Evaluation of the Efficacy of the Corporate Insolvency and Restructuring Act 2020 (Act 1015) of Ghana: A Comparative Analysis with the Insolvency Legal Framework of the United Kingdom (Part II)

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[A] INTRODUCTION

The first part of this article (this issue, pages 945–973) focused on an exposition of the insolvency regimes of Ghana and the United Kingdom (UK). This second part undertakes a comparative evaluation of Ghana's Corporate Insolvency and Restructuring Act 2020 (Act 1015) (CIRA), as amended, and the UK's insolvency regimes. It argues that while CIRA shares several significant similarities with the UK model, its operational effectiveness has been constrained by institutional, market, and jurisprudential limitations. The comparative analysis focuses on, among other matters, the policy orientation of both regimes, their legislative frameworks, judicial and institutional capacity, procedural efficiency, flexibility and the practical effectiveness of these systems in rescuing distressed companies. The chapter concludes by proffering policy recommendations for reform of Ghana's insolvency and restructuring regime to enhance its effectiveness.

[B] COMPARATIVE ANALYSIS OF THE INSOLVENCY FRAMEWORKS OF GHANA AND THE UK

Policy orientation and legislative framework

The insolvency regimes of Ghana under CIRA and the UK's Insolvency Act 1986 are both built around the idea of collective insolvency procedures designed to facilitate corporate rescue over liquidation. In both systems, when a company enters financial distress, control of the company is transferred to an independent officeholder, creditor enforcement actions

are temporarily stayed, and negotiations take place within a structured legal process.

In the UK, this rescue orientation is reflected in the administration regime under schedule B1 of the Insolvency Act 1986, which identifies the rescue of the company as a going concern, as the primary objective of administration, as well as in company voluntary arrangements (CVAs), which enable a debtor-in-possession compromise with creditors. The Enterprise Act 2002 strengthened this approach by significantly restricting administrative receivership and repositioning administration as the principal corporate rescue mechanism. More recently, the Corporate Insolvency and Governance Act 2020 (CIGA) further modernized the framework by introducing additional rescue tools, including the restructuring plan under part 26A of the Companies Act 2006, which permits cross-class cram-down of dissenting creditor classes, as well as a standalone moratorium procedure. Together, these reforms have reinforced the culture of corporate rescue within the UK insolvency regime.

CIRA, supplemented by the Corporate Insolvency and Restructuring Regulations, 2025 (LI 2502), reflects a broadly similar policy orientation. Like the UK administration regime, CIRA introduces administration as the principal mechanism for stabilizing financially distressed companies and preserving viable businesses as going concerns. The Act imposes a moratorium on creditor enforcement and places the company under the control of an administrator acting in the interests of creditors as a whole, while providing restructuring agreements as the primary mechanism for reorganizing the company's debts following administration. In this respect, CIRA represents a deliberate shift away from the liquidation-centred regime under the Bodies Corporate (Official Liquidations) Act 1963 (Act 180) and aligns Ghana's insolvency framework with contemporary rescue-oriented insolvency practice.

Despite this shared orientation towards corporate rescue, certain differences exist in the design and operation of the two regimes. In the UK, the rescue framework is oriented towards the rescue of viable businesses. Administration will typically only be commenced where the insolvency practitioner certifies that there is a reasonable prospect of achieving the statutory objectives of administration, including rescuing the company as a going concern. This requirement effectively operates as a viability test, ensuring that administration is used primarily where restructuring prospects exist. By contrast, CIRA does not expressly incorporate a comparable viability test prior to the commencement of rescue procedures.

As a result, distressed companies may enter administration even where the prospects of successful restructuring are uncertain.

Furthermore, while the UK insolvency regime has benefited from decades of judicial interpretation and refinement, Ghana's framework remains relatively nascent, with limited case law to guide its interpretation and practical implementation. Consequently, the emphasis on corporate rescue in Ghana remains, to some extent, aspirational, whereas in the UK it is supported by a well-developed body of jurisprudence and established restructuring practice. It is anticipated that, over time, Ghanaian courts will develop a body of case law capable of providing clearer guidance to the corporate sector and to insolvency practitioners in the application of the rescue framework.

The two systems also differ significantly in how restructuring decisions are implemented. The principal distinction lies in the extent to which each system relies on creditor consent as opposed to judicial intervention. Under Ghana's CIRA, restructuring is largely based on creditor consent. A restructuring agreement generally requires the votes of at least 51% of the creditors in value of the debt voting in person, by proxy or by postal vote and other statutory requirements. The court's role is mainly supervisory. It ensures that the process complies with statutory requirements and that creditor decisions are not oppressive or unfair by imposing a solution on dissenting creditor groups as provided in sections 43-57. This approach emphasizes creditor autonomy and protects creditor property rights. However, it may also create practical difficulties in complex financial structures. Where one class of creditors refuses to support the restructuring, it may block the entire restructuring process from proceeding, even in circumstances where liquidation would destroy the value of the business as a going concern. This situation creates what is commonly referred to as the "holdout problem".

The UK adopts a more flexible approach. It provides different restructuring options with varying levels of judicial intervention. For example, a company voluntary arrangement (CVA) under the Insolvency Act 1986, part 1, can bind unsecured creditors where the statutory majority of 75% in value of creditors voting approves the proposal, subject to other statutory requirements, but it cannot affect secured or preferential creditors without their consent. In this respect, the CVA maintains strong protection of creditor property rights within a relatively straightforward restructuring framework.

However, a restructuring plan introduced under part 26A of the Companies Act 2006 goes further. It allows the court to sanction a

restructuring even where one or more classes of creditors vote against the proposal, provided that the statutory conditions are satisfied. This mechanism, commonly referred to as cross-class cram-down, was designed to prevent dissenting creditors from blocking commercially viable restructurings and to preserve enterprise value. It therefore gives courts a more direct role in resolving conflicts between creditor groups by imposing a solution where necessary.

The UK restructuring framework therefore incorporates a court-driven mechanism capable of resolving complex restructurings where creditor consensus cannot be achieved, whereas Ghana's framework relies more on creditor consent. This distinction illustrates the broader policy difference between a consent-based restructuring model and a court-driven restructuring model.

Another important difference concerns the ease with which rescue procedures may be initiated and the extent to which they are used in practice. In the UK, administration can often be started quickly, and, in certain circumstances, without a court application. This streamlined procedure has allowed administration to develop into a routine and practical restructuring tool rather than a remedy of last resort under schedule B1 of the Insolvency Act 1986.

In Ghana, by contrast, CIRA assigns the courts a significant role in the administration process. The procedure involves structured creditor meetings and significant judicial supervision. Under section 64 of CIRA, the court possesses broad powers to issue orders during administration and to terminate the process where statutory conditions are not satisfied. While this judicial oversight enhances accountability and legal control, it also means that the effectiveness of the rescue framework depends significantly on the efficiency and capacity of the courts, particularly in urgent situations where delay may undermine restructuring efforts.

As a result, the UK framework places emphasis on procedural speed and accessibility, whereas Ghana's framework emphasizes judicial supervision and legal oversight, making the effectiveness of the rescue process more dependent on the operational efficiency of the courts.

Administration and moratorium

Both Ghana and the UK impose legal restrictions on creditor enforcement when a company enters financial distress. This temporary "pause" or moratorium preserves the company's value and gives time for restructuring negotiations. In both jurisdictions, the moratorium therefore functions as

a stabilizing mechanism within the broader rescue framework. However, the two systems differ in the way creditor protection is triggered and implemented.

In Ghana, the appointment of an administrator under CIRA triggers an automatic statutory moratorium against creditor enforcement. Enforcement and recovery actions against the company's property are stayed and dealings with company assets are restricted while restructuring efforts are undertaken. The administrator assumes managerial control of the company and must act in the interests of creditors as a whole. Courts also play an active supervisory role during this period and possess broad powers to oversee the process and protect creditor interests as outlined in sections 64-66. Although the moratorium provides substantial protection, it is not absolute. Under section 37, secured creditors may apply to the court for leave to enforce their security where continued restraint would cause prejudice. Judicial discretion therefore plays an important role in balancing the suspension of creditor enforcement with the protection of creditor rights.

A comparable moratorium exists in the UK upon the commencement of administration under schedule B1, paragraphs 42-43, of the Insolvency Act 1986. During this period, creditors are generally prevented from enforcing security, repossessing goods, or commencing legal proceedings against the company without the consent of the administrator or the permission of the court. This restriction supports rescue efforts by preventing disruptive creditor action while restructuring negotiations are undertaken. Over time, UK courts have developed an extensive body of jurisprudence clarifying how administrators should exercise their powers and balance rescue objectives with creditor interests as illustrated in *Re Atlantic Computer Systems plc* (1992: 505: Goode 2018: 10-45).

A further distinction arises from the availability of earlier intervention mechanisms in the UK. CIGA 2020 introduced a standalone moratorium under part A1 of the Insolvency Act 1986. This procedure allows companies to obtain temporary protection from creditor enforcement while exploring restructuring options without immediately entering administration. The moratorium is supervised by a monitor who must be satisfied that the company is likely to be rescued as a going concern, while management remains with the directors. This means that a company can obtain short-term protection without immediately entering full administration. In effect, the UK system offers a staged approach to rescue; early protection first, followed by full administration if necessary.

By contrast, under Ghana's CIRA, protection from creditor enforcement and entry into formal rescue generally occur at the same time, since the moratorium arises only upon the appointment of an administrator. Ghana's framework therefore ties access to rescue protection more closely to formal administration proceedings.

A further difference concerns institutional development and how creditors are treated during the protection period. Both systems rely on court supervision to balance competing interests. However, the UK moratorium operates within a well-developed system of insolvency practice supported by extensive case law and established practice. Ghana's framework, by contrast, remains relatively recent and has yet to generate a comparable body of judicial interpretation. Consequently, although the statutory regimes in both jurisdictions seek to preserve enterprise value through temporary restrictions on creditor enforcement, the UK's more developed institutional framework tends to produce greater predictability and procedural efficiency in practice.

Restructuring agreements/plans

Under the UK insolvency framework, creditor compromises such as CVAs and schemes of arrangement typically require approval by at least 75% in value of creditors voting, in addition to other statutory requirements. Similarly, Ghana's Companies Act 2019 (Act 992) permits companies to enter into arrangements and compromises approved by 75% in value of each class of members and creditors concerned.

CIRA, however, adopts a different restructuring mechanism. Although it does not provide for CVAs or schemes of arrangement, it introduces a restructuring agreement that performs a broadly comparable rescue function. A restructuring agreement adopted at a watershed meeting becomes binding where it is approved by creditors holding at least 51% in value of the debt of creditors voting, together with compliance with other statutory requirements. This simple majority threshold is comparatively low when measured against the UK framework. In practice, approval may therefore be secured by one or two significant creditors and may therefore not be sufficiently representative of the interests of the majority of creditors within the restructuring process.

Institutional framework

The role of courts

In both Ghana and the UK, effective corporate rescue depends significantly on judicial supervision at critical stages of the insolvency process. Courts may be required to restrain creditor enforcement, resolve disputes relating to creditor meetings, review restructuring plans, supervise administrators, and facilitate transitions between insolvency procedures. The success of corporate rescue therefore depends not only on statutory design but also on the speed and institutional capacity with which courts exercise these supervisory functions (World Bank 2021: Part D).

Under CIRA, court intervention is generally triggered by insolvency practitioners, creditors, or other affected persons, although the courts retain significant supervisory powers during administration and restructuring. Section 64(1)-(2) confers authority on the court to issue protective orders for creditors and terminate administration on specified statutory grounds where appropriate applications are made. This reflects a legislative intention to preserve judicial oversight and procedural fairness within the corporate rescue framework, even though day-to-day administration remains primarily practitioner-led.

Nevertheless, the practical operation of this supervisory framework depends significantly on the capacity of courts to respond efficiently when intervention becomes necessary. If courts delay at critical stages of the proceedings, the company's value as a going concern may deteriorate rapidly, just as it would if creditors were permitted to enforce their claims prematurely. The effectiveness of the framework therefore depends not only on statutory design but also on judicial expertise, procedural efficiency and institutional capacity.

The UK mitigates these risks through institutional specialization and procedural frameworks. Insolvency matters are typically handled in specialist divisions, particularly the Insolvency and Companies List of the Business and Property Courts (HM Courts & Tribunals Service nd). In addition, insolvency litigation is governed by specialized procedural rules, including the Civil Procedure Rules and the Insolvency (England and Wales) Rules 2016 supplemented by the Practice Direction – Insolvency Proceedings (as amended) and relevant Practice Statements. The judiciary also benefits from a substantial body of precedent developed over many years, which is regularly reported and is readily available to the public.

Together, these frameworks standardize the handling of insolvency cases and enable courts to issue urgent interim decisions where necessary. The

UK judiciary is therefore accustomed to managing complex restructuring proceedings and, while these features do not remove all complexity or disputes, they make the system more predictable and efficient.

By contrast, Ghana's courts do not currently operate specialized insolvency divisions, and judges frequently hear insolvency matters alongside other commercial disputes. This is so even though the Chief Justice possesses authority under section 14(3) of the Courts Act 1993 (Act 459) to establish divisions of the High Court and assign judges to them. The Chief Justice has historically exercised this authority through the creation of specialized divisions such as the Commercial Division of the High Court and other specialized courts. Insolvency matters therefore remain largely governed by the general civil procedure framework, principally the High Court (Civil Procedure) Rules 2004 (CI 47).

Judges may also lack specialized training in insolvency law, although some efforts have been made to address this gap. For instance, in October 2025, the Judicial Training Institute of the Judicial Service of Ghana, in collaboration with the World Bank Group and INSOL International, organized a capacity-building programme on insolvency law for selected judges of the Commercial Court.

These institutional limitations may restrict the judiciary's ability to fully utilize the expanded mandate provided under CIRA and may lead to procedural inefficiencies or a rigid application of statutory provisions, thereby potentially undermining the flexibility required to rescue distressed companies effectively.

Another important difference concerns procedural flexibility in judicial practice. The UK insolvency regime is recognized for its practical and adaptable approach. Courts frequently adopt procedures tailored to the specific circumstances of each case, allowing solutions that reflect the commercial realities facing financially distressed companies. Such flexibility is particularly important in insolvency law, where the complexity of corporate financial structures often requires bespoke remedies.

By contrast, Ghana's framework is procedurally rigid. Although CIRA introduces administration and restructuring mechanisms, the statutory structure leaves limited room for innovative procedural solutions or for the exercise of judicial discretion to adapt procedures to the specific circumstances of a case. This rigidity may reduce the effectiveness of the corporate rescue process where the statutory framework does not fully accommodate the complexities of particular restructuring scenarios.

In summary the key difference between the two systems in terms of role of the courts is institutional rather than purely legal. Both Ghana and the UK rely on courts to balance rescue efforts with creditor protection and to maintain the integrity of insolvency proceedings. However, the UK's specialized courts, procedural rules, and extensive jurisprudence help reduce inconsistency and delay.

In Ghana, the law clearly grants courts the powers necessary to supervise corporate rescue effectively. The more significant question is whether those powers can be exercised in a consistent and timely manner in practice. This ultimately depends on factors such as judicial expertise, court infrastructure, and the extent to which insolvency matters are routinely handled within the judicial system. Institutional capacity within the judiciary may therefore determine whether the statutory reforms introduced by CIRA translate into effective corporate rescue outcomes.

Regulation of insolvency practitioners

Both Ghana and the UK recognize that corporate rescue can succeed only if the professionals managing insolvency proceedings are competent, independent, and subject to effective regulation. For this reason, each jurisdiction has established institutional mechanisms to supervise insolvency practitioners and ensure professional accountability. However, the two systems organize this oversight in different ways.

In Ghana, the regulatory framework is centred on public institutional supervision. The Insolvency Services Division established within the Office of the Registrar of Companies oversees administration, restructuring, and other insolvency proceedings. It receives reports from insolvency practitioners, monitors insolvency practice, and cooperates with international bodies under both CIRA and the Companies Act 2019 (Act 992). In addition, the Chartered Institute of Restructuring and Insolvency Practitioners Act 2024 (Act 1117) introduced a professional licensing framework for insolvency practitioners. Together, these mechanisms create a system in which oversight is concentrated within a statutory administrative body, supported by professional regulation.

In the UK insolvency practitioners must be authorized under a statutory licensing regime, typically through recognized professional bodies. Government oversight is exercised through the Insolvency Service, which supervises the regulatory framework and the conduct of the recognized professional bodies responsible for authorization and discipline under sections 388-391 of the Insolvency Act 1986. This structure combines professional self-regulation with state supervision, creating a multi-layered system of professional accountability.

The enactment of the Chartered Institute of Restructuring and Insolvency Practitioners Act 2024 (Act 1117) has nevertheless moved the Ghanaian framework closer to the hybrid regulatory structure adopted in the UK by introducing a more formal system of professional licensing, discipline, and ethical regulation of insolvency practitioners. However, unlike the UK system of delegated professional regulation under statutory oversight, Ghana's framework continues to place substantial supervisory authority in the Office of the Registrar of Companies and the Insolvency Services Division, particularly in relation to licensing, monitoring, and disciplinary enforcement. The growing role of professional regulation therefore suggests an emerging shift away from a predominantly state-centred supervisory model rather than a complete transition to professional self-regulation.

The principal comparative difference is therefore no longer simply between public regulation and professional self-regulation, but between differing degrees of institutional centralization. Ghana's model may strengthen accountability and regulatory coherence at the developmental stage of the insolvency profession, where professional norms and institutional capacity are still evolving, by concentrating supervisory authority within a central public institution capable of enforcing consistent professional standards. However, the UK model arguably allows greater development of specialist professional expertise and professional norms through recognized professional bodies operating within a system of state oversight.

The comparative issue raises important questions such as: which model ensures stronger accountability to creditors? Which allows faster intervention when misconduct occurs? And which produces more consistent professional competence at the point of appointment?

These issues are not merely institutional design questions. They directly affect how insolvency systems function in practice (INSOL International 2018). If creditors and other stakeholders trust the competence and independence of insolvency practitioners, they are more likely to cooperate with restructuring efforts. Suppliers may continue trading with a distressed company, lenders may be more willing to provide rescue finance, and courts can rely more confidently on practitioner evidence when urgent decisions are required. In this sense, professional regulation plays a central role in determining whether statutory rescue mechanisms translate into credible and effective restructuring outcomes.

Ultimately, the effectiveness of either model depends not only on the design of the regulatory framework but also on enforcement capacity

and professional expertise. Even a well-structured statutory regime will struggle to deliver successful rescue outcomes if practitioners lack the necessary competence or if regulatory institutions are unable to enforce professional standards consistently.

Directors' liability

In the UK, case law has played an important role in clarifying the scope of directors' liability during insolvency. Under section 214 of the Insolvency Act 1986, directors may incur civil liability for wrongful trading where they knew or ought to have concluded that there was no reasonable prospect of avoiding insolvent liquidation and failed to take every step to minimize potential loss to creditors. In *Re Produce Marketing Consortium Ltd (No 2)* (1989: 520), the court clarified how a director's contribution should be assessed in such circumstances, particularly in relation to the quantification of losses attributable to continued trading. The court adopted a compensatory rather than penal approach, assessing the contribution by reference to the depletion of the company's assets caused by continued trading after insolvency was unavoidable. In doing so, it considered the directors' conduct—including the failure to heed professional advice and other indicators of worsening financial position—while focusing primarily on the loss caused to creditors.

Ghana's CIRA also imposes liability on directors for insolvent trading, but the liability is criminal and penalties imposed for breach accrue to the state rather than to the company or its creditors.

On the other hand, both jurisdictions impose criminal liability on directors in respect of trading with intent to defraud creditors.

Cross-border insolvency

Model Law framework in the UK and Ghana

Cross-border insolvency presents particular challenges for corporate rescue because distressed companies and their assets frequently span multiple jurisdictions. Both Ghana and the UK have adopted legislative frameworks based on the United Nations Commission on International Trade Law (UNCITRAL) 1997 Model Law to facilitate recognition of foreign proceedings and judicial cooperation, although the institutional contexts in which these frameworks operate differ in important respects.

The UK adopted the UNCITRAL Model Law on Cross-Border Insolvency through the Cross-Border Insolvency Regulations 2006 (CBIR). These regulations enable UK courts to recognize foreign main and non-main

proceedings, grant appropriate relief, and cooperate with foreign courts in cross-border insolvency matters. The broader principles governing recognition and judicial cooperation have also been clarified through case law. In *Rubin v Eurofinance SA* (2012: 46), the UK Supreme Court examined the limits and conditions under which foreign insolvency-related judgments may be recognized and enforced in England. Earlier, in *Re HIH Casualty and General Insurance Ltd* (2008: 21), the House of Lords considered the scope of assistance that English courts may provide to foreign insolvency proceedings under section 426 of the Insolvency Act 1986 and at common law.

CIRA also contains provisions addressing cross-border insolvency. Sections 150-152, together with the accompanying schedule, establish a framework governing cross-border proceedings. The legislation identifies several objectives, including promoting cooperation between courts, ensuring legal certainty in cross-border insolvency matters, protecting the value of assets, and preserving investment and employment.

Both regimes follow a legislative structure typical of Model Law jurisdictions. The statute articulates the guiding principles of cross-border insolvency, while an accompanying schedule or regulatory framework provides the operational rules governing recognition, relief, and cooperation. Court rules then supply the procedural detail necessary for implementation.

Judicial development and practical operation of the Model Law

The UK has developed a substantial body of case law applying the Model Law framework. UK courts have clarified issues such as what constitutes a "foreign proceeding", the characteristics required for a process to qualify as sufficiently collective, and the disclosure obligations that apply to recognition applications (*Re Sturgeon Central Asia Balanced Fund Ltd* 2020; *Re Stanford International Bank Ltd* 2010). This jurisprudence has contributed to greater predictability and has reduced opportunities for forum-shopping.

Ghana's framework aims to promote similar cooperation in cross-border insolvency matters, but its practical effectiveness will depend on the gradual development of comparable judicial guidance. Over time, the emergence of consistent case law will play an important role in clarifying how the statutory framework should operate in complex cross-border situations.

Creditor protection and judicial cooperation

Both regimes identify the protection of creditors, debtors, and other stakeholders as a central objective of cross-border insolvency while emphasizing the preservation of asset value. Courts in Ghana and the UK retain discretion over the relief granted to foreign representatives, and the regimes include a public policy exception permitting courts to refuse recognition or assistance where it would be manifestly contrary to fundamental domestic principles.

Judicial cooperation therefore remains central to the operation of cross-border insolvency regimes in both jurisdictions. When courts coordinate effectively, they can prevent conflicting orders, protect the value of assets, and facilitate orderly restructuring or liquidation across multiple jurisdictions. Where cooperation is slow or inconsistent, however, assets may dissipate and proceedings may fragment across competing legal systems. In this respect, the effectiveness of cross-border insolvency frameworks ultimately depends not only on statutory design but also on the willingness and capacity of courts to engage in coordinated international insolvency practice.

Rescue finance and market sophistication

An insolvency regime is only as effective as the financial system that supports it. The UK benefits from a well-developed restructuring finance market, in which banks, hedge funds, and specialist turnaround investors frequently provide rescue or bridge financing to distressed companies. This makes rescue financing more accessible for distressed companies to enable them to continue operations while pursuing restructuring. It has been observed that the effectiveness of insolvency law depends not only on statutory design but also on surrounding commercial infrastructure and creditor confidence.

By contrast, while CIRA recognizes the concept of post-commencement financing and addresses its classification and priority, Ghana's financial market for distressed-company financing remains relatively underdeveloped compared with that of the UK. Although the financial sector is growing, it lacks a mature distressed debt market and specialized restructuring finance providers. As a result, companies operating under a moratorium or administration may face significant difficulties in obtaining the working capital required to maintain operations during restructuring. This gap highlights a structural challenge within the Ghanaian insolvency framework and may be a major reason that explains the limited use of administration proceedings. Between 2021 and 2026, only four companies

entered administration (three in 2021 and one in 2026), compared with 98 companies placed in liquidation. These figures are as at 30 April 2026 and were provided by the Office of the Registrar of Companies in response to an enquiry by the Chartered Institute of Restructuring and Insolvency Practitioners dated 27 February 2026.

Restrictions on supplier terminations

Under the insolvency regime of the UK there are restrictions on contractual rights of suppliers to terminate supply contracts because a company entered an insolvency procedure. The law established protections designed to ensure that companies undergoing restructuring can continue to receive essential goods and services during a moratorium as per section 233B of the Insolvency Act 1986, subject to statutory exceptions under schedule 4ZZA.

By contrast, CIRA does not expressly address the treatment of essential or critical supply contracts during the period of a moratorium. While the Act provides for a moratorium that restricts creditor enforcement actions once insolvency proceedings such as administration commence, it is silent on whether contracts that are essential to the continued operation of the debtor's business, such as utilities, key supply agreements, or service contracts, must continue to be performed during the moratorium period. In particular, the statute does not contain provisions regulating the termination of such contracts solely on the ground of insolvency or restructuring proceedings. This may create uncertainty regarding the availability of critical supplies needed to sustain a distressed company during restructuring.

In summary, the comparative analysis shows that Ghana's reforms represent a shift from liquidation to corporate rescue. In design, CIRA reflects key features of the UK model, including administration, collective procedures, moratorium protection, and restructuring mechanisms, demonstrating adoption of a modern rescue philosophy. However, similarity in design does not ensure practical effectiveness. The UK regime benefits from judicial refinement, specialized courts, procedural rules, professional regulation, and a developed rescue finance market, which enhance predictability, speed, and creditor confidence.

Ghana's framework remains undeveloped. Despite robust statutory tools, effectiveness is constrained by limited judicial specialization, procedural rigidity, developing oversight, limited finance, and minimal jurisprudence. Reliance on consent of creditors and absence of cross-class cram-down features further restrict flexibility, making the rescue

framework more aspirational than operational. These findings inform the reform proposals recommended in the next section of this article aimed at improving the practical effectiveness of CIRA, by bridging the gap between its rescue-oriented design and operational performance.

[C] POLICY RECOMMENDATIONS FOR STRENGTHENING GHANA'S CORPORATE INSOLVENCY FRAMEWORK

The following policy recommendations are by no means exhaustive and are also provided without ignoring some significant challenges that must be overcome for their implementation. While previous sections have demonstrated that Ghana possesses a modern and rescue-oriented statutory framework, the long-term success and effectiveness of the regime depend on targeted institutional and procedural reforms. The recommendations proposed here are therefore designed to bridge the gap between intention of the legislation and its operational performance.

Establishment of an Insolvency List within the Commercial Division of the High Court

A key reform recommendation is the creation of a specialized Insolvency List within the Commercial Division of the High Court. Although the Chief Justice already possesses authority under the Courts Act 1993 (Act 459) to establish specialized divisions of the High Court and has exercised this power through the creation of some specialized courts, insolvency and restructuring matters currently form only part of the broader commercial caseload. Establishing a dedicated Insolvency List within the Commercial Division would enable a designated group of judges to handle insolvency matters on a regular and specialized basis. Such matters would include administration proceedings, restructuring agreements, liquidation disputes, receivership issues, and cross-border insolvency applications under CIRA.

It is further suggested that administrative case-management policies be introduced to allow matters to be transferred from the insolvency cause list to the general commercial cause list once the dispute no longer concerns insolvency issues. For example, where a matter evolves into a dispute over a contested debt rather than the conduct of the insolvency process itself, it may be more appropriately dealt with under the general commercial cause list. Such a mechanism would help prevent the

insolvency list from becoming congested and ensure that specialized judicial resources remain focused on core insolvency matters.

Judicial specialization would produce several important benefits. First, it would allow judges to develop expertise in complex insolvency matters involving corporate finance, creditor coordination, and restructuring negotiations. Second, it would promote consistency in judicial decision-making and accelerate the development of Ghanaian insolvency jurisprudence. Third, specialized case management would improve efficiency and reduce delays in the resolution of restructuring cases.

Development of insolvency Practice Directions

Modern corporate insolvency regimes require specialized procedural mechanisms capable of managing collective insolvency and restructuring processes efficiently. In Ghana, elements of this procedural structure are presently derived from both the High Court (Civil Procedure) Rules 2004 (CI 47) and the Corporate Insolvency and Restructuring Regulations 2025 (LI 2502).

While CI 47 grants the High Court broad procedural powers, particularly under Order 25 governing interlocutory injunctions and preservation of property, these provisions were designed primarily for general civil litigation rather than complex insolvency proceedings. LI 2502 complements CIRA by introducing provisions relating to solvency assessment criteria, creditor and watershed meeting procedures, insolvency practitioner regulation, proof-of-debt rules, and reporting obligations. However, matters relating to judicial case management and the conduct of court-supervised insolvency proceedings remain largely governed by the general procedural regime under CI 47 and would benefit from insolvency-specific practice directions.

The judiciary should therefore consider issuing insolvency-specific Practice Directions to supplement the existing procedural framework. These Practice Directions could provide guidance on matters such as:

- ◊ procedures for administration applications and related court hearings;
- ◊ approval processes for statutory restructuring agreements;
- ◊ creditor meeting procedures and voting mechanisms;
- ◊ filing requirements for insolvency applications;
- ◊ expedited procedures for urgent restructuring matters; and
- ◊ procedures for recognition of foreign insolvency proceedings.

Such Practice Directions would enhance clarity, reduce procedural uncertainty, and promote greater consistency in insolvency proceedings. Together, these procedural mechanisms would standardize the conduct of insolvency proceedings by providing structured guidance on filing, case management, and court procedure, thereby facilitating efficient handling of applications and enabling courts to issue urgent interim decisions where necessary.

Strengthening judicial training and capacity

The effective operation of specialized insolvency courts requires judges with expertise in complex commercial and financial matters. Insolvency cases frequently involve intricate corporate structures, valuation disputes, and cross-border issues. Consequently, continuous judicial training is essential for the development of an effective insolvency regime.

Training programmes should be organized for judges assigned to insolvency matters within the Commercial Division on a continuing basis. Such programmes could be coordinated through the Judicial Training Institute of Ghana and should focus on key areas such as corporate restructuring principles, rescue financing, cross-border insolvency cooperation, and creditor coordination mechanisms.

Comparative exposure may also prove beneficial. Judicial workshops involving experts from jurisdictions with mature insolvency systems could provide valuable insights into the management of complex restructuring proceedings. The development of judicial expertise is critical to ensuring that insolvency laws operate effectively in practice rather than merely existing as formal statutory frameworks.

Enhancing coordination with regulatory institutions

Effective insolvency administration requires close coordination between the judiciary and key regulatory institutions. Insolvency proceedings often involve interactions with regulatory authorities responsible for corporate registration, financial supervision, and tax administration.

In Ghana, important stakeholders include the Office of the Registrar of Companies, the central bank, Bank of Ghana, the Securities and Exchange Commission of Ghana, and the Ghana Revenue Authority.

Improved coordination between these institutions and the courts could facilitate information-sharing, improve enforcement of insolvency-related decisions, and support early identification of financially distressed

companies. One possible mechanism would be the establishment of inter-agency liaison committees or structured communication channels between insolvency courts and regulatory bodies.

Public awareness and credibility

Specialized insolvency adjudication mechanisms are most effective in jurisdictions where there is a sufficiently high volume of restructuring and insolvency cases. In Ghana, corporate insolvency filings remain relatively limited. Many distressed companies are still resolved informally, through negotiated settlements, or through liquidation rather than formal restructuring processes. If the volume of cases remains low, a specialized insolvency list or court structure may be underutilized, making it more difficult to justify the institutional investment required to maintain it.

To address this challenge, public awareness initiatives should be implemented to promote the use of formal restructuring mechanisms under CIRA. Such initiatives could include campaigns designed to:

- ◊ educate companies and directors about the availability of formal insolvency and restructuring procedures;
- ◊ orienting major creditors (including banks, government agencies, and utility companies) on the benefits of a collective recovery approach, which is likely to maximize value for all creditors, as opposed to fragmented individual recovery actions;
- ◊ encourage early engagement with restructuring mechanisms and voluntary compliance with reporting obligations; and
- ◊ strengthen public confidence in the efficiency and transparency of courts in handling insolvency disputes.

Strengthening corporate data systems

Effective insolvency systems also depend on access to reliable corporate financial information. The role of the Office of the Registrar of Companies should therefore be strengthened by enhancing the capacity of the Insolvency Services Division to collect and analyse corporate financial data.

Companies could be required to submit standardized periodic financial and operational reports, enabling regulators and insolvency authorities to identify early indicators of financial distress. Greater integration of corporate data between the Office of the Registrar of Companies and other regulatory institutions would further improve the effectiveness of

this system. Relevant institutions include the Bank of Ghana, the Data Protection Commission of Ghana, and the Ghana Revenue Authority.

Introduction of early-warning systems

An effective corporate insolvency framework should include mechanisms for identifying financial distress at an early stage. Early warning systems enable companies, creditors, and regulators to detect emerging financial difficulties before they escalate into full insolvency, thereby facilitating timely restructuring interventions and preserving the company.

For Ghana, the introduction of early-warning systems would involve identifying both financial and non-financial indicators of corporate distress. Such indicators may include rapid declines in revenue or profit margins, persistent loan repayment defaults, late filing of tax returns, increased litigation against the company, or unusually high turnover among directors and senior management staff. Monitoring these indicators would allow regulators and insolvency authorities to identify companies that may require restructuring support or closer supervisory attention.

Institutional warning system

The effective operation of such an early-warning system would require cooperation among key regulatory institutions, particularly the Office of the Registrar of Companies, the Ghana Revenue Authority, and other financial regulators. The Insolvency Services Division within the Office of the Registrar of Companies could play a coordinating role by analysing corporate financial information and facilitating communication between relevant authorities. The Insolvency Services Division should produce guidelines that outline common indicators of financial distress and recommend steps that institutions should take when those indicators arise.

Technological tools could further enhance these monitoring mechanisms. Data analytics systems may assist regulators in identifying patterns within corporate filings, tax records, and financial disclosures that indicate emerging financial distress. The use of such technologies should, however, be accompanied by appropriate confidentiality safeguards and compliance with applicable data protection standards.

Director early-warning obligations

Early intervention is widely recognized as a critical component of effective corporate rescue systems because the prospects of successful restructuring decline significantly once financial distress becomes severe. Modern insolvency regimes therefore increasingly encourage directors

to identify and respond to financial difficulty at an early stage through a combination of governance obligations, disclosure requirements, and potential liability rules.

Under CIRA, directors may incur liability for misconduct, breach of duty, or improper conduct in the period leading up to insolvency. However, the framework remains largely reactive rather than preventive, as it does not expressly impose a proactive obligation on directors to monitor financial distress indicators or initiate restructuring efforts when warning signs emerge. Consequently, intervention may occur only after the company's financial position has substantially deteriorated, thereby reducing the prospects of successful rescue.

Comparative experience from the UK illustrates the importance of earlier engagement with financial distress. Although UK law does not establish a single formal early-warning system, several legal and institutional mechanisms collectively encourage timely intervention. Directors are incentivized to monitor the financial position of their companies through their duties under the Companies Act 2006 and potential liability for wrongful trading under the Insolvency Act 1986 once insolvency becomes likely. In addition, corporate disclosure obligations, regulatory oversight, and professional restructuring practice create an environment in which financial distress may be identified and addressed at an earlier stage.

Ghana could strengthen its emerging rescue culture by introducing director early-warning obligations within the broader corporate governance framework, particularly through directors' duties to promote the interests of the company and to exercise reasonable care, skill, and diligence. Such measures might require directors to monitor key financial indicators, seek professional restructuring advice where signs of financial distress arise, and engage with creditors or restructuring professionals at an earlier stage. These obligations should nevertheless be designed carefully so as not to discourage legitimate commercial risk-taking or entrepreneurial decision-making.

Early warning obligations operating at the corporate governance level could also complement broader institutional monitoring mechanisms, including enhanced corporate reporting systems and regulatory coordination. Together, these reforms would encourage earlier engagement with restructuring procedures at a stage when recovery remains feasible, thereby preserving enterprise value, protecting creditor interests, supporting economic stability, and reducing the likelihood of unnecessary liquidation in line with the objectives of CIRA.

Legislative reforms

Fiduciary duties

A notable gap in CIRA relates to the absence of clearly stated fiduciary duty standards for insolvency practitioners other than liquidators. The Act provides in section 90 that "on the commencement of a winding-up, the functions of the directors of the company shall vest in the liquidator who assumes a fiduciary position to the company". However, the law does not contain an equivalent provision expressly imposing fiduciary obligations on administrators or restructuring officers. Although it may be reasonably inferred, through principles of statutory interpretation, that these insolvency practitioners are similarly required to act in a fiduciary capacity in the discharge of their duties, an amendment to bring clarity is required to ensure accountability and consistency across insolvency practitioners.

Civil liability for insolvent trading

CIRA imposes criminal liability on a director who allows or causes a company to continue doing business or to incur a debt when the director knows, has reasonable grounds to believe, or ought to know that the company is insolvent or will become insolvent as a result. A director found guilty of this offence may, on summary conviction, be fined between 500 and 1000 penalty units, imprisoned for between two and five years, or both. While aimed at deterring misconduct, this approach may be overly punitive and not necessarily beneficial to creditors or the company. Instead, reframing the liability as primarily civil would allow courts to impose compensatory remedies in favour of creditors and the company, which will align with objectives of the law.

*Restrictions on supplier termination (***ipso facto** *clauses)*

The introduction of statutory restrictions on *ipso facto* clauses within the insolvency framework should also be considered. *Ipso facto* clauses (ie contractual provisions that permit termination or acceleration of obligations solely on the ground that a company has entered insolvency or restructuring proceedings) can hinder the effectiveness of corporate rescue mechanisms under CIRA. The automatic termination of key contracts when insolvency proceedings have commenced may deprive the distressed company of essential supplies, services, or contractual relationships necessary for its continued operation. Introducing statutory restrictions would support the continued operation of the business during rescue.

Restructuring approval

The current requirement that a restructuring agreement must be approved by creditors representing at least 51% of the value of debt must be reviewed. A higher voting threshold of at least 75% (as exists under the UK framework) would ensure that restructuring agreements receive broader creditor support and reduce the risk of a small number of significant creditors determining the outcome of the restructuring process to the detriment of majority of creditors.

Viability test

Another significant legislative intervention would be to introduce a rescue viability test prior to the commencement of administration. CIRA does not require any pre-administration viability assessment. This allows all companies including those with limited prospects of rescue to enter administration. Introducing a viability test, as in the UK, would ensure that rescue procedures are used only where restructuring is realistically achievable. This will reduce delay and cost.

[D] CONCLUSION

The policy recommendations outlined demonstrate that Ghana's insolvency reform journey is at a critical developmental stage. The enactment of CIRA marked a significant legislative milestone, but meaningful transformation requires complementary institutional, procedural, and legislative reforms. Providing modifications to allow specialized insolvency adjudication, refining court structures, improving procedural rules, strengthening case-management systems and investing in judicial training will enhance efficiency in insolvency proceedings.

Judicial reforms must also be supported by greater integration between regulatory bodies, such as the Office of the Registrar of Companies, the Bank of Ghana, the Securities and Exchange Commission, and the Ghana Revenue Authority, which would facilitate more effective information-sharing and improve identification of corporate distress.

Connected to the above, the article also recommends the enhancement of corporate databases and the introduction of early-warning systems. These measures would further shift Ghana's insolvency culture toward proactive restructuring. In particular, reforms such as early-warning director obligations and data-driven monitoring mechanisms could encourage timely intervention and prevent distressed companies from being liquidated prematurely.

The legislative amendments recommended in this article must be adopted to improve the practical implementation of CIRA. Public awareness, education and stakeholder confidence are equally vital, as insolvency systems function best when businesses, creditors, and professionals trust their fairness and efficiency.

Taken together, these recommendations aim to deepen the effectiveness of Ghana's rescue-oriented insolvency regime. If implemented progressively and supported by adequate political and institutional commitment, they can enhance creditor confidence, improve business survival rates, and strengthen Ghana's attractiveness as a stable and competitive investment destination.

About the author

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References

Goode, Roy. *Principles of Corporate Insolvency Law*, 5th edn. London: Sweet & Maxwell, 2018.

HM Courts & Tribunals Service. "Insolvency and Companies List: Structure and Role within the Business and Property Courts," nd.

INSOL International. "Global Principles for Insolvency Practitioner Regulation," 2018.

World Bank. Principles for Effective Insolvency and Creditor and Debtor Regimes (English): Part D ("Implementation: Institutional and Regulatory Frameworks"). Washington DC: World Bank Group, revd 2021.

Legislation, Regulations and Rules

Ghana

Bodies Corporate (Official Liquidations) Act 1963 (Act 180)

Chartered Institute of Restructuring and Insolvency Practitioners Act 2024 (Act 1117) (CIRA)

Companies Act 2019 (Act 992)

Corporate Insolvency and Restructuring Act 2020 (Act 1015)

Corporate Insolvency and Restructuring Regulations 2025 (LI 2502)

Courts Act 1993 (Act 459)

High Court (Civil Procedure) Rules 2004 (CI 47)

International

United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency 1997

United Kingdom

Civil Procedure Rules: Practice Direction – Insolvency Proceedings 2018 (as amended)

Companies Act 2006

Corporate Insolvency and Governance Act 2020 (CIGA)

Cross-Border Insolvency Regulations 2006 (SI 2006/1030) (CBIR)

Enterprise Act 2002

Insolvency Act 1986

Insolvency (England and Wales) Rules 2016 (SI 2016/1024)

Cases

Re Atlantic Computer Systems plc [1992] Ch 505 (CA) 542-545

Re HIH Casualty and General Insurance Ltd [2008] UKHL 21

Re Produce Marketing Consortium Ltd (No 2) [1989] BCLC 520

Re Virgin Active Holdings Ltd [2021] EWHC 1246 (Ch)

Re Sturgeon Central Asia Balanced Fund Ltd [2020] EWHC 123 (Ch)

Re Stanford International Bank Ltd [2010] 3 WLR 941

Rubin v Eurofinance SA [2012] UKSC 46