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 I)

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Abstract

Before 2020, corporate insolvency in Ghana was governed by a liquidation-focused framework under the Bodies Corporate (Official Liquidations) Act 1963 (Act 180), which was criticized for its limited capacity to rescue distressed companies. The enactment of the Corporate Insolvency and Restructuring Act 2020 (Act 1015) (CIRA) marked a shift towards a rescue-oriented regime aligned with international best practices. This study evaluates CIRA's effectiveness after its introduction through a comparative analysis with the United Kingdom. The article finds that, while CIRA represents significant progress, challenges remain in judicial specialization, procedural efficiency, and institutional capacity, necessitating targeted reforms to enhance corporate rescue outcomes.

Keywords: corporate insolvency; corporate rescue; restructuring agreement; administration; liquidation; moratorium; creditor rights; judicial oversight; cross-border insolvency; comparative insolvency law; insolvency framework; creditors; insolvency practitioners; courts.

[A] INTRODUCTION

The corporate insolvency landscape in Ghana has evidently undergone a radical transformation in accordance with the changing global trends with the introduction of the Corporate Insolvency and Restructuring Act 2020 (Act 1015) as amended by the Corporate Insolvency and Restructuring (Amendment) Act 2020 (Act 1031) (hereinafter referred to as CIRA).

The introduction of CIRA is an attempt to elevate Ghana's insolvency regime to meet international best practices and to protect companies during their vulnerable moments. The passage of CIRA marked a shift

from the previous liquidation-focused regime under the Bodies Corporate (Official Liquidations) Act 1963 (Act 180) for a more modern rescue-oriented insolvency regime.

Historically, the passage of Act 180 came on the wings of the rapidly changing economic scene, fuelled by the exponential growth in commerce after colonial rule. Act 180 was founded on the recommendations of the Insolvency Commission which was appointed under the Commission of Enquiry Ordinance (Cap 249) to review the applicable insolvency law in Ghana and provide recommendations for reforms. The recommendations were contained in the Report of the Commissioners Appointed to Enquire into the Insolvency Law of Ghana (1961: 15, paragraphs 419-422).

The primary aim of Act 180 was to eliminate dishonest and unreliable traders, subjecting such individuals to the duties and disabilities of bankrupts, and to assist in reviving or restructuring the honest debtor. Act 180 was criticized over the years for its procedural rigidity, absence of corporate rescue mechanisms, and overemphasis on liquidation (Adarkwa 2017: 198-210). Although the reforms proposed by Professor L C B Gower (1961), who played a central role in Ghana's post-independence company law reform process during the early 1960s, culminated in the Companies Act 1963 (Act 179) and modernized company law while introducing insolvency mechanisms, the regime remained predominantly liquidation focused.

The promulgation of CIRA was largely practitioner-led and championed by the Ghana Association of Restructuring and Insolvency Advisors (GARIA) (Date-Bah 2022: 17).

To what extent is this realignment of Ghana's insolvency regime effective when compared with the insolvency frameworks of other countries? Research indicates that Ghana's experience in insolvency advancement mirrors broader regional struggles with insolvency law reform, particularly regarding implementation, institutional capacity, creditor–debtor balance, and corporate restructuring efficacy. It is therefore imperative for a comparative insolvency legal analysis to be conducted.

The United Kingdom (UK) provides a useful comparator because its insolvency law has evolved from punitive origins into a sophisticated, rescue-oriented system. Early legislation, such as the Bankrupts Act 1542, treated insolvency as misconduct while introducing collective distribution principles that later developed into the *pari passu* rule. By the nineteenth century, insolvency law had shifted away from moral blame as business failure came to be understood as a commercial risk. These

developments culminated in the Cork Report of 1982, which laid the foundation for a modern framework centred on rescue, creditor fairness, and accountability.

Today, the UK's insolvency framework is anchored by the Insolvency Act 1986 and its subsequent reforms and decades of refined judicial interpretation. It offers one of the most comprehensive restructuring frameworks. It combines flexibility with strong institutional support and has developed into a leading venue for cross-border restructuring. Empirical indicators reinforce this position, as reflected in high recovery rates and strong global rankings reported in the World Bank's *Doing Business* 2020 (2019) and *Business Ready (B-READY) Index* (2025). These features justify its use as a benchmark for evaluating Ghana's insolvency regime.

This article analyses the insolvency frameworks of Ghana and the UK, evaluates the effectiveness of CIRA through comparative analysis with the UK regime, and proposes policy recommendations for reform in Ghana.

This is Part I of a two-part publication. It provides an overview of CIRA and UK insolvency legal framework by examining the principal insolvency mechanisms and institutional frameworks in both jurisdictions. The exposition forms the basis for the detailed comparative analysis undertaken in Part II (this issue, pages 974-998).

[B] THE INSOLVENCY FRAMEWORK OF GHANA

Insolvency mechanisms

The framework of CIRA is designed to give distressed but potentially viable companies an opportunity to continue as going concerns, while ensuring more efficient and fair outcomes for creditors than an immediate liquidation would deliver.

CIRA recognizes insolvency primarily through a cash-flow test based on a company's inability to pay its debts as they fall due (section 169), irrespective of whether its assets exceed its liabilities. In addition, statutory indicators permit assessment of the company's financial position by reference to its liabilities and assets where relevant for administration (section 1(2)) or liquidation proceedings (section 83(5)(a).

Section 83 sets out the statutory indicators of inability to pay debts for liquidation as where: (a) a creditor owed at least 10,000 currency

points serves a written demand and the company fails within 30 days to pay, secure, or compound the debt; (b) execution on a judgment debt is returned unsatisfied in whole or in part; or (c) it is proved to the satisfaction of the Registrar that the company is unable to pay its debts, taking into account contingent or prospective liabilities. Regulation 4 of the Corporate Insolvency and Restructuring Regulations 2025 (LI 2502) supplements this framework by providing balance-sheet and cash-flow solvency tests for assessing a company's financial position.

Administration is the most significant innovation under CIRA. It is positioned as the first formal legal process for managing a company in distress. Section 1(2) sets out the purpose of administration as a rescue mechanism. It operates as a temporary intervention aimed at stabilizing a distressed company, preserving its business as a going concern where possible, and achieving outcomes for creditors that are better than an immediate liquidation. Under section 3(7), a company may voluntarily appoint an administrator where its directors resolve that the company is insolvent or likely to become insolvent. The administrator must be an insolvency practitioner as provided under section 154(1)(c). Once an administrator is appointed, the administration formally commences and continues until it is terminated by restructuring, liquidation, or court order as set out under section 2(2) and (3).

On appointment, the administrator, under sections 10 and 11 assumes control of the company's business, property, and affairs. Directors remain in office but are effectively inactive unless authorized and may not exercise management powers without the administrator's consent. This centralizes decision-making previously exercised by the directors in an administrator, who may (1) investigate the company's viability, (2) operate or realize assets of the company, (3) defend proceedings on behalf of the company, and (4) exercise the company's corporate powers, in order to preserve value and prevent fragmented creditor action while maintaining the company as a going concern.

Although control rests with the administrator, which reduces coordination failures, its effectiveness ultimately depends on the administrator's judgement and access to reliable information. However, these are matters that are beyond the scope of the statute.

During administration, CIRA, through sections 30 to 34, imposes a moratorium that stays enforcement and recovery actions against the company's assets and restricts dealings with those assets. This moratorium is not absolute but is subject to judicial oversight.

The administrator must convene a first creditors' meeting within 10 days of commencement of administration to establish a creditors' committee and to consider the administrator's replacement (section 21(1) and (2)).

A defining feature of administration under CIRA is creditor participation through the watershed meeting, which serves as the principal decision-making stage of the administration process. At this meeting, creditors consider the administrator's proposals and vote on the future course of the administration under sections 20-21 of CIRA, supplemented by regulations 20-27 of LI 2502, which govern the convening and conduct of creditor meetings. Creditors may resolve to pursue a restructuring agreement where the company appears capable of rehabilitation, or they may terminate the administration, potentially resulting in liquidation proceedings. Under section 25(4), the High Court retains supervisory authority and may intervene where resolutions of creditors are oppressive or unfairly prejudicial to the interests of the general body of creditors.

This majority-based mechanism enables swift decision-making and reduces the risk of deadlock among creditor groups. However, it also creates potential risks for minority creditors in the absence of effective judicial oversight. By allowing creditors to assess the viability of the company by reviewing the administrator's proposals, the framework promotes efficiency based on creditor incentives and direct knowledge of the company's financial position. Its success thus depends on how information is disclosed timeously and how the courts can effectively control the influence of majority creditors.

If creditors opt for restructuring at a watershed meeting, section 44 requires a detailed, implementable restructuring agreement which must be prepared by the restructuring officer.

A restructuring agreement is approved by creditors at the watershed meeting by a vote of creditors holding at least 51% of the value of the debt, voting in person or by postal vote or proxy (section 28). Upon approval, the agreement must be executed within 21 days or such further period as extended by the court under section 45(2). Where the proposed agreement is not fully approved at the watershed meeting, section 48 prescribes a structured completion and execution timetable, subject to limited extensions by the court within the specified periods. Where the company fails to execute the restructuring agreement within the deadline for execution, the restructuring officer must apply to the court for leave to convert the administration into official liquidation. This moves the restructuring agreement from being aspirational into practical operation.

By requiring early commitment to concrete and enforceable terms, it helps minimize avoidable disputes and risks involved in implementation.

Once executed, the restructuring agreement binds the company, the officers and shareholders, the restructuring officer and the creditors (to the extent provided by section 50). During its subsistence, creditors are restrained from enforcing claims except in accordance with its terms or with the leave of the court. The company is released from pre-administration obligations only to the extent provided in the agreement. Guarantors and third parties are not released unless the restructuring agreement expressly provides otherwise (sections 49-51). This approach promotes coordinated resolution by preventing individual creditor enforcement that could undermine the restructuring process, while ensuring that third-party obligations are not discharged unless expressly provided for.

Liquidation is the final insolvency mechanism under CIRA. Section 169 defines liquidation as the winding-up of a company. Although sections 80-149, which govern the liquidation of insolvent companies, are mainly a re-enactment of Act 180's provisions on liquidation, CIRA introduced significant innovations in the context of liquidation process, including the revised creditor priority scheme and the provision of a new class of post-commencement financing. However, unlike Act 180, CIRA positions liquidation primarily as the consequence of a failed rescue process, although liquidation may still commence independently through the statutory modes set out under section 81(1).

Liquidation centralizes control under the Registrar of Companies as the official liquidator or appointed insolvency practitioners. It may be commenced by: (1) a special resolution of shareholders; (2) a court order on a petition by the Registrar of Companies, creditors, shareholders, contributories, or the Attorney-General; (3) conversion from private liquidation where it becomes evident the company is insolvent; (4) conversion following a failed administration or restructuring (section 81, 84(1A)); or (5) conversion following failure to execute a restructuring agreement approved at the watershed meeting within the statutory period, upon application to court by restructuring officer (section 48).

Upon the commencement of official liquidation, the powers of directors cease, the company's business may continue only to the extent necessary for its beneficial winding-up, and the company's property comes under the custody and control of the liquidator (sections 90, 91, and 102). Any transfer of shares or alteration of members' rights after commencement is void unless sanctioned by CIRA or by the court under section 94, and

civil proceedings against the company are stayed, except with the leave of the court under section 93.

A liquidator, typically nominated by creditors, acts as an officer of the court and is required to exercise their functions independently in the interests of all the creditors. They are empowered to collect and realize the company's assets, recover debts owed to the company, sell company property, and admit or reject creditor claims under sections 97, 101-104, 107, and 120.

The Act further provides mechanisms of investigation and accountability. Liquidators may require the submission of statements of affairs (section 108) and examine directors, officers, and other persons with relevant knowledge of the company's affairs (section 116).

Under CIRA section 97(e)-(f), the liquidator is mandated to enter into compromises during official winding-up proceedings. The liquidator may agree settlements with creditors or persons claiming to be creditors in respect of present or future claims, whether certain or contingent, ascertained or unliquidated, against the company, as well as matters relating to calls, contributories, debtors, or other persons potentially liable to the company.

CIRA equips the liquidator with avoidance powers to challenge or recover certain pre-liquidation transactions entered into during the relevant period as defined in section 122(2). After the realization of assets, the liquidator must distribute proceeds in accordance with the statutory order of priority provided in section 107.

The liquidation process concludes with the submission of audited final accounts to the court. Once approved, the Registrar strikes the company from the register and publishes a notice of dissolution. This terminates the company's legal personality, subject to the preservation of its books and records for a prescribed period and the possibility of restoration within a prescribed period on application by specified persons (sections 134 to 137).

The Cross Border Insolvency framework is also introduced under CIRA by sections 150-152 and the schedule. Cross-border insolvency arises where assistance is required in Ghana by a foreign court or foreign representative, or conversely where Ghanaian proceedings require cooperation abroad. The schedule reproduces the 1997 Model Law developed by the United Nations Commission on International Trade Law (UNCITRAL).

Under paragraph 6 of the schedule, a foreign representative is granted direct access to the court, enabling engagement with the Ghanaian insolvency framework without first commencing domestic proceedings. Recognition is formally initiated under paragraph 12, which allows a foreign representative to apply for recognition of the foreign proceeding in which that representative has been appointed.

Following recognition, the schedule provides mechanisms to preserve the debtor's assets as one pool rather than being sold off piecemeal through individual creditor actions. This ensures all creditors are treated fairly in a collective process.

Where both Ghanaian and foreign proceedings are ongoing, paragraph 26 requires the court to ensure that relief granted is consistent with the domestic proceeding. Similarly, where multiple foreign proceedings exist, paragraph 27 mandates coordination to ensure that relief granted in Ghana aligns with the recognized foreign main proceeding. These provisions aim to: (1) avoid conflicting judicial outcomes; (2) minimize duplication; and (3) support coherent cross-border administration.

The cross-border regime under CIRA performs three core systemic functions: (1) it facilitates recognition of foreign proceedings through structured judicial oversight; (2) it enables protective relief to preserve the debtor's assets and uphold collective insolvency principles; and (3) it promotes coordination between domestic and foreign proceedings, ensuring orderly administration across jurisdictions.

These functions collectively support international insolvency cooperation while preserving the autonomy of Ghanaian courts. This balance is reinforced by the public policy exception in paragraph 4, which allows the court to refuse action that would be contrary to Ghana's public policy.

As complementary rescue mechanisms, financially distressed companies may also utilize procedures under the Companies Act 2019 (Act 992), independently of the framework established under CIRA. These include court-sanctioned schemes of arrangement under sections 239-240.

Under sections 239-240, a company may propose arrangements or compromises with its creditors, members, or any class of them through a judicially supervised restructuring process. This mechanism facilitates restructuring negotiations under court supervision, although without the automatic statutory moratorium associated with administration under CIRA. Where such an arrangement is proposed, the company,

creditors, members, or liquidator may apply to the High Court for an order convening a meeting of the relevant class to consider and approve the proposed arrangement or compromise. Approval requires creditors or members representing at least 75% in value of those present and voting, either in person or by proxy.

Following the meeting, the Registrar of Companies may recommend the appointment of an independent reporter, whom the court may appoint to assess the fairness and feasibility of the proposed arrangement or compromise. After considering the report and hearing objections by dissenting parties, the court may confirm the arrangement or compromise, with or without modifications, rendering it binding on all affected parties.

A certified true copy of the court's sanction order must be delivered to the Registrar, who registers the order and publishes notice in the Companies Bulletin. Section 240 further requires court sanction where the arrangement or compromise involves the transfer of the whole or part of the undertaking or assets of the company.

Institutional framework of CIRA

CIRA identifies the Office of the Registrar of Companies (ORC), insolvency practitioners, creditors, and the courts as central institutional actors, assigning supervisory, regulatory, and stakeholder consultation functions.

The Insolvency Services Division (ISD) operates under the ORC as established by CIRA. The ISD supervises insolvency practice, regulates the qualification and registration of insolvency practitioners, maintains a statutory register, and monitors professional conduct, although it does not directly oversee insolvency proceedings. The Chartered Institute of Restructuring and Insolvency Practitioners (CIRIP) Ghana website listed 295 practitioners in good standing as of 7 May 2026. In response to an enquiry by CIRIP dated 27 February 2026, the ORC subsequently indicated that, as of 30 April 2026, it had recorded 1,571 insolvency proceedings between 2021 and 2026, compared with 1,447 proceedings recorded between 2021 and 2025, suggesting a modest increase in the use of the insolvency framework.

CIRA requires qualified insolvency practitioners to manage insolvency proceedings under sections 154-155 and accordingly regulates their appointment, remuneration, and removal. LI 2502 further supplements this framework through provisions governing matters such as remuneration, reporting obligations, creditor meetings, and the administrative responsibilities of insolvency practitioners and

liquidators. Practitioners may assume control of company affairs, investigate the financial position, convene creditor meetings, and implement restructuring or liquidation while balancing interests of stakeholders. The Chartered Institute of Restructuring and Insolvency Practitioners Act 2024 complements this framework by introducing licensing and professional regulation that strengthens accountability.

Creditors are placed at the centre of the process as they influence outcomes through meetings, including the watershed meeting, where majority decisions bind dissenting creditors, subject to safeguards and court oversight (section 25). Creditors may replace an administrator, approve or reject restructuring proposals, nominate a liquidator, and establish creditor committees (sections 21-28). Voting mechanisms—including proxy and postal voting—facilitate participation, enabling collective decision-making without direct management control.

CIRA treats secured creditors differently depending on the insolvency procedure in issue. Under administration, a general moratorium applies to both secured and unsecured creditors (sections 33-36). However, a secured creditor may enforce its security with the leave of the court (section 37). During restructuring, secured creditors may realize or enforce their security only where: (1) the restructuring agreement permits such enforcement and the secured creditor voted in favour of it; or (2) the court grants leave under section 52. In determining whether to grant such leave, the court considers whether enforcement would adversely affect the purpose of the restructuring agreement and whether refusal would prejudice the secured creditor more than other creditors. Under liquidation secured creditors may enforce independently, subject to proof for any shortfall.

The treatment of secured creditors thus reflects a collective approach that seeks to preserve value for all creditors while protecting the rights of secured creditors. It must be noted, however, that priority and enforceability of security depend on compliance with the Borrowers and Lenders Act 2020, which governs registration and priority of security interests.

The High Court plays a supervisory and facilitative role, ensuring compliance, resolving disputes, regulating meetings, and overseeing conduct of practitioners. Its powers include appointment and removal of insolvency practitioners, inquiry into misconduct, and enforcement of statutory safeguards. The Court balances rights of creditors with collective rescue objectives, including decisions on lifting the moratorium,

regulating participation of creditors, extending timelines, and supervising liquidation.

Directors, before the commencement of insolvency proceedings, are governed by fiduciary duties under common law and the Companies Act 2019. CIRA introduces additional accountability. Where a company's business is carried on with intent to defraud creditors prior to winding-up, any person, including a director, who knowingly participated commits an offence and is liable on summary conviction to a fine, imprisonment, or both (section 118). Further, directors must not continue trading or incur debts where insolvency is likely, with criminal liability if there is breach (section 119).

Employees and shareholders are also recognized stakeholders during the insolvency process. Under CIRA, employment continues during administration unless terminated. Rights of shareholders are preserved but restricted, with transfers or alterations requiring approval of the court.

[C] THE INSOLVENCY FRAMEWORK OF THE UK

Insolvency mechanisms

The insolvency framework of the UK is primarily governed by the Insolvency Act 1986, as amended by subsequent legislation, particularly the Enterprise Act 2002 and the Corporate Insolvency and Governance Act 2020 (CIGA), and supplemented by the Insolvency (England and Wales) Rules 2016 and the Companies Act 2006.

Section 123 of the Insolvency Act 1986 establishes two principal statutory tests to determine when a company is to be deemed insolvent and when formal procedures may be invoked. A company is insolvent under a cash-flow test if "unable to pay its debts as they fall due" or is likely to reach that position in the near future. The phrase "unable to pay its debts as they fall due" refers to short-term liquidity pressures, such as overdue wages, tax liabilities, creditor petitions, or unpaid supplier invoices, even if assets have substantial value but are unable to be converted into cash immediately.

Under the balance-sheet test, a company is insolvent where its liabilities exceed its assets. This includes contingent and prospective liabilities such as litigation or future warranty claims to assess long-term financial health. Importantly, it requires realistic commercial appraisal

of assets and liabilities. In *BNY Corporate Trustee Services Ltd v Eurosail* (2013: 28), the court emphasized that the assessment of insolvency is not a mechanical calculation. It requires a fact-based valuation of the company's financial position. Courts must avoid treating remote or speculative risks as indicators of present insolvency. For most practical purposes across the insolvency regime, the decisive issue is whether the company is currently able to pay its debts as they fall due.

The analysis of the UK insolvency toolkit begins with the mechanism of Administration. Administration is a formal collective rescue procedure available where a company is insolvent or likely to become insolvent. Its statutory basis is schedule B1 of the Insolvency Act 1986. Paragraph 3(1) provides that the administrator must seek to (1) rescue the company as a going concern; if that is not reasonably practicable, (2) to achieve a better result for the company's creditors than would be likely on an immediate winding-up; or, failing both, (3) to realize property for distribution to secured or preferential creditors where doing so does not unnecessarily harm the interests of creditors (Insolvency Act 1986, schedule B1, paragraph 3(3)).

Overall, administration is designed to manage the company's affairs, business, and assets in a manner that prioritizes rescue of the company as a going concern where viable but otherwise seeks to achieve a better result for creditors than would be obtained on immediate liquidation. Paragraph 3(2) reinforces this collective orientation by requiring the administrator to perform their functions in the interests of the company's creditors.

Among the most significant effects of placing a company into administration is the operation of a statutory moratorium. Paragraph 43 of schedule B1 to the Insolvency Act 1986 restricts creditor enforcement upon the commencement of administration. During administration, no step may be taken to enforce security, repossess goods under hire-purchase agreements, commence or continue legal proceedings, or exercise a right of forfeiture by peaceable re-entry except with the consent of the administrator or the permission of the court. Although these restrictions are extensive, the court retains discretion to grant leave where appropriate (*Re Atlantic Computer Systems plc* 1992: 542-545; Goode 2018: paragraphs 10-45).

A pre-packaged administration ("pre-pack") is another form of administration in which the principal terms of a sale of the company's business or substantially all of its assets are negotiated before the administrator's appointment, with completion occurring immediately

upon or shortly after the appointment (Goode 2018: paragraphs 1-37). Although now closely associated with the post-Enterprise Act 2002 administration regime, the practice developed from techniques previously employed in administrative receivership.

Where an administration order is sought to implement a pre-pack sale, the court must be satisfied that the statutory purpose of administration is met. In *Re Kayley Vending Ltd* (2009), the High Court emphasized that sufficient information must be provided to enable the court to assess whether the proposed transaction serves the interests of creditors as a whole and whether pre-appointment costs should properly rank as expenses of the administration.

The administrative receivership mechanism historically constituted an enforcement mechanism available to the holder of a floating charge over the whole or substantially the whole of a company's assets (Insolvency Act 1986, section 29(2)). The administrative receiver—typically a qualified insolvency practitioner appointed by the charge holder—assumed extensive managerial control over the company's undertaking for the purpose of realizing the secured creditor's security under section 42 of the Insolvency Act 1986.

The Insolvency Act 1986 consolidated and regulated this regime. However, the Enterprise Act 2002 substantially curtailed its availability by inserting sections 72A-72H into the Insolvency Act 1986. Section 72A restricts the appointment of an administrative receiver under qualifying floating charges created after 15 September 2003, subject to specified statutory exceptions.

Liquidation or winding-up is another insolvency mechanism in the UK insolvency toolkit. The terms "winding-up" and "liquidation" are used interchangeably. The Insolvency Act 1986 (sections 84-96, 122, 143 and 165) provides that, upon a winding-up order or the commencement of liquidation, a liquidator is appointed to realize the company's assets and distribute them in accordance with the statutory scheme. Proceedings against the company are stayed, and the directors' management powers are effectively displaced as administration of the company passes to the liquidator (sections 107, 175 and 176A; *Ayerst v C & K (Construction) Ltd* 1976: 177-178; *Carvill-Briggs v Reading* 2025).

The Insolvency Act 1986 provides two principal routes into liquidation: compulsory liquidation by court order and voluntary liquidation initiated by shareholder resolution. Compulsory liquidation occurs where the court makes a winding-up order, typically under section 122 of the Act.

Voluntary liquidation, governed by part IV of the Act, may proceed either as a members' voluntary liquidation where the directors make a statutory declaration of solvency under section 89, or as a creditors' voluntary liquidation where the company is insolvent.

Creditors' claims are addressed collectively through the proof and distribution process prescribed by the Insolvency (England and Wales) Rules 2016, part 14. A statutory cut-off date governs the admission and valuation of claims, and subsequent events occurring before distribution may be taken into account in valuing contingent debts, as affirmed by the Court of Appeal in *MS Fashions Ltd v Bank of Credit and Commerce International SA* (1993).

Liquidation operates as a collective enforcement mechanism. As Lord Hoffmann explained in *Buchler v Talbot* (2004: paragraph 28): "The winding up of a company is a form of collective execution by all its creditors against all its available assets." The statutory scheme does not alter proprietary rights; rather, it regulates their enforcement and ranking. Although liquidation restrains individual enforcement through the statutory stay in compulsory winding-up, secured creditors generally retain their proprietary rights and may enforce their security outside the statutory order of distribution.

Upon completion of liquidation, in cases of voluntary liquidation, dissolution occurs under section 201 of the Insolvency Act 1986 following the filing of the liquidator's final account. Where the company is wound up by the court, dissolution occurs under section 205 once the registrar receives notice that the winding-up has been completed. This brings the company's legal existence to an end, subject to the possibility of restoration to the register within a prescribed period upon application by specified persons to the court (section 1029 of the Companies Act 2006).

A company voluntary arrangement (CVA) is another insolvency mechanism provided for under part I of the Insolvency Act 1986 and supplemented by the Insolvency (England and Wales) Rules 2016 (part 2). It is designed to facilitate the restructuring and potential rescue of a distressed company while leaving management in the hands of its directors. It enables the company to propose a binding compromise or arrangement with its unsecured creditors in respect of some or all of its debts, subject to creditor approval in accordance with the statutory voting thresholds. A proposal may be made by the company's directors, an administrator, or a liquidator (Insolvency Act 1986, section 1(1)).

Under the CVA, a licensed insolvency practitioner acts initially as nominee, reporting to the court and creditors on whether the proposal has a reasonable prospect of being approved and implemented. If the arrangement is approved, the nominee becomes the supervisor, responsible for overseeing its execution under section 7.

The CVA represents a debtor-in-possession mechanism that prioritizes consensual compromise over displacement of corporate control (Anderson 2017: 84-103). There is no statutory requirement that the company be insolvent in order to propose a CVA, although in practice the procedure is typically deployed where the company is insolvent or at real risk of insolvency (Insolvency Act 1986, sections 2-4A; Insolvency (England and Wales) Rules 2016, rule 15.33).

For a CVA to take effect, it must be approved by the requisite statutory majorities of creditors and members. Approval requires at least 75% in value of creditors voting in favour of the proposal, and the arrangement will not be approved if more than 50% in value of unconnected creditors voting oppose it. A simple majority of members is also required, although where the decisions of creditors and members differ, the creditors' decision prevails. Once approved, the CVA binds all unsecured creditors who were entitled to vote, whether or not they voted or received notice of the meeting. Secured and preferential creditors are not bound without their consent (Insolvency Act 1986, sections 2, 4(1), 4A, 4(3), 4(4), 5(2)(b), and 386).

Section 6 of the Insolvency Act 1986 provides that a creditor, member or contributor may challenge the arrangement within 28 days on grounds of unfair prejudice or material irregularity. The court will assess unfair prejudice by reference to comparative treatment among creditors and the realistic alternative to the CVA, as illustrated in *Discovery (Northampton) Ltd v Debenhams Retail Ltd* (2019).

A court-approved scheme of arrangement is another identifiable insolvency mechanism that enables a company to enter into a compromise or arrangement with its creditors, or with particular classes of creditors, and where relevant its members (Companies Act 2006, section 895(1)). Unlike a CVA, which is contained within insolvency legislation, schemes are governed by part 26 of the Companies Act 2006. Their statutory location outside the Insolvency Act 1986 reflects the fact that they are not insolvency proceedings and may be deployed irrespective of the company's solvency status and do not trigger an automatic moratorium on creditor enforcement. Accordingly, a scheme does not of itself prevent creditors from enforcing their rights during the preparatory stages. Where

protection from enforcement is required, schemes have sometimes been used in conjunction with administration or other protective mechanisms.

Under section 896(2) of the Companies Act, a scheme may be proposed by the company, by a creditor or member, or, where applicable, by an administrator or liquidator. There is no requirement that the company be insolvent or likely to become insolvent under part 26 of the Companies Act. This flexibility has made schemes an important restructuring mechanism, particularly where complex capital structures or unanimity clauses in finance documents would otherwise impede consensual restructuring.

The scheme procedure is court-supervised and proceeds in two principal stages. First, the court considers whether to order meetings of the relevant classes of creditors or members (Companies Act 2006, section 896(1)). At each meeting, the scheme must be approved by a majority in number representing at least 75% in value of those present and voting (Companies Act 2006, section 899(1)). Secondly, if the statutory majorities are achieved, the court must decide whether to sanction the scheme (Companies Act 2006, section 899(3)).

Upon sanction by the court and delivery of the order for registration, the scheme becomes binding on the company and all creditors or members within the relevant classes, including dissenting minorities (Companies Act 2006, section 899(4)).

The restructuring plan, a court-supervised restructuring tool under part 26A of the Companies Act 2006 (sections 901A-901L), was introduced by CIGA 2020 to enhance the UK's rescue-oriented insolvency framework. Although structurally modelled on the schemes of arrangement under part 26, the restructuring plan departs from that framework in several material respects.

A restructuring plan may be proposed where (1) the company has encountered, or is likely to encounter, financial difficulties that are affecting, or may affect, its ability to carry on business as a going concern, and (2) a compromise or arrangement with its creditors or members is proposed to eliminate, reduce, prevent, or mitigate the effect of those difficulties. The statutory threshold under Companies Act 2006, section 901A(2)-(3), is therefore framed broadly and does not require the company to be insolvent.

The procedural structure mirrors the two-stage process applicable to schemes. First, the court determines whether to order meetings of the relevant classes of creditors or members (Companies Act 2006, section 901C(1)). In addition, the court may exclude from participation

those who have no genuine economic interest in the company in the relevant alternative (Companies Act 2006, section 901C(4); *Re Virgin Active Holdings Ltd* 2021; *Re Smile Telecoms Holdings Ltd* 2022).

At each meeting, approval requires a majority of 75% in value of those present and voting (Companies Act 2006, section 901F(1)). Unlike schemes under part 26, there is no requirement for a majority in number. If the statutory majority is obtained in each class, the plan returns to court for sanction. The court retains a discretion whether to sanction, considering compliance with the statutory requirements and the fairness of the process.

The distinctive feature of part 26A is the cross-class cram-down mechanism. Even where one or more classes vote against the plan, the court may sanction it if satisfied that (1) none of the dissenting class members would be worse off under the plan than in the event of the relevant alternative, and (2) at least one class who would receive a payment or have a genuine economic interest in that alternative has approved the plan by the statutory majority. The assessment of the "relevant alternative" and the no-worse-off condition has required judicial engagement with valuation evidence, as reflected in early authorities interpreting the provision (*Re Virgin Active Holdings Ltd* 2021; *Re DeepOcean 1 UK Ltd* 2021).

The scope of the court's discretion under part 26A was further clarified by the Court of Appeal in *Strategic Value Capital Solutions Master Fund LP v AGPS BondCo plc* (*Re AGPS BondCo plc*) (2024). The Court held that satisfaction of the statutory no-worse-off test and supporting creditor approval under section 901G merely establish the jurisdiction to impose a cross-class cram-down and do not create any presumption in favour of sanction. The decision emphasized that courts must undertake a broader assessment of fairness, including a "horizontal comparison" examining whether the restructuring distributes benefits fairly between creditor classes and whether any departure from the *pari passu* principle is properly justified.

Like schemes of arrangement, restructuring plans do not give rise to an automatic statutory moratorium (Companies Act 2006, part 26A; cf Insolvency Act 1986, schedule B1, paragraphs 42-43). Their effectiveness therefore depends upon court approval and, where necessary, the availability of separate protective measures.

Standalone moratorium (debtor-in-possession) established under part A1 of the Insolvency Act 1986, inserted by CIGA 2020, is also available

to eligible companies. The initial moratorium period is 20 business days, beginning on the business day after it comes into force.

Entry is effected by filing the prescribed documents where no winding-up petition is pending, or by court order where one is outstanding. The directors must state that the company is, or is likely to become, unable to pay its debts, and the proposed monitor, who must be a qualified insolvency practitioner, must confirm that it is likely that the moratorium would result in the rescue of the company as a going concern.

During the moratorium, most enforcement of security, winding-up petitions, and legal proceedings are restricted, subject to statutory exceptions. Management remains with the directors, but the monitor must terminate the moratorium if rescue of the company as a going concern is no longer likely or other statutory conditions requiring termination arise.

Eligibility is governed by schedule ZA1, which excludes specified categories of companies and restricts repeat use. The moratorium may be extended by the directors, by creditor consent, or by court order within statutory limits. It ends upon expiry, termination by the monitor, or entry into specified insolvency procedures.

Restrictions on *ipso facto* termination clauses under section 233B of the Insolvency Act 1986, inserted by CIGA 2020, imposes restrictions in specified insolvency contexts—set out in schedule 4ZZA—on *ipso facto* clauses, which historically permitted suppliers to terminate or vary contracts solely because the counterparty entered an insolvency procedure.

Where a company enters administration, a part A1 moratorium, a CVA, or a part 26A restructuring plan, a supplier may not terminate a contract for the supply of goods or services solely by reason of the company's insolvency; nor may the supplier rely on an insolvency-triggered term to vary the contract or require payment of pre-insolvency arrears as a condition of continued supply.

The restriction does not prevent termination for post-insolvency breaches, including non-payment for goods or services supplied during the insolvency period. Termination is also permitted with the consent of the officeholder in administration or, in other relevant procedures, with the consent of the company. In addition, a supplier may apply to the court for permission to terminate if continuation of the contract would cause hardship.

A cross-border insolvency mechanism arises where insolvency proceedings involve a foreign element, whether relating to the debtor's place of incorporation, the location of assets, or the composition of its creditors. English law addresses such situations through three central inquiries: jurisdiction, recognition of foreign proceedings, and choice of law. These questions are informed by the doctrine of modified universalism, under which courts seek to cooperate with foreign insolvency processes so far as this is consistent with domestic law and public policy (*Re HIH Casualty and General Insurance Ltd* 2008; *Cambridge Gas Transport Corp v Navigator Holdings plc* 2006).

The UK's cross-border regime operates through three principal mechanisms: the Cross-Border Insolvency Regulations 2006 (CBIR), section 426 of the Insolvency Act 1986, and residual common law assistance. In *Rubin v Eurofinance SA* (2012), the Supreme Court confirmed that recognition and enforcement of foreign insolvency judgments remain governed by established principles of private international law. The Privy Council in *Singularis Holdings Ltd v PricewaterhouseCoopers* (2014) further emphasized that common law cooperation cannot create powers unavailable under domestic insolvency legislation.

English courts may exercise jurisdiction over foreign companies where a sufficient connection with the jurisdiction exists, a power reflected in the statutory regime governing the winding-up of unregistered companies (Insolvency Act 1986, section 221).

However, the practical reach of English insolvency proceedings remains dependent on recognition by foreign courts. Orders such as moratoria or stays do not automatically bind foreign jurisdictions unless recognized locally. Recognition under the CBIR may nevertheless facilitate cooperation and relief supporting foreign restructuring processes (*Re Videology Ltd* 2018). Cross-border distribution is further shaped by equitable principles such as the hotchpot rule, which prevents creditors from recovering more than their proper entitlement through parallel claims across jurisdictions (*Cleaver v Delta American Reinsurance Co* 2001).

The UK's withdrawal from the European Union significantly altered the cross-border insolvency landscape. From 1 January 2021, the European Union Insolvency Regulation 2015 ceased to apply to UK proceedings, ending the previous system of automatic recognition across member states. As a result, the CBIR now constitute the principal statutory gateway for recognition of foreign proceedings in the UK. Adoption of the UNCITRAL Model Law within the European Union remains limited,

meaning recognition of UK proceedings in many member states depends on national private international law rather than a harmonized regime.

Despite this fragmentation, the UK remains a prominent venue for international restructuring, particularly through schemes of arrangement and part 26A restructuring plans under the Companies Act 2006 (sections 895-901). Judicial cooperation mechanisms, including the Judicial Insolvency Network (JIN) *Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters* (2019), further support coordination in complex multinational restructurings.

Directors' duties in financial distress

While the company remains solvent, directors are primarily required to promote the success of the company for the benefit of its members. As financial distress intensifies, however, creditor interests assume increasing importance. The legal framework governing this shift derives principally from the Companies Act 2006, while the Insolvency Act 1986 supplements these duties through provisions imposing personal liability and enabling the avoidance of certain transactions undertaken before insolvency.

The Supreme Court in *BTI 2014 LLC v Sequana SA* (2022) clarified the scope of directors' duties to creditors as a company approaches insolvency. The Court confirmed that the creditor-interest duty is not a separate duty owed directly to creditors, but rather a modification of the directors' duty to act in the interests of the company. The duty arises where the company is insolvent, bordering on insolvency, or where insolvent liquidation or administration is probable, although the Court did not conclusively determine whether directors must actually know, or ought to know, that such circumstances exist. A merely remote risk of insolvency is insufficient to trigger the duty.

Importantly, the Court adopted a progressive approach to creditor interests rather than a fixed trigger point. As a company's financial condition deteriorates, directors are required to give increasing weight to creditor interests alongside those of shareholders. Where insolvent liquidation or administration becomes inevitable, creditor interests become paramount because shareholders no longer retain any real economic interest in the company's assets.

The Insolvency Act 1986, section 214, establishes liability for wrongful trading. This provision applies where, prior to the commencement of winding-up, a director knew or ought to have concluded that the company

cannot avoid liquidation or administration but failed to minimize loss to creditors. The director will be liable to compensate under section 214.

Under section 213 of the Insolvency Act 1986, liability also arises where the company's business has been carried on with intent to defraud creditors or for any fraudulent purpose. The threshold for liability is significantly higher than in wrongful trading and requires proof of actual dishonesty. Section 993 of the Companies Act 2006 establishes a criminal offence punishable by imprisonment and/or an unlimited fine. Findings of fraudulent trading frequently lead to director disqualification under the Company Directors Disqualification Act 1986.

Under the Insolvency Act 1986, section 238 allows a liquidator or administrator to challenge transactions at an undervalue entered into before insolvency. The relevant period extends to two years prior to the commencement of liquidation or administration. A transaction is considered to be at an undervalue where the company makes a gift or enters into a transaction for consideration significantly less than the value it provides.

Also, section 239 of the Insolvency Act 1986 provides a mechanism for challenging preferential transactions. A preference arises where a company does something that places a creditor, surety, or guarantor in a better position than they would otherwise have been in insolvent liquidation. The relevant period is six months prior to the onset of insolvency, extended to two years where the creditor is a connected person. A key element of the statutory test is that the company must have been influenced by a desire to prefer the creditor. This requirement distinguishes preferences from ordinary commercial transactions.

Section 245 of the Insolvency Act 1986 invalidates floating charges granted within 12 months prior to insolvency, or two years where the charge holder is connected with the company, except to the extent that the charge secures new value. New value may consist of money paid, goods or services supplied, or the discharge of existing indebtedness. The purpose of the provision is to prevent creditors from improving their position shortly before insolvency at the expense of the general body of creditors.

The institutional framework of UK insolvency law

The UK insolvency law system is implemented through a network of institutional actors. The Insolvency Service is an executive agency of the Department for Business and Trade and a central institution in the UK insolvency framework. Operating under the authority of the Secretary

of State for Business and Trade, it performs three principal functions: administration, regulation, and enforcement (Insolvency Service 2022).

The Insolvency Service administers personal insolvency procedures such as bankruptcy and debt relief orders. It also operates the redundancy payments service for employees of insolvent employers (Insolvency Service 2024-2025). It also oversees the insolvency profession by supervising recognized professional bodies that license and regulate insolvency practitioners under the Insolvency Act 1986, section 391. Additionally, the Insolvency Service investigates misconduct connected with insolvency and may pursue director disqualification under the Company Directors Disqualification Act 1986 (sections 6-7). Since 2021, its powers extend to investigating the conduct of directors of dissolved companies, strengthening enforcement against corporate misconduct and economic crime (Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Act 2021, sections 1-2, amending the Company Directors Disqualification Act 1986).

Official Receivers (ORs) are statutory officers established under the Insolvency Act 1986, part XIV, sections 399-401. Appointed by the Secretary of State, they operate both as civil servants and officers of the court, ensuring the lawful administration of insolvency proceedings. In compulsory corporate liquidation, the OR automatically becomes the initial liquidator when a winding-up order is made. Creditors or the Secretary of State may subsequently appoint a licensed insolvency practitioner to act as liquidator. If no such appointment is made, the OR continues to administer the estate and distribute assets in accordance with statutory priorities.

ORs investigate the causes of the company's failure and report on the conduct of directors. Where misconduct is identified, the OR's findings may support enforcement action, including director disqualification proceedings under the Company Directors Disqualification Act 1986 (section 7).

The Secretary of State for Business and Trade plays a central constitutional and regulatory role in the UK insolvency framework. Although many operational functions are exercised through the Insolvency Service, significant statutory powers remain vested in the Secretary of State under the Insolvency Act 1986 and the Company Directors Disqualification Act 1986.

Under the Insolvency Act 1986, the Secretary of State may make rules and regulations forming the statutory basis for instruments such as

the Insolvency (England and Wales) Rules 2016. The Secretary of State also exercises supervisory and appointment functions. In compulsory liquidations the Secretary of State may appoint a liquidator where no appointment is made by creditors, ensuring that proceedings continue without administrative deadlock (Insolvency Act 1986, section 137). The Secretary of State further oversees the regulation of insolvency practitioners through recognized professional bodies, a supervisory function carried out operationally by the Insolvency Service (Insolvency Act 1986, section 391).

Qualified insolvency practitioners are the professional officeholders responsible for administering most corporate and personal insolvency procedures in the UK. Under the framework, individuals may act as liquidators, administrators, trustees in bankruptcy, administrative receivers, or voluntary arrangement supervisors only if they are authorized as insolvency practitioners. Authorization is granted through recognized professional bodies approved by the Secretary of State, including organizations such as the Institute of Chartered Accountants in England and Wales, the Insolvency Practitioners Association, and the Institute of Chartered Accountants of Scotland (Insolvency Act 1986, sections 388-391). Only individuals, rather than corporate entities, may hold an insolvency practitioner licence, ensuring personal accountability for the exercise of statutory powers.

Creditors are placed at the centre of insolvency governance while reducing reliance on traditional in-person meetings. The Insolvency (England and Wales) Rules 2016 under part 15 establish a flexible framework for creditor decision-making designed to enable creditors to collectively supervise the insolvency process to minimize cost and delay while preserving participation rights. These include voting by correspondence, electronic voting, virtual meetings, physical meetings, and any other decision procedures that enable equal participation by all entitled creditors.

The treatment of secured creditors varies materially according to the procedure engaged. The chosen route affects (i) the timing of enforcement, (ii) the extent to which enforcement may be restricted, (iii) participation in collective decision-making, and (iv) whether secured rights may be modified.

As a general principle, secured creditors enjoy proprietary priority. A secured creditor enforces against the charged asset rather than claiming *pari passu* in the insolvent estate. That priority, however, is mediated by

statutory mechanisms designed to preserve collective value and prevent destructive individual enforcement.

Under administration the commencement of the process triggers a statutory moratorium preventing secured creditors from enforcing security without the consent of the administrator or the permission of the court (Insolvency Act 1986, schedule B1, paragraph 43).

In liquidation, secured creditors generally retain direct enforcement rights over fixed charge assets. Such assets may be realized through the exercise of a contractual power of sale or the appointment of a receiver (Law of Property Act 1925, sections 101, 109). The proceeds are applied to the secured debt, with any surplus falling into the insolvent estate.

Under a CVA, the rights of secured creditors generally are not interfered with without their consent. The binding effect of a CVA applies primarily to unsecured creditors, allowing secured creditors to remain outside the compromise and enforce their security if they choose (Insolvency Act 1986, section 5(2)). This structural limitation distinguishes the CVA from court-sanctioned restructuring mechanisms.

Under schemes of arrangement (Companies Act 2006, part 26), secured creditors vote in classes constituted according to the similarity of their rights, and approval requires a majority in number representing at least 75% in value of creditors voting in each class (Companies Act 2006, section 899(1)). Because schemes do not create an automatic moratorium, secured creditors may retain enforcement leverage pending sanction (*Sovereign Life Assurance Co v Dodd* 1892; *Re Hawk Insurance Co Ltd* 2001).

Within the context of restructuring plans, the Companies Act 2006, part 26A, introduces a cross-class cram-down mechanism that binds dissenting creditor classes, including secured creditors, without unanimous consent. The court may sanction a plan binding a dissenting class if (1) none of the members of that class would be worse off than in the "relevant alternative" and (2) at least one class with a genuine economic interest has approved the plan by 75% in value (Companies Act 2006, section 901G).

The courts in the UK remain the constitutional foundation of the insolvency regime even though many insolvency procedures operate largely out of court and are administered by insolvency practitioners. The courts supervise and enforce statutory procedures and provide authoritative interpretation of the legislation, ensuring that insolvency operates as a collective process governed principally by the Insolvency

Act 1986, CIGA 2020, the Insolvency (England and Wales) Rules 2016, and relevant Practice Directions and Practice Statements.

Judicial practice is structured in particular by the Insolvency Practice Direction 2018 (as amended), which supplements the Civil Procedure Rules and the Insolvency (England and Wales) Rules 2016. These instruments govern matters such as allocation of cases within the Business and Property Courts, service and filing requirements, listing of applications, and other aspects of the procedural management of insolvency proceedings.

The courts perform a central gatekeeping function, ensuring that statutory prerequisites for collective procedures are satisfied and preventing the misuse of winding-up petitions as debt-collection tools where the underlying debt is genuinely disputed (*Re LHF Wools Ltd* 1970). Courts also exercise protective and interim powers, including injunctions, the appointment of provisional liquidators, and validation orders authorizing dispositions of company property after the presentation of a petition where this benefits creditors collectively (Insolvency Act 1986, section 127).

[D] CONCLUSION

This article has examined the evolution, structure, and operation of Ghana's corporate insolvency framework under the Corporate Insolvency and Restructuring Act 2020 (Act 1015), as amended (CIRA), alongside that of the UK. It has demonstrated that the UK's insolvency regime provides a useful comparator due to its sophisticated rescue-oriented framework. The examination of both insolvency regimes reveals important similarities as well as significant structural differences. Both systems reflect a clear transition from liquidation-focused insolvency regimes to modern rescue-oriented frameworks that prioritize collective creditor engagement and the preservation of viable businesses over immediate liquidation, although liquidation remains the outcome where rescue efforts fail.

Administration serves as the central rescue mechanism in both jurisdictions, supported by moratoria, creditor participation, insolvency practitioners, and court supervision. Both frameworks also recognize the importance of collective insolvency processes and cross-border cooperation.

However, the UK framework is structurally broader and more sophisticated. While schemes of arrangement are also available in Ghana under the Companies Act 2019 (Act 992), the UK framework provides

a more extensive and integrated restructuring toolkit, including CVAs, part 26A restructuring plans, standalone moratoria, and pre-pack administrations. The UK also permits greater restructuring flexibility through mechanisms such as cross-class cram-down, which CIRA does not currently provide. In addition, the UK framework operates within a more developed institutional environment supported by specialized courts, extensive judicial interpretation, and a mature insolvency profession.

CIRA therefore reflects substantial convergence with the rescue-oriented approach of the UK, although important differences remain in the depth of restructuring mechanisms, the role of judicial development, and institutional capacity. Ultimately, while CIRA significantly modernizes Ghana's insolvency framework, its long-term effectiveness will depend on how successfully its institutional structures evolve to support the rescue objectives embedded within the Act.

This exposition of the insolvency regimes of Ghana and the UK forms the basis for the detailed comparative analysis and proposed reforms presented in part II of this article.

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