GHANA
BENTSI-ENCHILL, LETSA & ANKOMAH

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COUNTRY INFORMATION

Ghana, a country on the West African coast, is a developing democracy. It shares boundaries with Togo to the east, La Cote d'Ivoire to the west, Burkina Faso to the north and the Gulf of Guinea to the south. Ghana is a significant petroleum and natural gas producer and one of the world's largest gold and cocoa producers.

TYPE OF GOVERNMENT

The Republic of Ghana is a Constitutional Democracy.

POLITICAL SYSTEM

Ghana is a multi-party, constitutional democracy. The 1992 Constitution recognises the concept of separation of powers between the executive, the legislature and the judiciary. It declares and promotes fundamental human rights and freedoms.

LEGAL SYSTEM

Ghana's legal system is based on the common law.

TESTS FOR INSOLVENCY

What are the tests for insolvency (ie liquidation)?

The Corporate Insolvency and Restructuring Act, 2020 (Act 1015) as amended by the Corporate Insolvency and Restructuring Act, 2020 (Act 1031) (Corporate Insolvency and Restructuring Act) provides that where -

- a creditor to whom the company owes more than GHS10,000 (approx. USD 848.90) serves a written demand on the company to pay the amount, and the company, for 30 days after the demand, neglects to pay the money or to secure or compound for it to the creditor's reasonable satisfaction; or
- execution in the country of a judgment of the High Court in favour of a creditor of a company wholly or partly fails; or
- it is proved to the satisfaction of the Registrar of Companies (Registrar) that the company is unable to pay its debts, the company will be held to be insolvent.

What are the Tests for Financial Distress?

There is no concept of financial distress in Ghanaian law.

INSOLVENCY AND RESTRUCTURING PROCEDURES

Formal insolvency procedures

Liquidation is the only formal insolvency procedure available in Ghana.

Formal Restructuring Procedures

The formal restructuring procedures available to a company in Ghana are:
(a) administration;
(b) a scheme of arrangement or merger, with or without Court approval; and
(c) the acquisition of minority shareholders shares.

Informal Insolvency or Restructuring Procedures

The insolvency procedures in Ghana are formal and set out in Ghanaian law, as set out above.

Restructuring Procedures

Administration

A company may be placed in administration if the company is unable to pay its debts or current obligations as the debts or obligations fall due even if the total assets of the company exceed the total liabilities of the company; or the company has a negative net worth. Administration arises when an administrator is appointed by (i) the company; (ii) the liquidator, where the company is in liquidation; (iii) a person holding a charge over the whole or substantially the whole of the property of the company or the receiver appointed by that person; or (iv) the Court.

Scheme of Arrangement or Merger

A scheme of arrangement or merger without Court approval arises when members pass a special resolution to put the company into voluntary liquidation and authorise the liquidator to sell all or part of the undertaking or assets to another entity in exchange for fully paid shares, debentures or other like interests in that entity and to distribute those shares, debentures or other like interests in specie among the members of the company in accordance with their rights in the liquidation.

A scheme of arrangement or compromise with Court approval arises when an arrangement or compromise is proposed and the company, a creditor, a member, the administrator where an administration order is still in force, the liquidator, or any other person interested in the matter applies to the Court requesting the Court to order a meeting of its members and creditors in order for them to vote on the proposal.

Acquisition of the Minority Shares of a Company

A merger by acquisition of the minority shares of the company arises when a body corporate, upon the satisfaction of certain conditions, compulsorily acquires all the shares of the minority shareholders of the company.

LIQUIDATION

What is the aim of liquidation?

To wind up the affairs of the company, distribute its assets, settle its debts and provide for any other related matters.

Process Required to Commence a Liquidation

There are two types of liquidations in Ghanaian law - an official liquidation and a private liquidation. An official liquidation may be commenced by a -

- special resolution passed by the members of a company;
- petition addressed to the Registrar by a creditor, member or contributory of a company; petition to the High Court by the Registrar, creditor, member, contributory or (where the business or objects of the company are unlawful; the company is operated for an illegal purpose; or the business being carried out by the company is not authorised by its constitution) the Attorney-General;
- conversion from a private liquidation to an official liquidation by the Registrar if the liquidator gives notice under a private liquidation in accordance with the Companies Act, 2019 (Act 992) (Companies Act) alleging that the company may not be able to pay the debts of the company in full within the period stated in the declaration of insolvency; or
- conversion from administration or restructuring of the company to an official liquidation by an application made to the High Court by the Registrar when the administrator gives notice that the administration has been converted into an official liquidation.

Private liquidation commences when the directors of the company declare an affidavit of solvency and the members of the company pass a special resolution to wind up the company by private liquidation.

At What Point Does the Liquidation Process Commence?

An official liquidation commences -

(a) on the passing of a resolution for the winding-up of the company;
(b) on the making of a winding-up order by the Court; or
(c) on the passing of a winding up order by the Registrar.

A private liquidation commences at the time that the company (through its members) passes a special resolution to wind up the company by private liquidation.

Duration of the Liquidation Process

There is no specified duration for the liquidation process. The Corporate Insolvency and Restructuring Act merely requires the liquidator, where the official winding up continues for more than 1 year, to summon a general meeting of the company and a meeting of the creditors at the end of the first year from the date of the commencement of the winding-up, and of each succeeding year, or at the first convenient date within 3 months from the end of the year or a longer period that the liquidator may allow.

Extent of Court Involvement in the Liquidation Process

The Court's involvement in the liquidation process depends on the manner in which the process is commenced, the nature of the affairs of the company and the position of the various stakeholders of the company. A Court may -

- order the liquidation of the company where -
  - the company does not commence the business which the company is authorised by the constitution of the company to carry on, or suspends business for a year within a year after the incorporation of the company;
  - the company does not have members;
  - the business or objects of the company are unlawful;
  - the company is operated for an illegal purpose;
  - the company is unable to pay the debts of the company; or
  - the Court is of the opinion that it is just and equitable that the company should be wound up.
- appoint the registrar to exercise the powers of a liquidator;
- order a person to comply with the liquidator's requirements on the application by the liquidator where a person refuses or fails to comply with a requirement by the liquidator;
- direct the liquidator in respect of the carrying out of his functions on the application of a person aggrieved by an act done by the liquidator;
- direct the transfer of the balance of the company's assets to the fees account of the company within the Liquidation Fund and give directions for the disposal of an asset not converted into money, after payments to the creditors are made; and/or
- order the termination of an official liquidation on an application by the liquidator to terminate the liquidation proceedings after the completion of the winding-up of a

company and the drawing up of the financial statements which have been approved by an auditor appointed by the creditors.

Management of the Company whilst in Liquidation

During liquidation the powers of the board of directors of the company cease upon the liquidator's appointment and vest in the liquidator who assumes a fiduciary position to the company. On the written request of a liquidator, a person who was a director of the company at the commencement of the winding-up shall submit and verify by affidavit the statement of affairs of the company. The liquidator, during the liquidation procedure, may -

- bring or defend legal proceedings on the company's behalf;
- carry on the company's business as is necessary for the beneficial winding up of the company;
- pay any class of creditors in full;
- appoint a legal practitioner or any other professional to assist the liquidator in the performance of the functions of the liquidator;
- make a compromise or an agreement, with creditors or persons claiming to be creditors of the company (to have present or future claims, certain or contingent, ascertained or sounding only in damages against the company) or whereby the company may be rendered liable subject to the Companies Act;
- take security for the discharge of the calls, debts, liabilities or claims and give complete discharge in respect of any of them;
- sell the company's property or assets by public auction or private contract;
- execute deeds, receipts and other documents on behalf of the company and using the company's seal where necessary;
- prove and rank claims in the bankruptcy and insolvency of a contributory for a balance against the estate of the contributory, and may receive dividends in the bankruptcy or insolvency regarding the balance, as a separate debt due from the bankrupt or insolvent and proportionately with the other separate creditors;
- make a compromise on calls and liabilities to calls, debts and liabilities of the company capable of resulting in debts, present or future claims (certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist) between the company and a contributory or alleged contributory, or any other debt or person apprehending liability to the company, and the questions relating to or affecting the assets or the winding-up of the company on the terms that may be agreed;
- draw, accept, make and endorse a bill of exchange or promissory note in the name and on behalf of the company;
- raise money on the security of the company's assets;
- take out letters of administration of a deceased contributory and perform in the name of the liquidator or do any other act necessary to obtain payment for money due from the contributory or the estate of the contributory which cannot conveniently be done in the name of the company, and in those cases the money due shall for the purposes of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator; and
- do anything necessary to liquidate and distribute the company's assets.

Filing of Claims

A creditor may present the liquidator with a statement, 'a proof of debt' containing brief particulars of the values and due dates of provable debts, securities and obligations alleged by the creditor to be outstanding in his favour and the details of the transactions from which those debts and obligations arose.

The liquidator gives a copy of the proof of debt to the company and each creditor mentioned in the statement of affairs of the company or who, not being so mentioned, personally lodges a proof of debt; and the company notifies the liquidator if it knows or thinks the proof is false.

The liquidator examines the proof of debt and if satisfied, notifies the creditor that he admits the proof of debt subject to verification. Conversely, if after examining the proof of debt lodged with the liquidator, the liquidator considers the representations made by the company or any other creditor and it appears to the liquidator that (a) an item is improperly included, (b) a value is incorrectly stated, or (c) the proof is otherwise incorrect, the liquidator must give notice of the objection to the creditor who may lodge an amended proof within the period specified in the notice or the period that the liquidator may permit.

The liquidator must give notice to the creditor if the liquidator rejects the proof of debt where a creditor fails to lodge an amended proof of debt or a further amended proof of debt within the period permitted and the liquidator maintains that the previous proof of debt is incorrect.

The liquidator may by notice in the Companies Bulletin fix a time within which creditors should prove their claims or debts or be excluded from the benefits of any distributions made before those debts are proved.

The liquidator must call a first meeting of creditors for a date within 6 weeks after the appointment of the liquidator, give notice of the meeting to each creditor who (i) is mentioned in the statement of affairs of the company, or (ii) not being so mentioned, has lodged a proof of debt, and publish the notice in the Companies Bulletin and a national newspaper. Each creditor will also receive a copy of the company's statement of affairs and of any proposals for an arrangement with creditors. An arrangement with creditors must be approved by at least 51% of the votes cast at the meeting. Each creditor with an admitted proof of debt is entitled to be heard in person or by a proxy. The meeting should be closed not later than 8 weeks after the appointment of the liquidator.

On the commencement of liquidation, the liquidator must in relation to each debt which ranks for dividend, ascertain into which class the whole or a part of such debt falls. The order of priority for creditors, classified in decreasing order is as follows -

a) Class A - post-commencement financing ranks first and has priority over all creditor claims, including secured and preferential class of creditors and shall be paid in full;

b) Class B - preferential debts (such as outstanding employee remuneration for the whole or part of the 4 month period preceding the winding-up, taxes, pension contributions and other debts owed to the State or local authority within the year preceding the date of commencement of administration or winding-up);

c) Class C - secured debts which are secured by way of a fixed charge against the assets of the company;

d) Class D - debts which within the year preceding the winding up, is or was owed to a director or former director of the company and does not fall within Class E;

e) Class E - refers to debts or part of a debt being excess benefit restored to the liquidator following the reversal of a transaction involving the disposition of company property under section 123 of the Corporate Insolvency and Restructuring Act; or excess interest that is a portion of a debt representing interest at a rate in excess of 5% above the Bank of Ghana policy rate;

f) Class F - unsecured debts which are not secured by a charge of any kind over an asset of the company and do not fall within any other class;

g) Class G - debt in respect of preference shareholders; and

h) Class H - debt in respect of ordinary shareholders.

Subject to fees and outgoings to be paid in respect of the liquidation, the liquidator shall, from time to time, and as early as practicable, declare and distribute dividends to creditors in accordance with the classes into which the debts fall.

Factors Which Influence the Period of the Administration in a Liquidation

Court processes, such as an application by an aggrieved person, a member of the company, the company or the liquidator to the High Court for the rectification of the register of members, may contribute to the delays in the liquidation process.
Other Court processes that may also affect the duration of the liquidation process include the summoning before the High Court by the liquidator of an officer of the company or a person known or suspected of possessing company property, indebted to the company or considered capable of giving information about the promotion, formation, trade, dealings, affairs or property of the company.

Where the liquidator, a creditor, member or contributory of the company, applies to the Court to stay liquidation proceedings, this will also affect the duration of the liquidation process.

Effect of Liquidation on Employees

Remuneration owed to an employee (i) during the business restructuring or administration proceedings of the company, which is not paid to the employee; or (ii) in respect of employment during the whole or a part of the 4 months preceding the commencement of the winding-up is prioritised as a class A and class B debt, respectively and must be paid when the first dividends are declared.

Effect of Liquidation on Contracts

The company ceases to carry on the business of the company except where the company is required to do so for the beneficial winding-up of the company. The corporate status and corporate powers of the company continue until dissolution. The liquidator, therefore, has to terminate contracts that are not beneficial if it so wishes or requires.

Effect of Liquidation on Shareholders

Shareholders retain their shareholding in the company. A transfer of their shares after the commencement of any winding-up is void unless the transfer is made to the liquidator or with the approval of the Court.

Effect of Liquidation on Creditors

The debts of the company are ranked in an order of priority, and creditors are paid dividends accordingly. A secured creditor can commence or proceed with an action against the company for the realisation of its security without the leave of the Court. The remainder of the creditors await the receipt of any dividend which is paid in accordance with the order of priority that arises by operation of the law.

Pending Claims, Litigation and Arbitration

On the commencement of winding-up, civil proceedings against the company, other than proceedings by a secured creditor for the realisation of that secured creditor's security, shall not commence or proceed, except with leave of the High Court and subject to the terms that the Court may impose.

Voidable Transactions

The following transactions may be set aside by the liquidator and the proceeds recovered into the liquidated estate of the company -

- a floating charge created on the undertaking (that is, the business of the company) or over property belonging to the

company within 12 months before liquidation commences, unless it is proved that the company was solvent immediately after the creation of the charge. However, a floating charge created over cash paid to the company (at the time of, or subsequent to, the creation of that charge) in consideration for that charge, together with interest on that amount at the yearly interest rate applicable to the 91 day Government treasury bill, shall not be set aside as void;
- money paid, property transferred, mortgage or charge payment, judgments or obligations incurred by the company to a creditor within the 12 months ending with the commencement of the winding-up and at a time when the company was insolvent with the intent that any of the creditors should benefit at the expense of others;
- money paid or property transferred to a person in the period beginning 21 days before the presentation of the petition to the Court to wind up the company and ending when the winding up order is made except with respect to a payment or any other transfer of property (a) made by the company to the banker of the company in so far as the payment has been subsequently made by the bank in meeting cheques drawn by the company, (b) made regarding a debt incurred during the relevant period, (c) made in respect of a secured debt, or (d) made on the enforcement against a third party of a guarantee or indemnity or of a mortgage, charge or lien on the property of that party;
- dispositions of property to settle any debt due or an obligation incurred by the company otherwise than for full value (a) during the 2 years before the winding up order, or (b) between 2 and 10 years before the making of the order and at a time when the company was insolvent; and
- money paid or allowed by the company during the 10 years before the winding up order in respect of a loan, in circumstances where the High Court would have ordered the lender to repay the company.

How is the Liquidation Process Terminated?

An official liquidation terminates after the winding-up process is complete and once the final financial accounts have been approved by the auditor appointed by the creditors of the company and the liquidator applies to the High Court for an order terminating the liquidation proceedings. If satisfied with the application by the liquidator, the Court will grant the application and the Registrar of the Court sends a copy of the Court order to the Registrar for registration.

Private liquidations, on the other hand, terminate when the Registrar is satisfied that the winding up process is complete and strikes the company's name off the register and publishes the record of the strike-off in the Companies Bulletin. The company is dissolved as at the date of the publication of the notification in the Companies Bulletin.

Director or Officer Liability

A director or officer of a company will be liable for contravening a duty that is imposed on him/her by the Corporate Insolvency and Restructuring Act. Where, in the course of the official winding-up of a company, it appears that the business of the company has been carried on with intent to defraud the creditors of the company or creditors of any other person or for a fraudulent purpose, the Court may, on the application of (a) the liquidator, (b) a creditor, or (c) a member or contributory of the company declare that the persons who were knowingly parties to any fraudulent conduct of the business are personally responsible, without limitation of liability, for the debts or any of the debts or any other liabilities of the company that the Court may direct.

A past or present officer or member of the company may be prosecuted by the Attorney General (AG) where -

a) in the course of winding up it appears to the Court that a past or present officer or member of the company has committed an offence in relation to the company for which that officer or member of the company is criminally liable, and the Court on its own motion or on the application of an interested person, refers the matter to the AG or directs the liquidator to make the report to the AG; or

b) in the course of an official winding-up of a company the liquidator considers that a past or present officer or member of the company has committed an offence in respect of the company for which that officer or member is criminally liable, and the liquidator (a) reports the matter to the AG, (b) furnishes the AG with the information, and (c) gives the AG access to the facilities for inspection and obtaining copies of documents, in the possession or under the control of the liquidator that relate to the matter in question that the AG may require.

The AG must in the circumstances of (a) and (b) provided above investigate the matter and may apply to the Court for the grant of the powers under the Companies Act to investigate the affairs of the company. If the AG considers that the case is one for which prosecution ought to be instituted, the AG must prosecute the past or present officer or member of the company.

Consequences of Director or Officer Liability

Civil Consequences

Personal responsibility, without a limitation of liability, for the debts or any of the debts or liabilities of the company, that the Court may direct may arise if the officer is found to have been knowingly a party to the business' fraudulent activities. A director may be disqualified from acting as a director for 5 years.

Criminal Consequences

Where the business of the company has been carried on with intent to defraud the creditors of the company or creditors of any other person or for a fraudulent purpose, the officers of the company who were knowingly party to any fraudulent conduct of the business shall be deemed to have committed an offence and be found liable on summary conviction to a fine of not less than 500 penalty units (GHS 6000, approx. USD 509) and not more than 1000 penalty units (GHS 12,000, approx. USD 1018.68) or to a term of imprisonment of not less than 2 years and not more than 5 years or to both the fine and imprisonment.

A director who causes a company to engage in any form of business or trade or incur a debt or liability where that director (a) has reasonable grounds to believe that the company is insolvent, or will become insolvent; or (b) ought to have known at the time of causing the company to engage in the business or trade or incur the debt or liability that the company was insolvent or would become insolvent as a result of incurring that debt commits an offence and is liable on summary conviction to a fine of not less than 500 penalty units (GHS 6000, approx. USD 509) and not more than 1000 penalty units (GHS 12,000, approx. USD 1018.68) or to a term of imprisonment of not less than 2 years and not more than 5 years or to both.

A director or officer of a company may be liable for a fine not less than 300 penalty units (GHS 3600, approx. USD 305) and not exceeding 750 penalty units (GHS 9000, approx. USD 1763.16) or a term of imprisonment of not less than 18 months and not exceeding 3 years or to both the fine and imprisonment for contravening a duty imposed on that person by the Corporate Insolvency and Restructuring Act.

BUSINESS RESCUE/ADMINISTRATION

There is no USA Chapter 11-style business rescue process in Ghana. The following answers are therefore based on -
a. the administration procedures provided in the Corporate Insolvency and Restructuring Act; and
b. an adaptation of the arrangement and merger provisions under the Companies Act.

Administration

A company may be placed in administration if the company is unable to pay its debts or current obligations as the debts or obligations fall due, even if the total assets of the company exceed the total liabilities of the company; or the company has a negative net worth.

What is the Aim of Administration?

To manage the business, property and affairs of a distressed company in a manner that provides an opportunity for the company to continue in existence as a going concern; to place a temporary freeze on the rights of creditors and other claimants against a distressed company; and to develop and implement a restructuring plan which results in a better return for the creditors and shareholders of the company than would result from the immediate winding-up of a distressed company.

Process Required to Commence Administration

Administration commences when an administrator is appointed by (i) the company; (ii) the liquidator, where the company is in liquidation; (iii) a person holding a charge over the whole or substantially the whole of the property of the company or the receiver appointed by that person; or (iv) the Court.

Duration of Administration

A specific timeline has not been prescribed for the entire administration process. The Corporate Insolvency and Restructuring Act provides specific timelines for various procedures during the administration of a company as provided below -

- The administrator is required within 21 days of appointment to investigate the affairs of the company and form an opinion as to whether it will be in the interest of the creditors for the company to execute a restructuring agreement, end the administration or appoint a liquidator.
- The administrator must call the first meeting of creditors to establish a committee of creditors where necessary; or determine whether to replace the administrator within 10 days after the date on which the administration begins.
- The administrator must convene a watershed meeting within 28 days from the date of the appointment of the administrator (convening period), or any other date if the period is extended by the Court.
- The administrator shall not less than 7 days before convening the watershed meeting, give written notice of the watershed meeting to the creditors of the company and publish the notice of the watershed meeting in a daily newspaper of national circulation.
- The watershed meeting shall be held within seven days after the convening period or extended convening period, as the case may be.
- Where the creditors resolve in a watershed meeting that the company should execute a restructuring agreement, it should be executed within 21 days unless the Court extends the period.

Preparation and Content of Restructuring Agreement

The restructuring officer shall prepare a document that sets out the content of the restructuring agreement. The document shall specify -

- who the restructuring officer is;
- funding of the restructuring agreement;
- the property of the company that will be available to pay creditors;
- whether the property is owned by the company at the time when the company executes the agreement;
- the nature and duration of any moratorium period for which the agreement provides;
- the extent to which the company will be released from the liabilities of the company;

- the conditions for the agreement to come into operation;
- the circumstances in which the agreement terminates;
- the order in which the proceeds of realisation of the property of the company will be distributed among creditors who are bound by the agreement; and
- the day, on or before which claims of the creditors must have arisen if the claims are to be admissible under the restructuring agreement which shall not be later than the day when the administration began.

The document shall be deemed to include the provisions prescribed under sections 2 to 78 of the Corporate Insolvency and Restructuring Act, except the provisions that the document expressly excludes. A restructuring agreement shall include post-commencement financing.

Extent of Court Involvement in the Administration Process

The Court may make any order that the Court considers appropriate in respect of the administration of a company.

On the application of the company, a creditor of the company, the administrator, restructuring officer, Registrar or any other person with an interest in the administration of the company, the Court may terminate an administration where the Court is satisfied that -

- the company is solvent;
- the provisions on the administration of companies are not being complied with; or
- for some other justifiable reason, the administration should end.

The Court may make an order regarding the proceedings of the meetings of creditors on the application of a dissatisfied creditor or administrator. In that regard, where the Court is satisfied that -

- a resolution at a meeting of creditors was passed, rejected, required to be decided by a casting vote, as the case may be, and such resolution would not have been passed, rejected or required to be decided by a casting vote if the vote cast by a particular related creditor was disregarded; and
- the passing of the resolution, or the failure to pass the resolution (i) is contrary to the interests of the creditors or a class of creditors as a whole, or (ii) has prejudiced or is likely to prejudice, the interests of the creditor that voted for or against the resolution to an extent that is unreasonable, the Court may -

- order that the resolution be set aside;
- order that a new meeting be held to consider and vote on the resolution;
- order that a specified related creditor shall not vote on the resolution or on a resolution to vary or amend the resolution; or
- make any other order that the Court considers appropriate.

The Court may grant leave to a secured creditor to enforce security against the company during the administration of a company, where the Court considers that serious prejudice will be caused to that secured creditor if the application is not granted, which outweighs the prejudice to other creditors.

The Court may, on the application of the Registrar or a director of a company, make an order to protect the interests of the creditors of a company in administration.

An administrator or restructuring officer may apply to the Court for directions in respect of the performance or exercise of any of their functions and powers and in relation to the operations of, or for giving effect to the restructuring agreement.

Management of the Company during Administration

Once administration commences, the company must suspend its business except where the company is required to do so for the beneficial administration of the company.

During the administration of a company, the administrator -

- shall have control of the business, property and affairs of the company;
- is required to investigate the affairs of the company and consider possible ways of salvaging the business of the company in the interests of creditors, employees and shareholders;
- is required to carry on the business of the company and manage the property and affairs of the company with the object of salvaging the business of the company in the interests of creditors, employees and shareholders;
- may terminate or dispose of the whole or part of the business of the company, and may dispose of any of the properties of the company; and
- may perform any other function, and exercise any other power, that the company or any of the officers of the company could perform or exercise if the company were not in administration.

The administrator is required to prepare a report on the affairs of the company as well as a financial statement of the company and submit copies to the directors of the company for each of the following periods -

- the period of 6 months or shorter as the administrator may determine with effect from the date on which the administrator was appointed;
- each subsequent period of 6 months during which the administrator holds office; and
- such additional period until the administrator vacates office.

The administrator shall file the financial statements and report with the Registrar within 28 days after the end of the periods specified above and shall be in the prescribed form and showing for each period the receipts and payments of the administrator.

A payment made, transaction entered into, or any other action taken, in good faith, by or with the consent of the administrator of a company in administration is valid and effectual for the purpose of the Corporate Insolvency and Restructuring Act and shall not be set aside, if the company is placed in liquidation.

Filing of Claims

The Corporate Insolvency and Restructuring Act does not provide a mechanism for the filing of claims of creditors during the administration of a company.

Factors which Influence the Period of Administration

Court processes such as an application for directions by an administrator or restructuring officer regarding the management of the company; applications by secured creditors to enforce security over the property of the company; or the conduct of proceedings at creditors meetings may delay the administration process.

Funding of the Company

There is no specific provision in the law which regulates how a company is to be funded whilst in administration. This should be provided for in and regulated by the restructuring agreement executed by the company in administration and the restructuring officer.

Effect of Administration on Employees

The commencement of administration does not automatically terminate an employment contract between employees and the company. The administrator is required to pay the accrued salary of employees during the administration of the company, arising from any contract of employment entered into by the company before the appointment of the administrator unless the administrator has given due notice of the termination of the contract within 21 days after the appointment of the administrator. On application by the administrator, the Court may extend the 21-day period for issuance of the notice of termination of the employment contract. If the administration results in loss of employment or the workers suffer a diminution in the terms and conditions of employment, the workers are entitled to be paid a redundancy pay.

Effect of Administration on Contracts

During the course of administration, a transaction or dealing by a company or by a person on behalf of the company, affecting any property of the company is void unless the transaction or dealing was entered into by the administrator on the company's behalf; with the prior written consent of the administrator; or pursuant to a Court order. A payment made by a bank out of an account kept by the company with the bank will not be void if the payment is made in good faith and in the ordinary course of the business of the bank and on or before the day which the bank was notified in writing by the administrator that the administration had begun or before the bank had reason to believe that the company was in administration, whichever was earlier.

Effect of Administration on Shareholders

During the course of administration, shareholders are prohibited from transferring their shares or altering the rights and liabilities attached to their shares. However, where the administrator is satisfied that the transfer of shares is in the best interests of the shareholders and creditors of the company, the administrator may consent to the transfers of shares of the company in administration.

The Court may order the transfer of shares where the administrator refuses or fails to respond within 14 days of a request for consent of a transfer of shares. The Court may also order the alteration of the rights and liabilities of a shareholder in a company in administration.

Effect of Administration on Creditors

A secured creditor may apply to the Court within 14 days of the commencement of administration for leave to enforce its security over the property of the company. The grant of an application for a secured creditor to enforce a security will depend on whether the Court considers that serious prejudice will be caused to the secured creditor if the application is not granted and that outweighs the prejudice caused to other creditors.

If a company enters into a restructuring agreement, the creditors will be bound by it and will be required to refrain from doing anything inconsistent with the agreement, except with the leave of the Court.

Pending Claims, Litigation and Arbitration

During the administration of a company, a person shall not commence or continue proceedings in a Court against the company or in relation to any property of the company or commence or continue an enforcement process against the company's property except with leave of the Court and on terms that the Court considers appropriate.

Effect of the Moratorium

The restructuring agreement will provide for the nature and duration of any moratorium period.

Voidable Transactions

Transactions concluded prior to the commencement of an administration are not susceptible to being set aside. However, during the course of administration, a transaction or dealing by a company or by a person on behalf of the company, which affects any property of the company is void unless the transaction or dealing was entered into by the administrator on the company's behalf; with the prior written consent of the administrator; or pursuant to a Court order.

The Administration Plan

The administration plan includes -

- the appointment of an administrator;
- investigation into the company's affairs by the administrator;
- submission by the directors of the financial statements of the company within 7 days of the appointment of the administrator or such further extension granted by the administrator;
- submission of a report of the company by the administrator to the Registrar that shall specify any matter that, in the opinion of the administrator, should be brought to the notice of the Registrar. The administrator shall report to the Registrar as soon as practicable, where the administrator believes that -
  - a past or present officer or shareholder of the company may have committed an offence involving dishonesty or an offence in contravention of the Companies Act; or
  - a person who has taken part in the formation, promotion, administration, management or liquidation of the company (i) may have misapplied or retained or become liable or accountable for the money or property of the company in Ghana or elsewhere; or (ii) may have been guilty of negligence, default or breach of duty or trust in relation to the company.
- convening of the first creditors meeting and any other meeting required by the creditors;
- convening of the watershed meeting to decide if the company should execute a restructuring agreement, end the administration process or be liquidated; and
- where the creditors resolve that the company should execute a restructuring agreement, a restructuring officer is appointed (if the creditors so wish, unless the administrator is maintained as the restructuring officer) to prepare and oversee the execution and implementation of the restructuring agreement.

Voting on the Administration and Restructuring

Creditors may adopt a resolution at their meetings provided it is supported by the votes of creditors or class of creditors holding at least 51% of the value of the debt owed to the creditors or class of creditors voting in person or by proxy vote or by postal vote. The administrator or its nominee shall chair the meeting of the creditors and has a casting vote.

At the watershed meeting, decisions may be made by the creditors by a resolution supported by 51% of the votes representing the value of the debt owed to the creditors or class of creditors voting in person or by proxy vote or by postal vote cast. The directors of the company are also required to pass a resolution to authorise the execution of the restructuring agreement by the company or on the company's behalf.

Cram Down on Creditors

There are no express cram down provisions in the Corporate Insolvency and Restructuring Act. Provided that 51% majority of the creditors resolve that the company should execute a restructuring agreement, the dissenting creditors shall be bound by the restructuring agreement except to the extent that the Court orders otherwise.

Implementation of the Plan

Once administration and restructuring has been proposed and the requisite approvals from creditors, directors, members and/or the Court have been obtained, the plan is implemented by the company in accordance with its terms.

Discharge of Claims

The discharge of claims of a company in administration is not provided for or regulated by the Corporate Insolvency and Restructuring Act.

Effect on Suretyships

This should be provided for in the restructuring agreement executed by the company if the creditors resolve that the company should do so; but where the assets and liabilities of the company are transferred to another company, the transferee company would inherit the suretyships.

How is the Process Terminated?

The administration of a company may be terminated where -

- a restructuring agreement is executed by the company and the restructuring officer;
- the creditors of the company resolve that the administration should end;
- the creditors of the company appoint a liquidator by a resolution passed at the watershed meeting;
- the Court orders the administration to end because the Court is satisfied that the company is solvent or for some other specified reason and the administration ends on the date specified in the order or, if no date is specified, when the order is made;
- the convening period expires without the watershed meeting having been held and no application has made to extend the period;
- the Court refuses to extend the convening period after an application has been made to it;
- a watershed meeting ends without a resolution that the company execute a restructuring agreement;
- the company fails to execute a proposed restructuring agreement within 21 days after a watershed meeting has approved the restructuring agreement or within such further period ordered by the Court; or
- the Court appoints a liquidator.

Director and Officer Liability

A director who fails to submit the financial statements of a company in administration within the required time frame to the administrator would be liable to pay to the Registrar an administrative penalty of 250 penalty points (GHS3,000, approx. USD 254.7).

A director and officer of the company in administration may be found liable for committing offences involving dishonesty or an offence in contravention of the Companies Act.

Civil Consequences

Depending on the aforesaid act or omission, a director or officer could be personally liable for part of or the whole of the debts or liabilities of the company, or to a fine or to both a fine and imprisonment.

Criminal Consequences

Depending on the aforesaid act or omission, a director or officer may be liable to a term of imprisonment or to both imprisonment and a fine.

Scheme of Arrangement

Process Required to Commence a Scheme of Arrangement

A scheme of arrangement or merger without Court approval arises when members pass a special resolution to put the company into voluntary liquidation and authorise the liquidator to sell all or part of the assets of the company to another entity in exchange for fully paid shares, debentures or other like interests in that entity. A scheme of arrangement or compromise with Court approval arises when an arrangement or compromise is proposed and the company, a creditor, a member, the liquidator itself in the case of a company being wound up, the administrator where an administration order in relation to the company is still in force, or any other person interested in the matter applies to Court to order a meeting of its members and creditors in order for them to vote on the proposal.

At what point does the Scheme of Arrangement Commence

Without Court approval, it commences when the special resolution is passed. With Court approval, it commences when the Court makes an order confirming the arrangement or compromise, which is binding on the company, its members and creditors.

Duration of a Scheme of Arrangement

A specific timeline has not been prescribed for either process. The Court process may take about 6 weeks, depending on whether or not an interested party steps in to oppose the application. However, the pre- and post-Court procedures do not have any stipulated timelines.

Extent of Court Involvement in the Process

The Court may make an order confirming an arrangement or compromise. In the order or by a subsequent order, the Court may also make provision for all or any of the following matters -

- the transfer to the transferee company of the whole or a part of the undertaking, assets and liabilities of the transferor company;
- the allotting or appropriation by the transferee company of the shares, debentures or other like interests in that company which, under the arrangement or compromise, are to be allotted or appropriated by that company to or for a person;
- the continuation by or against the transferee company of legal proceedings pending by or against a transferor company;
- the dissolution, without winding up, of the transferor company;
- that provision be made for persons who, within the time and in the manner that the Court directs, dissent from the arrangement or compromise; and
- the incidental, consequential and supplemental matters that are necessary to ensure that the arrangement or compromise is fully and effectively carried out.

The Court may, on an application made by the company or with the leave of the Court, a member or creditor of a company, order that an arrangement, compromise, merger or division is binding on the company and any persons or class of persons as the Court may specify. Any such order may be made on the terms and conditions that the Court considers appropriate.

Management of the Company

There is no provision in the Companies Act that regulates the manner in which a company is managed during an arrangement. This should be provided for in the scheme of arrangement.

Filing of Claims

Again, the law does not provide a mechanism for the filing of claims of creditors. This should be provided for in and regulated by the scheme of arrangement.

Factors Which Influence the Period of Arrangement

The period of arrangement may be affected by either of the following matters:

- where a dissenting shareholder applies to Court for redress;
- where a dissenting shareholder gives written notice of dissent from the arrangement in respect of all of the shares held by that shareholder to the liquidator, within 28 days after the resolution is passed- the liquidator shall abstain from carrying the resolution into effect or purchase the member’s shares at an agreed price or at a price agreed

upon during arbitration in accordance with the Alternative Dispute Resolution Act, 2010 (Act 798).

Funding of the Company

There is no specific provision in the law which regulates how a company is to be funded whilst in arrangement. This should be provided for in and regulated by the scheme of arrangement.

Effect of a Scheme of Arrangement on Employees

If the arrangement or merger results in loss of employment or the workers suffer a diminution in the terms and conditions of employment, the workers are entitled to be paid a redundancy pay.

Effect of a Scheme of Arrangement on Contracts

This should be provided for in the scheme. In an arrangement or merger where the assets and liabilities of the company are transferred to another company, the transferee company would inherit the contracts.

Effect of a Scheme of Arrangement on Shareholders

In an arrangement/merger, the shareholders may lose their shares in the company and gain shares, debentures or other like interests or cash in the transferee company.

Effect of a Scheme of Arrangement on Creditors

Generally, the scheme of arrangement will provide for how creditors should be treated. Further, under an arrangement or compromise with Court approval where the whole or part of the company's assets are to be transferred to another company, the liabilities of the company, including its debts will be transferred to the transferee company.

Pending Claims, Litigation and Arbitration

Pending claims, litigation and/or arbitration will be provided for in the scheme of arrangement. But in the case of a transfer of assets from the distressed company to another, the liabilities of the company, including litigation, will be transferred to the transferee company.

Effect of the Moratorium

No such moratorium arises by operation of the law and is not regulated or provided for in a scheme of arrangement.

Voidable Transactions

Transactions concluded prior to the commencement of an arrangement are not susceptible to being set aside.

The Scheme of Arrangement Plan

A scheme of arrangement would include a plan on how the claims of creditors will be settled, how the company will continue in existence on its own or as a consequence of a merger or transfer of its assets and any other related matters.

Voting on the Scheme of Arrangement

In an arrangement or merger without Court approval, the vote of not less than three-fourths (75%) of the members of the company concerned is required to pass the special resolution required. In an arrangement or compromise with Court approval, the votes of 75% of each class of members concerned and 75% of each class of creditors concerned is required to approve the arrangement or compromise.

Cram Down on Creditors

The Court can make an order confirming an arrangement or compromise (approved by a majority in number representing 75% in value of each class of members concerned and 75% in value of each class of creditors concerned) with or without modifications that shall be binding on all creditors of the company and its validity shall not be subsequently impeachable in any proceedings. Therefore, where the Court grants such an order, the arrangement or compromise will be binding on any minority group of creditors that may have voted against the proposals.

Implementation of the Plan

Once a scheme of arrangement has been proposed and the requisite approvals of creditors, members and/or the Court have been obtained, the plan is implemented by the company in accordance with the implementation provisions in the scheme of arrangement.

Discharge of Claims

The discharge of claims is not provided for or regulated by law but instead should be provided for in the scheme of arrangement.

Effect on Suretyships

This should be provided for in the scheme of arrangement, but where the assets and liabilities of the company are transferred to another company, the transferee company would inherit the suretyships.

How is the Process Terminated?

The manner in which the arrangement process is terminated should be provided for in the scheme.

What is the Status of a Scheme of Arrangement?

This will depend on the type of arrangement or merger that is undertaken. The company may end up liquidated with its assets sold to another body corporate or the shareholding of the company may change hands if its shares are bought by a transferee company.

Director and Officer Liability

For either of the following matters that occur during an arrangement, a director or officer of a company may be liable-

- where a director of the company and of a trustee for debenture holders of the company does not notify the company of his or her material interests and the effect of such interest on the arrangement or compromise;
- where the company or its officer (including a liquidator or trustee of a deed securing debentures of the company) does not send the statement explaining the effect of the arrangement or compromise to its members or creditors or include in the statement, a notification of the place and manner in which the members or creditors may obtain copies of the statement;
- where the Court makes an order to facilitate the arrangement, compromise, merger or division, and the company does not deliver a copy to the Registrar within 14 days after the order was made; and
- where the Court makes an order confirming the arrangement/ amalgamation and the company does not annex a copy of the order to every copy of the company's regulations issued by the company after the order has been made;
- where the company is put into voluntary liquidation, a liquidator may exercise his powers of summoning before the Court, an officer of the company who is known or suspected of possessing company property, indebted to the company or considered capable of giving information about the affairs of the company.

For either of the following acts or omissions that occur before an arrangement, directors may also incur contractual liability -

- where the company continues to trade/conduct business when the directors have realised that the company will be unable to pay its debts as they fall due;
- where a director gives a personal guarantee to a contract entered into by the company;
- where the company transacts business, exercises a borrowing power or incurs indebtedness, except that which is incidental to its incorporation or to obtaining subscriptions to or payments for its shares, before it has met the minimum capital requirements; and/or
- where the company does not pay a judgment debt obtained by the creditor against the company.

Civil Consequences

Depending on the aforesaid act or omission, a director or officer could be personally liable for part of or the whole of the debts or liabilities of the company, or to a fine or administrative penalty or to both a fine and imprisonment.

Criminal Consequences

Depending on the aforesaid act or omission, a director or officer may be liable to a term of imprisonment or to both imprisonment and a fine.

SECURITY

Types of security

Security may be a fixed or floating charge, mortgage, pledge of title documents, outright conveyance, trust for sale on condition, lease, hire-purchase, conditional sale or sale with a right of repurchase or a lien.

Taking of Security

Generally, a charge can be created on any asset of the borrower. Security may be taken against the movable property, immovable property or the intangible assets of the chargor. Thus shares, accounts, intellectual property rights, land, receipts, receivables, goods and book debts may all be the subject matter of security.

Security Trustees or Special Purpose Vehicles

Security trustees are usually employed in multiple lender situations such as syndicated loans. The appointment of a security trustee is a contractual matter between the parties to the agreement. Special purpose vehicles are recognized and utilised under Ghanaian law.

Most Robust Form of Security Available to Lenders

The most robust form of security available to a lender is a fixed charge on an asset. A fixed charge has priority over a floating charge affecting the same asset unless the terms on which the floating charge was granted prohibiting the company from granting a later charge having priority over the floating charge and the person in whose favour that later charge was granted had actual notice of that prohibition at the time when the charge was granted to that person.

Registration of Security

- A lender in whose favour a security interest is created must register the security interest with the Collateral Registry of the Bank of Ghana within 28 days after the security interest is created. The Registrar then issues an acknowledgement within 3 days of the registration of the security interest to the lender. The lender must also deliver a copy of the

acknowledgement to the borrower within 15 days after receipt of the acknowledgement. The production of the acknowledgement in proceedings before a Court is prima facie evidence of the effective registration of the security interest in the collateral specified in the acknowledgement.
- Office of the Registrar of Companies - in addition to the Collateral Registry, the particulars and original or certified copies of a security instrument created by a company should also be registered with the Registrar within 45 days after creation, otherwise, the charge is void. This does not apply to a pledge of, or possessory lien on, goods, or to any charge, by way of pledge, deposit, letter of hypothecation or trust receipt, of bills of lading, dock warrants or any other documents of title to goods, or of bills of exchange, promissory notes or any other negotiable securities for money.
- Lands Commission- where the charge is in respect of land, the borrower or lender should also register the instrument at the Lands Commission. A mortgage does not have any effect unless it is registered in accordance with the Land Act, 2020 (Act 1036). When a mortgage is registered as a charge over a registered land or an interest in land, the mortgage instrument must be filed with the Lands Commission.

Stamp Duty

The Stamp Duty Act, 2005 (Act 689) as amended by the Stamp Duty (Amendment) Act, 2023 (Act 1109 (Stamp Duty Act) requires all agreements to be stamped within 2 months of being executed, either as chargeable or as exempt from stamp duty. An unstamped agreement is not available for any purpose (except in criminal proceedings) in a Ghanaian Court unless the unpaid duty and any penalty for late stamping is paid.

The penalty for late stamping is GHS 30 (approx. USD 2.6). Where the unpaid duty exceeds the equivalent in value of GHS 30 (approx. USD 2.6), there is an additional penalty by way of interest on the unpaid duty at 5% per annum from the day on which the agreement was first executed up to the time when the interest is equal in amount to the unpaid duty.

The Stamp Duty Act does not prescribe which party is responsible for payment of the stamp duty, but in practice, with respect to a charge, stamp duty is usually paid by the person granting the charge. The stamp duty is payable to the Land Valuation Division of the Lands Commission. Calculation of duty is ad valorem. Stamp Duty of 0.5% and 0.25% is paid on principal and ancillary security, respectively.

With respect to land, on an assignment of a lease or where there is consideration payable on the grant of a lease, additional to rent, the applicable stamp duty payable will be as follows -

VALUE OF CONSIDERATION	RATE
Less than GHS10,000	0.25%
More than GHS10,000 but less than GHS50,000	0.5%
More than GHS50,000	1.0%

The applicable stamp duty payable for the grant of a lease is as follows -

TERM OF LEASE	RATE
Not more than 50 years	0.5%
Term of more than 50 years	1%

Stamp duty is usually paid by the acquirer of the interest in the property. The Land Valuation Division may vary the assessment if it considers that the property has been undervalued in the deed. In such an instance, the Land Valuation Division may visit the land, re-value it and/or reassess the stamp duty that should be paid.

Registration Costs

- Registration at the Collateral Registry costs GHS 20.00 (approx. USD 1.70) and is processed online. The costs are payable online at the time of registration and can be undertaken by either the borrower or the lender. The Collateral Registry sends a confirmatory email to acknowledge payment.
- Registration at the Office of the Registrar of Companies costs GHS 100.00 (approx. USD 8.5). Payment is made physically at a payment point on the premises, and a receipt is issued. Registration may be undertaken by either the company which creates the charge or the lender.
- Registration of mortgages at the Lands Commission costs GHS115.00 (approx. USD 9.8) and may be undertaken by the borrower or the lender. Payment is made physically at a payment point on the premises.

Requirements for the Assignment or Transfer of Security

Security can be transferred and/or assigned by virtue of an agreement to that effect. The assignment or transfer agreement should be stamped and registered in the relevant public office, depending on the nature of the security.

Instances in which Securities might be Vulnerable to Attack

- Where the security interest has not been stamped or registered, stamped and registered interests are more robust.
- Where a third party has an interest in the secured property, the third party can initiate an interpleader action in Court to prevent the security from being realised.

Methods of Enforcement of Security

Where a borrower fails to pay an amount secured by a charge, the lender may:

- sue the borrower on any covenant to perform under the credit agreement; or
- where the security is registered under the Borrowers and Lenders Act, 2020 (Act 1052) (the Borrowers and Lenders Act), realise the security over the property charged without initiating proceedings in Court, with notice to the Collateral Registry; or
- appoint a receiver or manager in accordance with the provisions of the credit agreement or apply to Court for the appointment of a receiver or manager to (i) take possession of and protect the property; (ii) collect rents and profits derived from the property; and (iii) realise the security on behalf of the lender.

A lender who intends to realise security without a Court order must register a notice of that intention with the Collateral Registry. The Borrowers and Lenders Act requires the lender to first give the borrower written notice requesting the borrower to pay the amount due within 30 days. However, the lender is not required to give the borrower notice where the collateral is perishable. If the borrower fails to pay or make satisfactory arrangements to pay the amount outstanding to the creditor within 30 days after receiving the notice, the lender may enforce the security by any of the means provided above. Where all requirements are met, the Registrar shall certify the realisation process and issue a Memorandum of No Objection to the lender. The Memorandum of No Objection will remain valid until the collateral is sold, retained by the lender or until debts have been settled and the collateral redeemed.

Where a lender is unable to exercise a right of possession in a peaceful manner, it may upon a warrant issued by a Court, use the services of the police to remove the collateral or evict the borrower where the collateral is immovable property, subject to the rights of third parties or other persons in possession of the collateral.

The security can also be realised by making an application to Court to request a judicial sale of the property or taking possession of the assets over which one has security.

Problems Experienced when Enforcing Security

The following problems may be experienced when one attempts to enforce one's security -

- interpleader - where the lender initiates action in Court to enforce the security, a third party claiming an interest in the property may initiate interpleader proceedings in Court in order to be joined as a defendant or substituted for the defendant in the action;
- where the property is already subject to other encumbrances with priority of time;
- where the proceeds from the judicial sale of the property are exhausted before they can satisfy all of the encumbrancers;
- where the property has already been disposed of or is otherwise unavailable; and
- delays in the Court process.

Financial Assistance Requirements

The Companies Act prohibits a company from providing financial assistance, directly or indirectly, for the purchase of its shares or the shares of its holding company. However, a company may voluntarily acquire its own shares on its conversion to a company limited by guarantee. Also, the prohibition against financial assistance does not prevent -

(a) the payment of commission or brokerage to a person in consideration of that person subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares in the company where the payment of commission or brokerage is authorised by the company's Constitution (previously Regulations) and does not exceed 10% of the price at which the shares are issued or a lesser rate as may be specified in the Constitution; or

(b) where the lending of money is part of the ordinary business of the company, although the money may be used for the subscription or purchase of shares in the company or its holding company; or

(c) the provision by a company of money for the purchase or subscription of shares to be held for the benefit of the company's employees or employees of an associated company including a director holding a salaried employment in the company or an associated company; or

(d) the advancing by a company of loans to persons, other than directors, genuinely employed by the company or an associated company with a view to enabling those persons to purchase or subscribe for shares to be held by themselves beneficially and not as nominees for the company or any other person; or

(e) the payment by a company of a lawful dividend on its shares although the dividend received by a shareholder is used to discharge a liability on that shareholder's shares or to repay money borrowed for the purpose of subscribing or purchasing shares; or

(f) in the case of a public company some or all of whose equity shares are dealt with on an approved stock exchange or in respect of which an application has been made to an approved stock exchange for permission to deal in those shares, the payment of commissions, fees, costs and expenses and the giving of indemnities and warranties in each case to a person arranging or otherwise involved in an underwriting, placing or sale of securities in the company or any other similar transaction, provided that -
   (i) an application for permission to deal in those securities has been or is to be made to an approved stock exchange, and
   (ii) the financial assistance given is in good faith in the interests of the company.

Under the Companies Act, unless a company's Constitution provides otherwise, the directors of a company need an ordinary resolution of the company to exercise the company's power to borrow money or to charge any of its assets, where the amounts to be borrowed or secured, together with the amount remaining undischarged of moneys already borrowed or secured (apart from temporary loans obtained from the company's bankers in the ordinary course of business), will exceed the stated capital of the company. Therefore, where the amounts will not exceed the stated capital, a board resolution would suffice. However, for the sake of prudence, shareholder approval is sought even when it is not essential.

RECOGNITION OF FOREIGN JUDGMENTS

Instances in which the high court of Eswatini will recognise a foreign judgment

The Courts in Ghana will recognise a foreign judgment when a judgment is final and conclusive and obtained in the superior Courts of the countries listed under the Foreign Judgments and Maintenance Orders (Reciprocal Enforcement Instrument) 1993 (LI 1575) and once the judgment has been registered in the High Court of Ghana.

Requirements for Recognition of a Foreign Judgment

- The judgment should be final and conclusive.
- A foreign judgment may be final and conclusive although an appeal may be pending against it or it may be subject to appeal in the country of the original Court.
- It should have been obtained in a superior Court of the foreign country.
- The foreign country should be listed in the Foreign Judgments and Maintenance Orders (Reciprocal Enforcement Instrument) 1993 (LI 1575). The applicable countries for which a Ghanaian Court will recognize a judgment are Brazil, France, Israel, Italy, Japan, Lebanon, Senegal, Spain, United Arab Emirates and the United Kingdom. This is on the basis of reciprocity.
- The judgment should be registered in the High Court of Ghana by the judgment creditor.
- The application for registration of the foreign judgment should be made within 6 years after the date of the judgment or where there has been an appeal, after the last judgment given in those proceedings.

Requirements for the Recognition of a Foreign Trustee, Business Rescue Practitioner or Insolvency Practitioner

Under the Corporate Insolvency and Restructuring Act, the following categories of persons may practice as insolvency practitioners -

- a receiver or manager under the Companies Act;
- an administrator or restructuring officer under the Corporate Insolvency and Restructuring Act; or
- a trustee in bankruptcy under the Insolvency Act, 2006 (Act 708).

A person is qualified to practice as an insolvency practitioner if -

- that person is a chartered accountant, a lawyer or a banker and that person is in good standing with the Institute of Chartered Accountants, the Ghana Bar Association or the Chartered Institute of Bankers, respectively;
- that person is a member of the Chartered Institute of Restructuring and Insolvency Practitioners, Ghana; and
- at the relevant time, a security or professional indemnity policy for the proper performance of the duties of that person is in force.

A professional person can only act as an insolvency practitioner if that person takes out an insurance policy for indemnity against any act or omission on the part of that person as an insolvency practitioner.

A person is not qualified to practice as an insolvency practitioner if the person -

- is a minor;
- is a body corporate;
- has been declared an undischarged bankrupt;
- is declared by a Court of competent jurisdiction to be of unsound mind;
- is the subject of a prohibition order under the Corporate Insolvency and Restructuring Act;
- is disqualified under the Companies Act for fraudulent trading or is disqualified from holding an office under the Companies Act;
- has been convicted in the preceding five years of an offence under the Corporate Insolvency and Restructuring Act or a crime involving dishonesty or moral turpitude;
- is disqualified from acting as a liquidator, administrator, receiver, trustee or supervisor under the Corporate Insolvency and Restructuring Act or any other law; or
- is subject to disciplinary proceedings or punishment under any law.