

# The Urgent Need to Speed up the Passage of the Bodies Corporate Insolvency Bill into Law

## Overview

The Companies Act, 1963 (Act 179) and the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) were considered to be some of the most progressive pieces of legislation ever passed within the English Commonwealth at that time. Regrettably, no serious effort has been made to update the corporate insolvency law with modern realities and international best practices after their enactment. The Committee of Experts on Company Law under the chairmanship of Prof. Justice Date-Bah and Ghana Association of Restructuring and Insolvency Advisors (GARIA) were assigned by the Attorney General to review

the two laws respectively. This assignment was completed in 2010 and left to gather dust on the shelves.

The purpose of this policy brief is to examine and bring to the fore the urgent need for Parliament of Ghana to fast track the passage of the Bodies Corporate Insolvency Bill into Law. It gives an overview of Insolvency in Ghana and the long-term benefits the Bill yields when enacted to law. The brief also presents necessary action points and advocacy expected of private sector and duty bearers to facilitate the quick passage of the bill into law.

## Past Trends

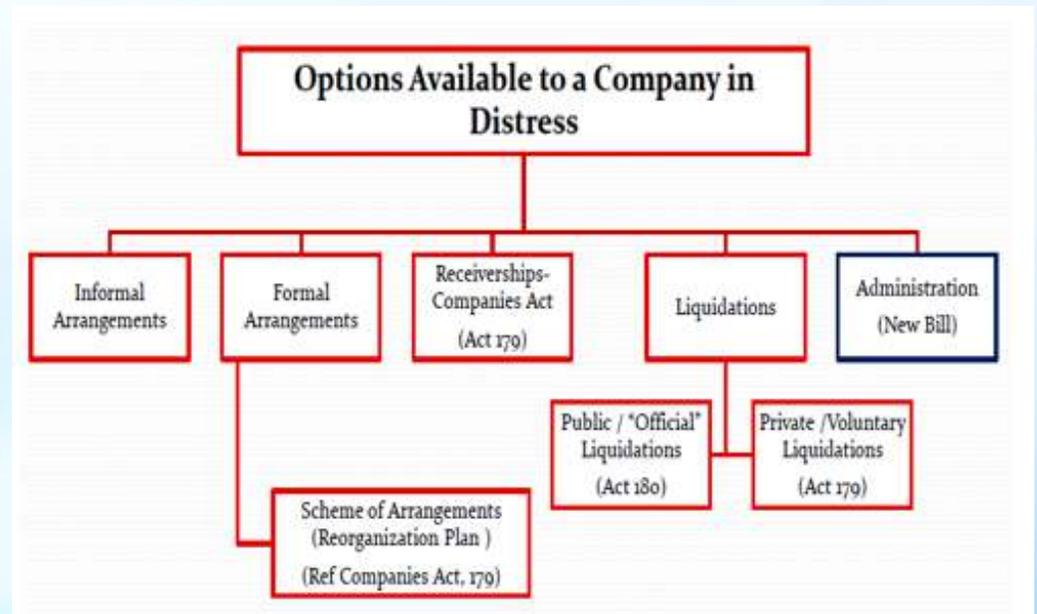
Date	Activity
1856	The first legislation on insolvency in the Gold Coast was passed as the Gold Coast Bankruptcy and Insolvency Ordinance (1857).
1857	The Ordinance (1857) was replaced by an ordinance with the same title.
1893	The 1857 Ordinance was repealed
1906	The 1857 Ordinance replaced as a result of increased economic activity
1962	Professor Gower recommended the Insolvency Act, 1962 (Act 153) was passed
1963	The passage of the Companies Code (now Act) and Bodies Corporate (Official Liquidations) Act 180
2006	Insolvency Act, 2006 (708) enacted
Currently	GARIA was assigned the task of reviewing the Bodies Corporate (Official Liquidations) Act 180 and submitted its recommendations to a Committee of Experts on Company Law under the Chairmanship of Justice Prof. Justice Date-Bah. The draft bill is presently in final drafting stage at the Attorney-General Department.

Source: Ghana Association of Restructuring and Insolvency Advisors (GARIA)

## Truth!

- Ghana over the years has experienced the premature insolvency of viable but distressed businesses.
- On August 14, 2017, the central bank of Ghana (BoG) announced its approval for the takeover of two indigenous banks, UT Bank Ltd and Capital Bank Ltd, by GCB Bank Ltd. BoG cited the insolvency of the banks in question, as the major reason for the revocation of their operating licenses. According to BoG, upon several agreements with the banks to increase their capital requirements, managers of the banks failed. Consequently, to protect customers, the licenses of the banks were revoked under a Purchase and Assumption transaction with GCB Bank Ltd.
- About a year later, on August 1, 2018, the central bank of Ghana again announced the consolidation of five indigenous banks to form a new bank called the Consolidated Bank Ghana Ltd. The five collapsed banks included uniBank Ghana Ltd, The Royal Bank Ltd, Beige Bank Ltd, Sovereign Bank Ltd, and Construction Bank Ltd.
- The same reason for insolvency was cited as a cause of the collapse of the various banks. Within a span of two years, about seven indigenous banks have collapsed
- The laws that guide both the debtor, creditor and even shareholders are outdated leading viable but distressed businesses into liquidation and eventually causing unemployment.
- The duration for liquidating a business in Ghana is short and procedures are very cumbersome.

## Current Options Available to a Distressed Company

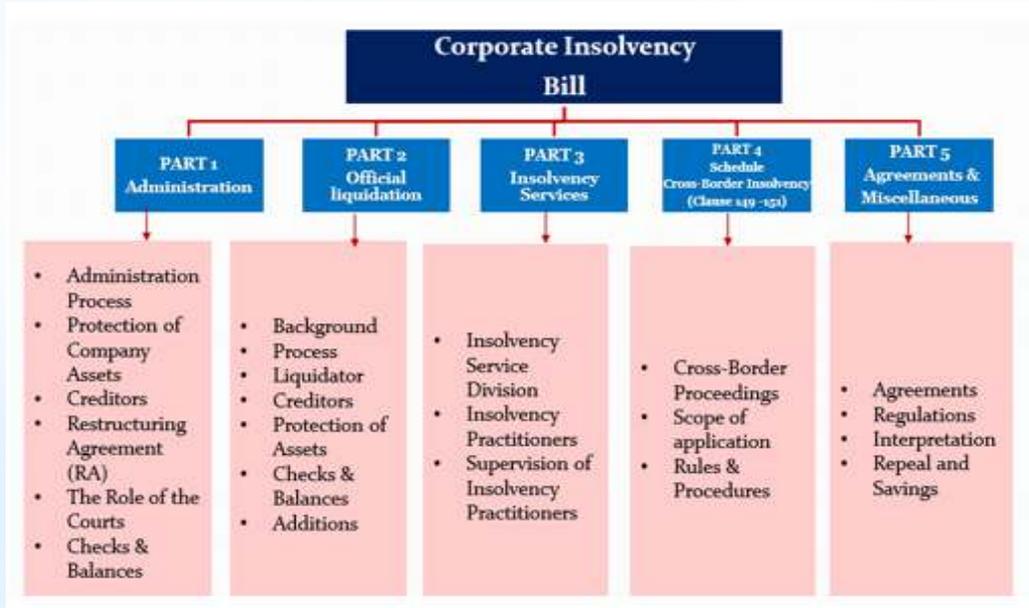


Source: Ghana Association of Restructuring and Insolvency Advisors (GARIA)

# Constraints

- The previous Act (Companies Act, 1963 (Act 179) and the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) don't provide a framework for negotiating and approving binding reorganisation plans before and after the commencement of insolvency.
- There is a lack of a legal environment to regulate companies that become insolvent. This has made resolving investor issues extremely cumbersome.
- Avenues for creditor participation in insolvency proceedings under the Act are almost absent and limited. In most modern insolvency regimes, creditors play an active role through a creditor committee or special representative.
- There is no recognised institution given the statutory mandate to regulate insolvency practitioners to ensure fairness, impartiality, transparency and accountability and professionalism.
- No coordination framework has been established between the scattered laws.

## Structure of New Corporate Insolvency Bill at a Glance



Source: Ghana Association of Restructuring and Insolvency Advisors (GARIA)

## Benefits of the Corporate Bodies Insolvency Bill to the Business Community

- Among other benefits, the Bodies Corporate Insolvency Bill, when passed into law, will:
- Enhance the ease of doing business in the country
  - Seeks to regulate the practice of insolvency in Ghana by licensed insolvency practitioners, among others.
  - Prevent the premature dismemberment of a debtor's assets by individual creditors seeking quick recoveries and provide restructuring or turnaround of distressed but viable businesses.
  - Prevent the unnecessary loss of jobs and continually improve the ease of doing business in Ghana.

- Build the capacity of Restructuring and Insolvency Practitioners with international best practices.
- Promote private enterprise and raise the present standards of business ethics and Corporate Governance in insolvency proceedings
- Improve the quality of the legal regime for corporate bodies and their administration, should they become insolvent.
- Provide a framework for restructuring viable but temporarily distressed businesses, closing and transferring assets of failed businesses.
- Facilitate access to timely, efficient and impartial insolvency proceedings.
- Reduce the burden of insolvency through potentially higher and equitable distribution of assets to a failed company's creditors

## Current State of the Corporate Body Insolvency Bill

- Stakeholder consultation and engagement on the draft bill has been finalized
- Attorney General department has finalized the drafting of the bill
- Parliamentary Select Committee on Finance is finalizing work on the draft bill and will lay it before the House for deliberation and passage before 2020 polls.
- President of Ghana, Nana Addo Dankwa Akufo-Addo at fundraising dinner

organized by GARIA stated his government's commitment to passing the bill before the 2020 election.

## Recommendations

- GARIA is Calling on the Attorney-General department to engage all parties involved to help with the drafting of the Legislative Instrument (LI) to the recently enacted Companies Act 2019, which will strongly complement the proposed Corporate Insolvency Law.
- There is also the need for intensive sensitization of the business community, stakeholders and the general public on the provisions of the new Companies Act.
- The business community needs to collaborate with GARIA to push for the passage of the Corporate Body Insolvency Law to make doing business in the country more friendly, easier and convenient.

## Urgent Actions Parliament of Ghana

- Facilitate the passage of the Corporate Insolvency bill into law

## Industry actors

- GARIA together with other industry players to continue to advocate and push for the passage of the Corporate Insolvency bill into Law.



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