible for defending, commencing and/or discontinuing legal proceedings.

The administrator appointed by the court owes a fiduciary duty to the court and shall be an officer of the court. An administrator appointed by the company shall owe a fiduciary duty to the company. An administrator appointed by the BoG shall act in accordance with the instructions and guidance given by the BoG at any time and shall be accountable only to the BoG.

Receiver

The role of a receiver appointed by the Registrar of Companies is to take possession of and protect the property of a company in receivership, receive rents and profits, discharge the outgoings in respect of the property and realise the security of those on whose behalf they were appointed.

A receiver is required to exercise their powers with reasonable regard to the interest of secured creditors, the company and unsecured creditors when taking possession to protect the property of the company. A receiver appointed by the court is an officer of the court and is under the directions of the court.

A receiver appointed by the BoG is required to take possession and control of the assets and liabilities of the distressed bank or specialised deposit-taking institution and report to the BoG.

Official Trustee

An Official Trustee's role is to receive petitions from creditors and debtors in respect of the conservation of individual assets of the debtor by way of a protection order. They are required to take possession of the property that has passed to them by virtue of an insolvency order. Also, the Trustee shall make arrangements for the continuance of the business, if necessary. In addition, they can bring bankruptcy proceedings

against a debtor before they are discharged from an insolvency order.

The Trustee is required to submit an annual report to Parliament, and can only be removed from office by the President.

Liquidator

A liquidator's role is to report to the creditors at intervals of not more than six months on the progress of the liquidation, consult the creditors on matters arising in proceedings that substantially affect their interest, and also give effect to the views expressed by the creditors in relation to the realisation and distribution of assets.

A liquidator appointed for the purposes of a private liquidation has a fiduciary relationship with the company, and reports to the company at a general meeting.

In an official winding-up, the liquidator has a fiduciary relationship with the company as if they were a director of the company.

9.3 Selection of Officers

Administrator

Under Act 1015, an administrator may be appointed by the company, by the liquidator (where a company is in liquidation), by a person holding a charge over the whole or substantially the whole of the property of the company or by the receiver appointed by that person or the court.

Where a company is already in administration, an administrator may be appointed only by:

- the creditors, as a replacement administrator for an administrator that the creditors have removed; or
- the appointer of the first administrator, if that administrator has died, resigned or become disqualified.

A person shall not be appointed as an administrator unless:

- they have consented in writing and have not withdrawn their consent at the time of appointment; and
- the consent of that person has been filed with the Registrar.

Exercising its powers under Act 930, the BoG may appoint an administrator.

An administrator may be removed by the court upon the application of a creditor, the liquidator of the company or the Registrar, by a resolution of creditors passed at the first meeting of the creditors.

An administrator shall be a natural person who is a qualified insolvency practitioner. To be qualified as an insolvency practitioner, the person must be an accountant, a lawyer or a banker in good standing with a professional group, and must be certified as an insolvency and restructuring practitioner.

Under Act 1015, the creditors of a company under administration are disqualified from acting as an administrator, as are persons who have been a shareholder, director, auditor or receiver of the company under liquidation or of any associated company within the previous two years.

Receiver

The courts or the Registrar General may appoint a receiver to take control of the assets and liabilities of insolvent companies. After it has determined that a deposit-taking institution is

insolvent or likely to be insolvent, the BoG may revoke the licence of such institution and appoint a receiver to take over its assets and liabilities.

The BoG may remove the receiver from office and appoint a replacement. A receiver appointed by the BoG must be a person who holds office in the private sector or an officer of the BoG, and must meet the requirement prescribed by the BoG.

Directors and auditors are prohibited from being appointed receivers.

Trustees

The President of Ghana appoints the Official Trustee and may remove them. The Official Trustee interacts with management through meetings to confirm proof of debt. The Official Trustee must give each creditor of the company a copy of the debtor's statement of affairs and the proposal for an arrangement with creditors. To qualify as the Official Trustee, a person must be a lawyer with a minimum of ten years' experience.

Liquidator

A liquidator is appointed for a company in administration:

- by the court;
- by resolution of the creditors at a watershed meeting; or
- at a meeting convened to consider the termination of a restructuring agreement.

The liquidator shall lodge the following with the Registrar:

- a copy of the administrator's report that accompanied the notice to creditors of the watershed meeting; and
- a further report that updates the administrator's report regarding any matters of which the administrator is aware that are not referred to in the administrator's report or have changed since that report, and that affect the financial position of the company.

Where there is no administrator or restructuring officer to act when the company is placed in liquidation, the directors of the company at the date of liquidation shall take the steps described in this section and act in the stead of the administrator or restructuring officer.

In an official winding-up, the liquidator has a fiduciary relationship with the company as if they were a director of the company.

Upon an application of a member of the company or of the Registrar, the court may also remove a liquidator and appoint another.

Directors and auditors of the company are disqualified from being appointed liquidators. A person shall not be appointed a liquidator if they are not a qualified insolvency practitioner with the requisite membership of the Institute of Chartered Accountants, the Ghana Bar Association or the Chartered Institute of Bankers.

10. Duties and Personal Liability of Directors and Officers of Financially Troubled Companies

10.1 Duties of Directors

Act 1015 provides that the directors of the company shall submit a financial statement of the company and a statement of its financial position, comprehensive income, changes in equity and cash flows to the administrator within seven days of their appointment.

In addition, directors must give the administrator a description of significant accounting policies and explanatory notes to the financial statements prepared in compliance with International Financial Reporting Standards approved or adopted by the Institute of Chartered Accountants or any other standards approved or adopted by the Institute.

The measures applied to determine financial distress or insolvency commence at the first meeting of creditors of the company or the watershed meeting, at which the administrator shall present the financial statements of the directors.

A director who fails to submit the financial statements as requested by the administrator or who fails to do so within the time determined by the administrator as required by law would be liable to pay the Registrar an administrative penalty of 250 penalty units (a penalty unit is GHS12, equivalent to USD2).

A director of a company that is in administration shall not exercise any power, perform any function, be responsible for managing the affairs of the company nor purport to do so as an officer of the company except with the prior written approval of the administrator.

In addition, under Act 992, a director of a company holds a fiduciary relationship towards the company and shall act with the utmost good faith towards the company in a transaction with or on behalf of the company. Directors also owe a duty of care to creditors to ensure that the affairs of the company are properly managed and that property is not dissipated or exploited. Furthermore, a director who is appointed by a special class, including creditors, must consider the best interest of that class in all transactions.

A director who is in breach of their duty and any other person who knowingly participated in the breach are liable to compensate the company for any loss suffered as a result of the breach. The identified directors would be required to account to the company for profits made as a result of the breach. Any profits made from any contract or transaction entered into between the directors and the company in breach of their fiduciary duty towards the company would be rescinded.

In addition, the administrator is duty-bound under Act 1015 to report any past officer or shareholder who may have committed an offence of dishonesty or be guilty of negligence or breach of duty or trust in relation to the company to the Registrar of Companies, for civil and criminal sanctions to be applied.

10.2 Direct Fiduciary Breach Claims

The insolvency officer is the only person that can assert fiduciary breach claims against the directors while the company is undergoing restructuring. Creditors are prohibited from asserting direct fiduciary breach claims against directors, as a restructuring agreement binds creditors including secured creditors regarding claims that arise on or before the day specified in the restructuring agreement.

11. Transfers/Transactions That May Be Set Aside

11.1 Historical Transactions

Where it appears to the liquidator that the company made some dispositions of property at other than the full value, or incurred due debt at other than the full value, the liquidator may by notice require the beneficiary of the disposition and debts to restore and surrender any rights accrued to the liquidator.

Under Act 930, the receiver may set aside the following pre-receivership transactions affecting the assets of the bank or specialised deposit-taking institution and recover the assets from the transferee or other beneficiary of the transaction:

- a gratuitous transfer to key management personnel or affiliates;
- transactions with key management personnel that are detrimental to the interest of depositors;
- gratuitous transfers to third parties;
- transactions based on forged or fraudulent documents;
- acts done with the intention to impair the rights of creditors; and
- any attachment of a security interest that existed six months before the effective date of receivership.

11.2 Look-Back Period

Under Act 1015, the liquidator is empowered to reverse transactions that took place during the two years ending with the making of the winding-up order, or more than two years but less than ten years before the making of the winding-up order and at a time when the company was insolvent.

Under Act 930, the receiver may set aside transactions with key management personnel that are detrimental to depositors within five years before the effective date of receivership.

11.3 Claims to Set Aside or Annul Transactions

In performing their duties under Act 1015, the administrator may issue notice to persons who are beneficiaries of debts and dispositions of properties of the company at other than the full value to restore said property to the company. Individual creditors are not empowered to assert claims directly nor to fund an office holder to do so on their behalf as the office holder is remunerated for their role.

A receiver appointed by the BoG has the power to annul transactions unilaterally if those transactions fall within the grounds for annulling pre-receivership transactions within the meaning of Act 930.

Claims to set aside or annul transactions can be brought in both restructuring and insolvency proceedings.

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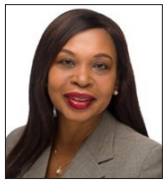

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Trends and Developments

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Insolvency in Ghana – an Introduction

The COVID-19 pandemic has adversely affected the economy of Ghana, as many businesses are struggling to remain operational. The need to protect businesses from collapse and by extension the protection of creditors and shareholders' security and assets became acute during the pandemic. It is against this backdrop that Ghana's Corporate Restructuring and Insolvency Act 2020 (Act 1015) was enacted to help stall the liquidation of businesses. Together with the Companies Act 2019 (Act 992), Act 1015 introduces a new approach to insolvency and liquidation proceedings in Ghana.

A new requirement is for Ghanaian businesses undergoing administration to take into account the interests of all stakeholders, including creditors, employees and shareholders (as opposed to just creditors), and to ensure their adequate protection. The COVID-19 pandemic exposed the weaknesses of the underlying legal and regulatory framework in corporate insolvency in Ghana due to the absence of rescue remedies in the previous legislation – ie, the Bodies Corporate (Official Liquidation) Act 1963 (Act 180). These weaknesses attracted the attention of the World Bank, which combined with the legal and corporate sectors of Ghana to lobby for reforms.

The Insolvency Legal Framework Prior to 2020

Prior to 2020, insolvency proceedings were governed by Act 180 and the Companies Act 1963 (Act 179). Act 180 was enacted to regulate the involuntary winding-up process triggered by a company's inability to pay its debts. It provided for four modes of commencing liquidation:

- a special resolution of the company;
- a petition by a creditor or member addressed to the Registrar of Companies requesting the liquidation of the company;
- the Registrar on their own volition commencing winding-up; and
- a member or creditor petitioning the court for the winding-up of the company.

A company may also convert private liquidation under Act 179 into official liquidation. Under Act 180, the liquidator is empowered to commence or defend an action against the company, transfer assets of the company and sell the company's property.

It became apparent that the provisions contained in Act 180 in respect of insolvency were aimed solely at the liquidation of distressed companies, so did not address any efforts to save deserving distressed companies.

Act 180 failed to make provision for cross-border insolvency proceedings, so, with respect to multinational companies, was inadequate to respond to increasing international insolvencies resulting from creditors being spread across different jurisdictions around the world. It was this realisation of the cross-border insolvency jurisdictional nature of multinational companies that resulted in cross-border insolvency proceedings in the courts of Ghana being included in the new Act. The former Act 180 also failed to address

situations where a creditor's petition for winding-up was refused by the court.

Corporate Rescue Under Act 1015

The new Act 1015 introduces a "rescue culture" by granting companies the opportunity to restructure or reorganise instead of going into administration, which had hitherto been the preserve of specialised institutions such as banking and insurance companies. In other words, the options to restructure, go into receivership or seek administration have finally been opened up to all companies registered in Ghana. The conceptual narrative now is that it is not only the banking and insurance sectors that are too significant to be allowed to fail but that all companies are equally important and thus deserve the same level of protection under the law, as their failure could potentially have a domino effect on the economy. When companies go into liquidation, the government loses tax revenues such as corporate tax and income tax from employees who are made redundant.

To enable the objectives of Act 1015 to be realised, a freeze is put on creditors and claimants commencing legal actions against the distressed company in administration. A restructuring plan agreed at a watershed meeting between the administrator, creditors and members after adoption by a three-quarter majority of creditors binds all creditors and members (including minority shareholders). By this provision, companies are afforded protection and an opportunity to reorganise their affairs without being subjected to threats of liquidation from the creditors of the company. The new Act empowers creditors to protect their interests throughout the administration process through a creditor committee constituted by the administrator.

The committee's duties include:

- advising the administrator on matters concerning the administration;
- monitoring and receiving reports from the administrator; and
- facilitating communication between the administrator and the creditors of the company.

A major role of the committee of creditors is to decide whether or not the company should continue in administration or proceed into liquidation; this decision must be made during the watershed meeting, which must be held within 28 days after the appointment of the administrator.

A significant development from the introduction of the new Act is the provision that holds directors personally liable for debts incurred by the company while it was insolvent and knowingly trading while insolvent. A director in breach of this provision would be personally liable for creditor obligations incurred during this period. In addition, a director who is summarily convicted of trading while the company is insolvent would be liable to a fine or imprisonment of not less than two years and not more than five, or to both.

Cross-Border Insolvency

The Act contains provisions recognising cross-border insolvency proceedings for the first time in Ghana. The recognition of foreign insolvency is intended to develop co-operation and co-ordination between the courts in Ghana and the foreign court where insolvency proceedings are taking place.

It has historically been demonstrated that insolvency proceedings involving multinational com-

panies are exceptionally complex due to the myriad of issues and the difficulty of practitioners working out or agreeing which jurisdiction's proceedings take priority over proceedings in other jurisdictions. The introduction of cross-border insolvency provisions in the new Act aims to bring some level of sanity to otherwise very complex international insolvency proceedings. The Act recognises foreign insolvency proceedings by making it permissible for foreign representatives to apply to participate in insolvency proceedings in Ghana.

Thus, foreign representatives can apply to a court in Ghana for the recognition of foreign insolvency proceedings, which requires the provision of a certified true copy of the foreign decision and a certificate certifying their appointment as foreign representative.

The practical benefit to parties in insolvency proceedings is that the new Act drastically reduces the complexities that otherwise existed in the insolvency of multinational companies with property and assets in Ghana.

Insolvency Services

Act 1015 also establishes an Insolvency Services Division in the newly created Registrar of Companies. This was launched on 22 July 2022 to regulate insolvency practice under Act 992 and Act 1015 or any other relevant enactment. Among other matters, the Insolvency Services Division would oversee the administration, restructuring and insolvency proceedings of companies.

The other significant development is the introduction of private insolvency practitioners. To qualify as an insolvency practitioner, the Act states that an individual must be a qualified lawyer, an accountant or a banker, and be certified as an insolvency and restructuring practitioner. It is now an offence to practise as an insolvency practitioner without a licence from the Ghana Association of Restructuring and Insolvency Advisors (GARIA). Prior to the enactment of Act 1015, there was no legally recognised professional body regulating insolvency practice in Ghana.

GARIA is mandated to provide the training and licensing of insolvency practitioners. Act 1015 also provides for GARIA to support the Registrar of Companies in its regulation of insolvency practitioners. In addition, the new Act provides for the establishment of GARIA by an Act of Parliament within two years after the passage of this new Act. Insolvency practice would henceforth be designated as a profession, with its own code of professional conduct and ethics. Licensed insolvency practitioners are required to undergo training at GARIA, maintain a high level of professional standards and be cognisant of the fact that they owe fiduciary duties to the Registrar of Companies, creditors and the company throughout the period the company is in administration.

Post-commencement Financing

The other equally significant development in the insolvency legal framework through the new Act is the introduction of post-commencement financing, under which distressed companies are funded by financial institutions while undergoing the process of restructuring or reorganising.

Financial institutions are risk-averse and thus hesitate to lend to distressed companies that may be unable to pay back loans. As a result of Act 1015, the fortunes of distressed companies have changed for the better as banks are more willing to support such companies in their attempt to restructure or reorganise themselves in the hope of turning their companies around

and avoiding liquidation. Financial institutions are now comforted by the fact that any loans they advance in this respect would be ranked as a Class A debt, and as such would be paid in full before the settlement of any other debts and all other creditor claims, including taxes owed to the government and secured creditors.

Conclusion

There is no doubt that there has been a monumental developmental change in Ghana's institutional and legal framework on insolvency proceedings as a result of the enactment of Act 1015. Act 1015 is timely in that it was enacted at the height of the COVID-19 pandemic when many companies were in financial distress. The coming into force of Act 1015 has significantly improved and clarified the corporate insolvency landscape of Ghana and brought it in line with international best practice. A comparable study of Ghana's corporate insolvency and restructuring regime with other advanced economies clearly suggests that Ghana has made significant progress in this regard.

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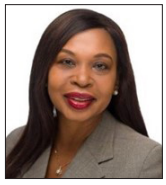

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