



**OFFICE OF THE REGISTRAR OF COMPANIES  
SENSITISATION PROGRAMME FOR SELECTED JUDGES OF THE  
JUDICIARY**

**THEME: JUDICIAL SENSITISATION ON INSOLVENCY AND  
BENEFICIAL OWNERSHIP LAWS**

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**PEDUASE LODGE, ABURI**

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**The Attorney General and Minister for Justice, Honourable Dr. Dominic Akuritinga Ayine,**  
**Your Lordships and your ladyship,**  
**Registrar of Companies, Mrs. Maame Samma Peprah,**  
**Distinguished Participants,**  
**Ladies and Gentlemen.**

## **OPENING**

Good morning.

I am truly honoured to be your Guest Speaker and to have been called upon to deliver the Keynote Address at this very important awareness training programme.

The Bank of Ghana (BoG) is delighted to be associated with this sensitisation programme on Corporate Insolvency, Liquidation Procedures, and Beneficial Ownership Laws, organised by the Office of the Registrar of Companies for selected Judges of the Judiciary.

## **RELEVANT LAWS**

The importance of the **Corporate Insolvency and Restructuring Act (CIRA), 2020 (Act 1015)**, particularly at a time like this, cannot be overemphasised. The passage of Act 1015 marked a transformative development, introducing a modern framework for aiding financially distressed companies.

The Act outlines clear conditions for placing companies into administration and defines the key responsibilities of administrators, who work to stabilise companies, and restructuring officers, who develop recovery strategies.

Act 1015 therefore offers significant potential in addressing insolvency situations through effective debt workouts and other restructuring modes. It is a crucial piece of legislation addressing corporate insolvency and restructuring in Ghana.

We believe that a resilient and robust corporate insolvency regime plays a critical role in strengthening Ghana's corporate regulatory framework, which is an area in which the Bank of Ghana plays a vital role.

A strong regulatory framework ensures compliance, protects the public interest, and promotes fair practices across sectors, safeguarding not just financial institutions but the broader economy as well.

The Bank of Ghana's statutory mandate is to:

- Maintain price stability,
- Promote economic growth,
- Ensure the efficient operation of the banking and credit system, and
- Promote financial stability.

In line with this mandate, the Bank recognises the value of a well-designed insolvency regime.

In addition to Act 1015, the **Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930)**, which serves as the primary legislation governing Ghana's banking sector, provides for:

- Prudential requirements,
- Enforcement mechanisms, and
- Early intervention through prompt corrective actions for distressed banks and Specialised Deposit-taking Institutions.

The Bank of Ghana takes insolvency seriously and works diligently, through its regulatory and supervisory roles, to prevent Regulated Financial Institutions (RFIs) and Specialised Deposit-taking Institutions from becoming insolvent. Insolvency is defined as the inability of a bank or SDI to meet its obligations as they fall due, or a situation where its liabilities exceed its assets. It goes beyond temporary illiquidity, indicating severe balance sheet mismatches and an inability to recover within a reasonable time.

### **COMMON CAUSES OF INSOLVENCY IN BANKS AND SDIs**

There are various causes that may lead a bank or financial institution into insolvency. These include:

- Creative accounting practices that misrepresent financial conditions,
- Cash and asset suppression,
- Insider dealings/related-party transactions exceeding statutory limits,
- Weak board oversight and internal control override,
- Non-compliance with BoG provisioning norms and failure to implement on-site recommendations,
- Non-existent paid-up capital or investments in SEC-regulated institutions,
- Inadequate capital to sustain operations,
- High management fees paid to related parties,
- Excessive risk-taking without proper risk management,
- Poor investment decisions and lack of due diligence,
- Misuse of depositors' funds for long-term expenditures, causing asset-liability mismatches,

- Poor credit underwriting standards leading to toxic assets (e.g., non-performing loans, unrecoverable placements, etc.), and
- Use of depositors' funds to finance related-party projects.

## **FACTORS THAT TRIGGER REGULATORY INTERVENTION**

A primary objective of the Bank of Ghana is to promote the safety and soundness of the operations of financial institutions through effective regulation and supervision. This includes corporate restructuring to support banks and SDIs in financial difficulties, with the aim of minimising financial risk, improving business performance to reduce debt, improving efficiency and restoring profitability.

However, it is imperative that weak banks or financial institutions that have the potential to create financial instability are handled properly to ensure the safety and soundness of the financial system. Sections 107 and 123 of Act 930 therefore mandate the Bank of Ghana to put a failed or failing bank or SDI through the resolution process.

Resolution occurs upon a determination by the Bank of Ghana that there is no feasible intervention that could restore the failed or failing institution to viability within a short timeframe. The process may commence with either the appointment of a Receiver or an Official Administrator and the subsequent appointment of a Receiver, based on the outcome of the Official Administration.

The Bank of Ghana may appoint an Official Administrator for a bank or SDI where among others:

- a) The Bank of Ghana determines that the bank or SDI has violated any provision of Act 930 or regulations, directives, or orders issued under Act 930, or has engaged in any unsafe and unsound practices in such a manner as to weaken the RFI's condition, seriously jeopardise depositors' interests, or dissipate the RFI's assets; or that
- b) The bank or SDI's capital adequacy ratio falls below 50% of the minimum required under section 29 of Act 930 or its unimpaired paid-up capital falls below 50% of the minimum required under section 28 of Act 930; or that
- c) The Bank of Ghana has reasonable cause to believe that the bank or SDI or its directors, key management personnel, or significant shareholders have engaged or are engaging in illegal activities in a manner likely to jeopardise the interest of depositors.

The Bank of Ghana is further empowered under section 123 of Act 930 to revoke the licence of an insolvent bank or SDI and appoint a receiver. This section is triggered when

the Bank of Ghana determines that a bank or SDI is either insolvent or is likely to become insolvent within sixty (60) days. Once this determination is made, the Bank of Ghana is mandated to revoke the institution's licence and appoint a receiver at the effective time of the revocation.

### **DISPUTE RESOLUTION MECHANISM**

Where a person is aggrieved with a decision of the Bank of Ghana in relation to:

- A prompt corrective action undertaken by the Bank under Sections 102–106 of Act 930;
- The appointment functions of an Official Administrator under Sections 107–122 of Act 930, and
- The revocation of licence and the appointment of a receiver under Sections 123–139 of Act 930;

and desires redress of such grievances, Section 141 of Act 930 requires that person to resort to arbitration under the rules of the Alternative Dispute Resolution Centre, which is established under the Alternative Dispute Resolution Act, 2010 (Act 798).

However, in the case of **Dr. Papa Kwesi Nduom & Others v. Bank of Ghana & Others (GN Bank), Civil Appeal No. J4/07/2023, (19<sup>th</sup> July 2023)** the Supreme Court ruled that the Human Rights Court has jurisdiction to hear bank resolution cases involving allegations of breaches of administrative justice.

This case illustrates the crucial role of judicial oversight in bank resolution proceedings in ensuring that the process is administered in accordance with law and within the legal framework governing such complex matters.

### **THE ROLE OF THE JUDICIARY**

Furthermore, while the laws on insolvency provide general guidance on the effective implementation of insolvency processes and procedures, they may not always address all possible scenarios. Thus, judicial intervention becomes essential to address grey areas of the law. The Courts should however employ circumspection in the exercise of its discretion in the adjudication of insolvency and restructuring proceedings. This is because, in the absence of any findings of breaches of the rules of natural justice and due process, adverse court determinations against administrative decisions of the Regulator in insolvency proceedings have the tendency to create significant legal uncertainties, unwind contractual arrangements (including government interventions), reverse work done by receivers (e.g., asset sales to repay debts) and risk financial instability.

For international best practices on this area, there is the Financial Stability Board (FSB) which coordinates, at the international level, the work of national financial authorities and international standard-setting bodies in order to develop and promote the implementation of effective regulatory, supervisory and other financial sector policies.

Permit me to share with you **Principle 5.5** of the FSB's Key Attributes for Effective Resolution Regimes (dated 25 April 2024). It states that:

*"Legislation establishing resolution regimes should not provide for judicial actions that could constrain the implementation of, or result in a reversal of, measures taken by resolution authorities acting within their legal powers and in good faith. Instead, it should provide for redress by awarding compensation, if justified."*

In addition, insolvency proceedings, unlike many adjudicative processes, is dynamic and require timeliness to achieve utmost effectiveness. Delays in the judicial process can lead to a diminution in the value of assets, jeopardise enterprise viability, and have unintended detrimental consequences on the insolvent estate and stakeholders. It is, therefore, critical that the judiciary ensures timely hearings and prompt rulings to safeguard the integrity of the process.

## **ONGOING LEGAL REFORMS**

I must also mention that Act 930 is currently under review. Amendments are being proposed to:

- clarify the Bank of Ghana's mandate in bank resolution,
- strengthen the legal framework for financial stability, and to
- ensure an orderly and credible resolution regime within the banking and credit system.

## **CONCLUSION**

It is my firm belief that this sensitisation programme will be instrumental in the successful implementation of Act 1015 and Act 930, and in supporting regulatory reforms governing commercial and insolvency court proceedings.

The Bank of Ghana remains committed to promoting economic growth, ensuring the efficient operation of the banking and credit system, and supporting the development of an effective corporate insolvency regime.

With the support of all stakeholders, we are confident that the insolvency and beneficial ownership laws of the country will be implemented effectively, to the benefit of Ghana's economy.

Once again, thank you. I wish you productive and fruitful deliberations.

God bless us all.

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