

**CORPORATE INSOLVENCY AND RESTRUCTURING
(AMENDMENT) BILL, 2020**

MEMORANDUM

The purpose of the Bill is to amend the Corporate Insolvency and Restructuring Act, 2020 (Act 1015) to empower the Registrar, a creditor of a company, a member of a company with shares or a contributory of a company and the Attorney-General to petition the Court for the official winding-up of a company under all the circumstances specified in subsection (2) of section 84 of Act 1015.

Even though Act 1015 came into force on 30th April, 2020 an anomaly has been identified in the implementation of section 84 of the Act.

Subsection (1) of section 84 of Act 1015, limits the circumstances under which the Registrar of Companies, a creditor of a company, a member of a company with shares or a contributory of a company or the Attorney-General, could bring a petition for the official winding-up of a company to only paragraphs (c), (d) and (e) of subsection (2) of section 84 of Act 1015.

However, subsection (1) of section 84 of Act 1015 is silent on who could bring a petition under paragraphs (a), (b), (f) and (g) of subsection (2) of section 84 of Act 1015.

The restriction in subsection (1) of section 84 of Act 1015 makes it impossible for the Registrar of Companies, a creditor of a company, a member of a company with shares or a contributory of a company to petition the High Court for the official winding-up of a company under all the circumstances specified in subsection (2) of section 84 of Act 1015.

Insolvency of a company is a commercial occurrence arising out of the inability of a company to pay its debts as they fall due on a balance sheet basis. The primary actors who have knowledge of the role to play in determining whether the company is insolvent or not are the members, the creditors or a contributory of a company.

The Directors, as managers of the Company with the duty to safeguard the interests of the creditors of the company, and with the inside information they would have on the finances of the company, are duty bound to recommend to the members to recapitalise the company or have it wound up if they are unable to pay their debts as it falls due.

A creditor, a member of a company with shares or a contributory of a company are the ones who would suffer from an inability of a company to pay its debts when it falls due and therefore one of the options

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available to them is to petition the Court for the company to be wound up on grounds of insolvency.

The Registrar of Companies as a regulator is mandated to petition the High Court because there may be circumstances where a deadlock may occur which may be inimical particularly to the interest of creditors.

Also, the yearly filing of Annual Returns with the Registrar, places the Registrar in a better position to form an independent opinion on whether the company is insolvent or not.

The Registrar of Companies, a creditor of a company, a member of a company with shares or a contributory of a company should therefore be able to petition the High Court for the official winding-up of a company under all the circumstances specified in subsection (2) of section 84 of Act 1015.

The Attorney-General, however, under article 88 of the Constitution, may pursue and initiate a prosecution for any criminal matter detected in the cause of a petition for the official winding-up of a company under paragraphs (a), (b), (f) and (g) of subsection (2) of section 84 of the Act, further to referrals and investigations.

The Attorney-General will therefore be restricted to petition the High Court only in circumstances specified in paragraphs (c), (d) and (e) of subsection (2) of section 84 of Act 1015 in the interest of free enterprise and in matters that are purely of a commercial nature.

The Bill consists of a single provision which amends subsection (1) of section 84 of Act 1015 to broaden the circumstances under which the Registrar, a creditor of the company, a member of a company with shares or contributory of the company or the Attorney-General may petition the Court for official winding-up of a company.

GLORIA AFUA AKUFFO (MISS)
Attorney-General and Minister responsible for Justice

Date: 1st September, 2020.

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(AMENDMENT) BILL, 2020**

ARRANGEMENT OF SECTION

Section

Section 84 of Act 1015 amended

A
BILL

ENTITLED

**CORPORATE INSOLVENCY AND RESTRUCTURING
(AMENDMENT) ACT, 2020**

AN ACT to amend the Corporate Insolvency and Restructuring Act, 2020 (Act 1015) to empower the Registrar, a creditor of a company, a member of a company with shares, a contributory of a company or the Attorney-General to petition the Court for the official winding-up of a company under all the circumstances specified in subsection (2) of section 84 of Act 1015.

PASSED by Parliament and assented to by the President:

Section 84 of Act 1015 amended

The Corporate Insolvency and Restructuring Act, 2020 (Act 1015) is amended in section 84 by the substitution for subsection (1), of

“(1) The following persons may present a petition to the Court for the official winding-up of the company:

- (a) the Registrar or any other person who is
 - (i) a creditor of the company, or

Corporate Insolvency and Restructuring (Amendment) Bill, 2020

- (ii) a member of a company with shares or contributory of the company; on the circumstances specified in subsection (2); and
- (b) the Attorney-General only in the circumstances specified in paragraphs (c), (d) and (e) of subsection (2).”

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