

# INTEGRATED LEGAL CONSULTANTS

**A Stitch in Time Saves Nine:  
The Aftermath of the Covid-19  
Pandemic and emergence of the  
Corporate Restructuring and  
Insolvency Act, 2020 (Act 1015).**



## ***Editor's Note***

Integrated Legal Consultants (ILC) was founded in April 2007, in Accra, Ghana, to offer dedicated and innovative corporate legal services while ensuring that the Ghanaian and West African business community and our network of international clients benefit from the highest quality of corporate and commercial legal services that the Practice provides.

As part of this vision, the firm has introduced the publication of newsletters on legal and economic issues that would be of interest to the client and equally affect their transactions. This is our 9<sup>th</sup> edition.

The outbreak of the Coronavirus (COVID - 19) pandemic has had adverse effects on businesses and economies across the globe. Many industries have experienced job cuts and some companies have been forced to shut down. One of the economic effects of this pandemic is Insolvency. As governments take steps to protect their economies by enacting appropriate legislations, Ghana has also taken steps to modernize its corporate insolvency regime with the enactment of the Corporate Restructuring and Insolvency Act 2020 (Act 1015).

In this issue, we have highlighted certain key features of the Corporate Restructuring and Insolvency Act 2020 (Act 1015) which seeks to enhance insolvency proceedings and improve the involvement of creditors in insolvency proceedings of a company.

We hope you find it informative and educative. Your feedback is welcome.

We trust that you are staying safe.

Happy Reading!

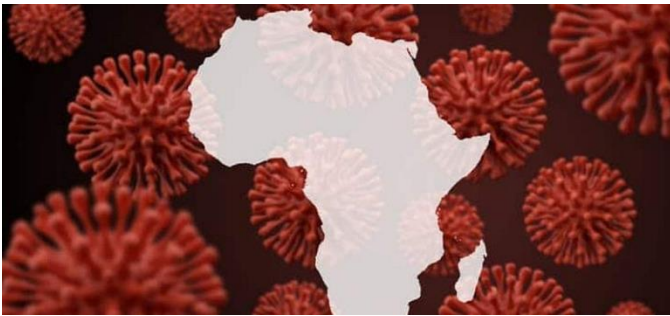
*Esohe Olajide*  
**Editor**

*Olusola Ogundimu*  
**Editor-In-Chief**



## **A Stitch in Time Saves Nine: The Aftermath of the Covid-19 Pandemic and emergence of the Corporate Restructuring and Insolvency Act, 2020 (Act 1015).**

In the wake of the Coronavirus (COVID-19) pandemic, the political, social, economic, religious, and financial structures of the world have been shaken and businesses are struggling to stay afloat. The pandemic is expected to have a significant adverse impact on the Ghanaian economy and the global economy at large. Governments around the world are implementing diverse economic and financial measures to alleviate the adverse effect the pandemic will have on the world and are working to provide relief for businesses and households.



On the 1<sup>st</sup> of May 2020, His Excellency Nana Addo Dankwa Akufo-Addo assented to the *Corporate Restructuring and Insolvency Act, 2020 (Act 1015)* of Ghana. This law modernizes the Corporate Insolvency regime of Ghana by enhancing insolvency proceedings and improving the involvement of creditors in the insolvency proceedings of a company.

The purpose of Act 1015 is to provide a legal regime for the administration and the temporary management of the business, property and affairs of a distressed company in a manner that provides an opportunity for the company to as much as possible

continue in existence as a going concern; the placement of a temporary freeze on the rights of creditors and other claimants against a distressed company; the development and implementation of a restructuring plan which results in a better return for the creditors and shareholders of the company that would result from the immediate winding up of a distressed company; the official liquidation of a body corporate; cross border insolvency; the regulation of insolvency services and netting agreements.

The new Act, Act 1015, contains the following key features.

### **1. Establishment of an Insolvency Services Division under the Office of the Registrar of Companies, under section 153(1).**

This division was established to regulate insolvency practice under the Companies Act, 2019 (Act 992), and any other relevant enactment. The division is also to keep under review the law and practice that relates to the insolvency of companies and other bodies corporate in the country and to oversee the administration, restructuring and insolvency proceedings of such companies and other bodies corporate in the country among other functions.

### **2. Introduction of the qualifications and a regulatory regime for Insolvency Practitioners.**

Per Section 154(1) of Act 1015,

*“an Insolvency Practitioner is a receiver under the Companies Act, 2019 (Act 992); a manager under the Companies Act, 2019 (Act 992); an administrator under this Act; a restructuring officer under this Act;*

*This newsletter includes general information about legal issues and developments in the law. Such materials are for informational purposes only and may not necessarily reflect the most current legal developments. These informational materials are not intended, and must not be taken, as legal advice on any particular set of facts or circumstances. You need to contact a lawyer licensed in your jurisdiction for advice on specific legal issues and problems.*

*or a trustee in bankruptcy under the Insolvency Act, 2006 (Act 708)".*

The Act also stipulates that a practitioner must either be a Chartered Accountant, a lawyer or a banker and must be in good standing with a recognised professional association. That person must also be certified as a restructuring and insolvency practitioner.

### **3. Cross-Border Insolvency proceedings**

The aim of these proceedings is to promote co-operation between the Courts and other competent authorities in Ghana on the one hand and foreign states on the other hand who are involved in cases of cross-border insolvency. It also provides legal certainty for trade and investment as well as the fair and efficient administration of cross-border insolvencies to protect the interest of creditors and other interested persons.

### **4. Insolvent trading and sanctions.**

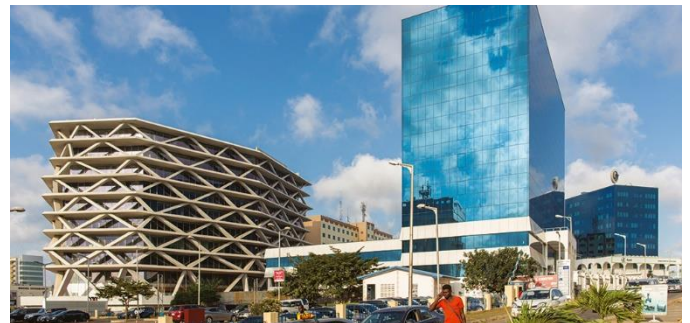
Section 119 of Act 1015 stipulates that, where a director causes a company to engage in business or trade or incur a debt or liability where that director has reasonable grounds to believe in the insolvency of the company or ought to have known at the time that the company was insolvent or would become insolvent as a result of incurring that debt, he commits an offence and is liable on summary conviction to a fine and/or to a term of imprisonment.

It is worthy of note that the Act 1015 repeals the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) and makes provision for official liquidation.

The Act 1015 aims at saving and aiding well-grounded but temporarily distressed corporate entities in order to preserve job opportunities, protect the company's assets and ensure that the company is allowed to undergo efficient and fair corporate/administration, and restructuring processes, with the assistance of an appointed Administrator and/or restructuring officer, who shall discharge his/her duties in line with a restructuring agreement executed by the company and the creditors to provide for payments towards the creditors' debts.


In a bid to save viable but struggling businesses, Act 1015 will place such businesses in "**administration**".

Per Section 1(2) of Act 1015, a company is to be placed in administration or restructuring where it is unable to pay its debts or current obligations when they fall due, even if the total assets of the company exceed the total liabilities of the company; or where the company has a negative net worth.



The period of administration of a company may be brought to an end; (i) where the court orders so because it is satisfied that the company has become solvent; (ii) where the company fails to execute a proposed restructuring agreement within the permitted time frame or, (iii) where the court appoints a liquidator.

*This newsletter includes general information about legal issues and developments in the law. Such materials are for informational purposes only and may not necessarily reflect the most current legal developments. These informational materials are not intended, and must not be taken, as legal advice on any particular set of facts or circumstances. You need to contact a lawyer licensed in your jurisdiction for advice on specific legal issues and problems.*



Although the Act 1015 was not drafted for the purposes of economic life after the Covid-19 pandemic, it will, without a shadow of doubt, aid in the rescue and revitalisation of individual businesses, and the economy as a whole when the rigours of the Covid-19 pandemic ends. The Act comes in handy to help alleviate the distressing situation in which most businesses will find themselves. The new Act will give businesses a foundation upon which to rebuild when the adverse impact of the Covid-19 pandemic is all over.

If you require any assistance with respect to insolvency or other related matters in Ghana kindly send an email to [ilc@integratedlegalconsultants.com](mailto:ilc@integratedlegalconsultants.com)

**by Nana Ayeyi Efua Ansaah (Associate)**

*This newsletter includes general information about legal issues and developments in the law. Such materials are for informational purposes only and may not necessarily reflect the most current legal developments. These informational materials are not intended, and must not be taken, as legal advice on any particular set of facts or circumstances. You need to contact a lawyer licensed in your jurisdiction for advice on specific legal issues and problems.*