



B&P
ASSOCIATES
Lawyers & Consultants

IN THIS ISSUE

- In The Nick of Time: The Insolvency Law and Post-COVID Recovery in Ghana
- Ghana's Response to COVID-19
- The Coronavirus Alleviation Programme
- An Employer's Checklist
- Firm News

Issue No. 20
May 2020

In The Nick of Time: The Insolvency Law and Post-COVID Recovery in Ghana

Ghana's economy is forecasted to shrink by about 5% of GDP in 2020 — this being a baseline scenario impact from the challenges of the pandemic. Businesses are facing a testing time, the like of which many would never have seen before. Owner managed businesses are particularly hard hit in these times as they often do not have cash reserves to carry them through months of potential disruption and forced closure. We are now subject to a threat nobody could have foreseen and thus the Corporate Restructuring and Insolvency Act, 2020 (Act 1015) is the need of the hour.

On 30th April 2020 the President assented to the Corporate Insolvency Bill, 2019 to bring into force a new legal framework for the regulation of insolvency practitioners as well as provide the avenue to help resuscitate temporarily distressed but viable businesses, entities and establishments from liquidation and its ramifications.

The new law provides for the timely, efficient and impartial proceedings for insolvent companies and offers restructuring and insolvency solutions including administration, receivership and liquidation. However, it does not cover companies in the financial services industry such as banks and insurance companies which have separate laws covering their restructuring and insolvency proceedings.

Key highlights of the new law include:

1.Consensual restructuring of liabilities involving active participation of creditors in administration (watershed meeting), receivership or liquidation which will on one hand secure their investment and, on the other, allow businesses to freely re-strategize and plan their recovery from the impact of COVID-19, for example.

2.The option of Restructuring agreements provided under the law releases the Company from a debt without affecting the liability of a guarantor of a debt.

3.Protection of Company property provided for under the law which essentially precludes creditors from enforcement of charge orders upon the commencement of

administration.

4.Cross-border insolvency processes. Foreign insolvency proceedings are recognised under the law as well as co-operation with foreign courts on insolvency and court recognition of foreign representatives to participate in insolvency proceedings in Ghana regarding a foreign debtor.

5.The establishment of a special division within the office of the Registrar of Companies to be known as the Insolvency Services Division which will be tasked with supervising practitioners, reviewing the law and advising the Minister on matters relating to insolvency.

6.The Liquidation Fund. As some businesses will not have the ability to pay off or settle creditors and remain trading, a Liquidation Fund is established into which moneys received by the liquidator are to be paid and from which moneys may be disbursed by the liquidator for the beneficial administration or winding up of a company post commencement of liquidation.

7. The newly enacted law repeals the winding up and liquidation proceedings under the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180).

The Corporate Restructuring and Insolvency Act 2020 (Act 1015), complete with the Companies Act, 2019 (Act 992), will introduce a new era in the Ghanaian business environment in which the creditors, employees and shareholders' interests are adequately protected and private enterprises are ensured a safe transition of the business.

Further support for the business community may be found in the Coronavirus Alleviation Programme (CAP) developed by the Minister of Finance and Economic Planning. Under the CAP, commercial banks have been engaged to provide a syndicated facility of GHS 3 billion to support key industries; grant a six-month moratorium on principal repayments for selected businesses; reduce interest rates by 200 basis points and increase credit supply to the private sector.

Additionally, the National Board for Small Scale Industries (NBSSI) is scheduled to roll

out a GHS 600 million Government Stimulus package for Micro, Small and Medium Scale Enterprises (MSMEs) in addition to a GHS 90 million Mastercard Foundation programme, also expected to come on stream, for the much needed relief for the MSME sector. This is in addition to the International Monetary Fund (IMF) recent approval of a 1-billion-dollar Facility to Ghana for the fight against the virus and its negative ripple effect on the economy.

While profound uncertainty remains over the length of the virus pandemic period, or how quickly the recovery period will be once it arrives for Ghana, the introduction of a more robust and effective Insolvency regime (along with other efforts) is undoubtedly, a timely and necessary preparatory step for the recovery battle ahead. Hopefully, one that does not extend beyond the short-term and sets the economy in motion to normalcy.



Ghana's Response To COVID-19

Ghana has tested 110,000 persons for COVID-19, and recorded 2,074 positive cases (1.9%), 212 recoveries (10.0%), 17 deaths (0.8%) and 1845 (1.7%) existing cases.

30 April 2020

Coronavirus Alleviation
Programme



USD 1 bn loan from IMF
COVID-19 Trust Fund

COVID-19 National Trust Fund
Act, 2020



Imposition on Restrictions
Act, 2020

Local production of PPEs
COVID-19 Tracker App



Previous 21-day partial lockdown in
some cities

Border closure

Ban on schools, sports and religious
gatherings remains in place



Work flexibility

Innovation

Enhanced digitalisation



Testing centres in all regions

Enhanced drone delivery

The Coronavirus Alleviation Programme (CAP)

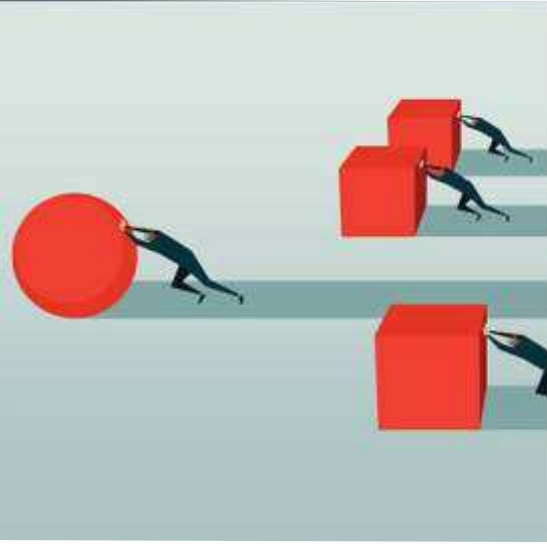
was established to facilitate economic recovery during and post-COVID, using a combination of monetary and fiscal measures.

	Monetary	Fiscal
BUSINESSES	<p>6-months moratorium of capital repayment.</p> <p>Syndicated facility loan of GHS3bn.</p> <p>GHS 3bn special loan package for the pharmaceuticals industries.</p> <p>GHS 600m soft loan scheme, with one moratorium and 2 year repayment plan.</p>	<p>Extension of due dates for filling annual taxes.</p> <p>Waive penalties on principal debts Reduced interest rate of bank loans by 2%.</p> <p>Extension of minimum capital requirement deadline by 6 months.</p> <p>2% reduction in regulatory reserve requirement.</p>
FRONTLINE HEALTH WORKERS	<p>Free Transportation during partial lockdown.</p> <p>Daily allowance of GHS150 to contact tracers.</p>	<p>No taxes on emoluments for 4 months.</p>
HOUSEHOLDS	<p>Absorbed utility bills for 3 months.</p> <p>Food for 400,000 households and individuals.</p>	<p>Contributions and donations towards COVID-19 as allowable expense.</p> <p>Waive taxes on selected Third-Tier Pension withdrawals.</p> <p>Waive VAT on donations of stock of equipment and goods.</p>

Monetary measures include loans, cash transfers and non-refundable goods and services

Fiscal measures include tax waivers and payment deferrals & waivers

An Employer's Checklist



Business Continuity Management (BCM) is a holistic management process that identifies potential risks to an organisation and the impact the identified risks may cause.

A BCM provides a framework for building organisational resilience with the capability of an effective response that safeguards the interests of key stakeholders.¹

In the midst of the COVID pandemic, the importance of a BCM plan has been brought into focus.

Set out below is a list of 5 key action points for Employers to consider in relation to their BCM:

1. Business Continuity Plan

Organisations need a business continuity plan in place which will be effective for its stakeholders, when needed.

2. Familiar Tool

All stakeholders must be familiar with the plan, know when and how to apply the company's business continuity plan. This will require staff training.

3. Reliable and Workable

It is important to plan and test contingency resources. In business continuity planning, assumptions cannot be conclusive; the plan needs to be tested out and fit for purpose.

4. Effective Communication Strategy

Most businesses may have a communication strategy to fall back on, in times of eventualities. It is useful to test out these strategies, in regular times to ensure its effectiveness.

5. Fit for Purpose

A business continuity plan must be 'a living document'. In other words, business continuity arrangements, however sophisticated and elaborate, should be updated on a regular basis, to ensure that it always remains fit for purpose in any given set of circumstances, however remote and unpredicted.

¹.International Organisation for Standardisation (ISO) 22301:2012

Firm News

New Location Announcement: **The Firm's Accra Office Moves to 4th Norla Street.**



House No. 99A, 4th Norla Street Labone-Accra,

We are excited to move into our New Home: The new location will provide a creative space for our team and our clients.

About B & P ASSOCIATES

B & P ASSOCIATES is a Corporate and Commercial legal practice and consultancy, with an excellent reputation, based in heart of Accra. The Team is highly regarded for its cross-border legal expertise, responsiveness and commitment. We provide business-oriented legal advice across a range of sectors, to both local and international clients. For more information see www.bpaghana.com to learn more about what we do.

B & P

ASSOCIATES

This publication may provide a summary of legal issues but is not intended to give specific legal advice. If you require legal advice, please speak to a qualified lawyer, which may include a qualified member of our legal team at B & P ASSOCIATES.