

IN THE FOURTH SESSION OF THE SEVENTH
PARLIAMENT OF THE FOURTH REPUBLIC OF GHANA

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REPORT OF THE COMMITTEE ON CONSTITUTIONAL,
LEGAL AND PARLIAMENTARY AFFAIRS

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ON THE

CORPORATE INSOLVENCY AND RESTRUCTURING
(AMENDMENT) BILL, 2020

Acc No: 1999 C₂
Class No: BR/CIR(A)/20.

OCTOBER, 2020

**IN THE THIRD MEETING OF THE FOURTH SESSION OF THE SEVENTH
PARLIAMENT OF THE FOURTH REPUBLIC**

**REPORT OF THE COMMITTEE ON CONSTITUTIONAL, LEGAL AND
PARLIAMENTARY AFFAIRS ON THE CORPORATE INSOLVENCY AND
RESRUCTURING (AMENDMENT) BILL, 2020**

1.0 INTRODUCTION

- 1.1 The Corporate Insolvency and Restructuring (Amendment) Bill, 2020 was laid in Parliament on 6th October, 2020 by the Hon. Attorney-General and Minister for Justice, Miss Gloria Afua Akuffo in accordance with Article 106 of the 1992 Constitution.
- 1.2 Consequently, the Bill was referred by the Speaker to the Committee on Constitutional, Legal and Parliamentary Affairs for consideration and report pursuant to Order 179 of the Standing Orders of the House.

2.0 DELIBERATIONS

The Committee met with the Hon. Attorney-General and Minister for Justice, Officials of the Office of the Attorney-General and Ministry of Justice, and the Registrar-General's Department to consider the Bill.

The Committee expresses its profound gratitude to the Hon. Attorney-General and the Officials for assisting the Committee in its deliberations.

3.0 REFERENCE DOCUMENTS

The Committee referred to the following documents during its deliberations:

- i. The Constitution of the Republic of Ghana, 1992;
- ii. The Standing Orders of Parliament, 2000;
- iii. The Companies Act, 2019 (Act 992); and
- iv. The Corporate Insolvency and Restructuring Act, 2020 (Act 1015).

4.0 BACKGROUND INFORMATION

- 4.1 The Corporate Insolvency and Restructuring Act, 2020 (Act 1015) was passed in April 2020 and repealed the Bodies Corporate (Official Liquidation) Act, 1963 (Act 180).

4.2 The implementation of Section 84(1) and (2) of Act 1015 has revealed an anomaly which needs to be rectified.

4.3 This provision is reproduced as follows:

84.(1) The following persons may present a petition to the Court for the official winding-up of the company only on grounds specified in paragraphs (c), (d) and (e) of subsection (2):

- (a) The Registrar,*
- (b) a creditor of the company,*
- (c) a member of a company with shares or contributory of the company, or*
- (d) the Attorney-General.*

(2) The Court may order the official winding-up of a company on a petition presented where

- (a) the company*
 - (i) does not commence the business which the company is authorised by the constitution of the company to carry on, or*
 - (ii) suspends business for a year within a year after the incorporation of the company;*
- (b) the company does not have members;*
- (c) the business or objects of the company are unlawful;*
- (d) the company is operated for an illegal purpose;*
- (e) the business being carried out by the company is not authorised by the constitution of the company;*
- (f) the company is unable to pay the debts of the company; or*
- (g) the Court is of the opinion that it is just and equitable that the company should be wound up.*

4.4 According to the Attorney-General, the original intention behind the provision was to permit the Registrar-General, shareholders, creditors or contributories of companies with shares to petition the Court under any of the seven (7) circumstances specified under Section 84(2) of the Act, and to restrict the Attorney-General to only circumstances stated in paragraphs (c), (d) and (f) of Section 84(2) of Act.

4.5 It has therefore become imperative to amend Section 84(1) of the Act to rectify the anomaly.

5.0 OBJECT OF THE BILL

The purpose of the Bill is to amend Section 84(1) of the Corporate Insolvency and Restructuring Act, 2020 (Act 1015) to empower 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 Court for the official winding-up of a company under all the circumstances specified in Section 84(2) of the Act.

6.0 OBSERVATION

The Committee made the following observations during its deliberations on the Bill:

6.1 Rationale for the Amendment

The Committee has accepted the suggestion by the Hon. Attorney-General to rectify the anomaly identified in Section 84(1) of Act 1015. This provision has limited all the parties entitled to initiate the process for official liquidation to three of the circumstances specified under Article 84(2) of the Act. The effect is that though the law has specified seven (7) circumstances under which the process for official winding of a company could be initiated, only three of the circumstances could actually be used in practice. This anomaly has resulted in restricting the Registrar of Companies, shareholders and contributories of a company to initiating the process for official winding up of the company only to the three circumstances originally intended for the Attorney-General.

6.2 Expanding the Circumstances for Official winding up of Companies

The Committee takes the view that the amendment Bill, if passed, would expand the grounds under which the Registrar of Companies, shareholders, creditors and contributories can initiate the process for official winding up of a company. This is grounded on the fact that, if a company is unable to pay its debts as they fall due, the parties likely to suffer are the creditors, members of a company with shares or a contributory of a company. One of the options available to them would be to petition the Court for the company to be wound up on grounds of insolvency. It is further noted that the Registrar of Companies, as the regulator, is better placed to form an independent opinion on the financial position of a company and would require expanded grounds to take the necessary action if it becomes necessary.

7.0 PROPOSED AMENDMENT

The Committee proposes that the entire clause be redrafted as follows:

Section 84 of Act 1015 amended

Delete subclause (1) and insert the following:

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

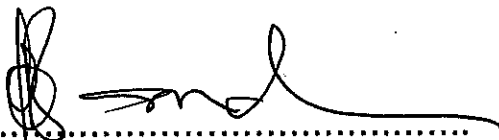
- (a) the Registrar or a creditor of the company, a member of the company with shares or a contributory of the company on the circumstances specified in subsection (2); and
- (b) the Attorney-General only in the circumstances specified in paragraphs (c), (d) and (e) of subsection (2).”

8.0 CONCLUSION AND RECOMMENDATION

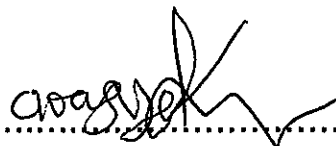
The Committee has critically considered the amendment Bill and is of the view that its passage would further strengthen the current legal framework for regulation of insolvency and restructuring of companies in Ghana.

The Committee, therefore, recommends to the House to adopt this Report and pass the Corporate Insolvency and Restructuring (Amendment) Bill, 2020 in accordance with Article 106 of the Constitution and the Standing Orders of the House.

Respectfully submitted.



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HON. BEN ABDALLAH BANDA
(CHAIRMAN, COMMITTEE ON
CONSTITUTIONAL, LEGAL AND
PARLIAMENTARY AFFAIRS)



.....
AKUA DUROWAA OWUSU-AGYEKUM (MRS)
(CLERK TO THE COMMITTEE)