



PRESS RELEASE

Enhancing the Ease of Doing Business: Reforming the Company and Insolvency Laws of Ghana

Accra, Ghana, 15 September 2017 – On behalf of the Board of the American Chamber of Commerce (AMCHAM) and the Governing Council of the Ghana Association of Restructuring and Insolvency Advisors (GARIA), we express our profound gratitude to the Attorney-General & Minister of Justice **Hon. Gloria Akuffo**, the Panel (**Prof. Bondzi-Simpson, Felix Ntrakwah, Tony Oteng Gyasi, Hon. Vicky Bright, Felix Addo, Justice V.C.R.A.C. Crabbe and Mavis Amoah**), AMCHAM and GARIA Members and the General Public for honoring our invitation.

This event which focused on “**Enhancing the Ease of Doing Business: Reforming the Company and Insolvency Laws of Ghana**” unearthed thought provoking pieces aimed at reducing the premature insolvency of businesses in Ghana, promote corporate restructuring and update the Companies Act 1963 to reflect the modern trend in doing business.

The World Bank reports that in 2017, globally, in resolving Corporate Insolvency, Ghana stands at 155 in the ranking of 190 economies. In addition, resolving insolvency takes 1.9 years on the average and costs over 22.0% of the debtor’s estate, with the most likely outcome as the liquidation of the company. Nevertheless, even when a business goes into liquidation, current laws do not adequately protect creditors and shareholders’ interests as well as ensure a safe transition of the business.

Per the Government of Ghana Ease of Doing Business Initiative Concept Note (2017); “*It is the vision of the government to transform the business climate environment with the political will to bring about the fundamental reforms to set the stage for robust growth, and position Ghana as a competitive, global business and services-based platform, with an open economy...*” The realization of this vision is premised on effective business legislation that could streamline the activities of businesses to not only preserve jobs but create employment.

Previous Attorney-Generals have made efforts to have the revised Company and Insolvency Bills passed into law and the current Attorney-General, Hon. Gloria Akuffo is very optimistic about the passage of the two Bills and assured stakeholders that the Bills which are currently before Cabinet would be sent to Parliament for consideration in due course.

HIGHLIGHTS OF PROPOSED BILLS

(1) COMPANIES BILL

Ghana's current Companies Code was enacted in 1963 and seems to have outlived its purpose given the changes in the way companies have evolved. A number of proposals have been made in the legislation of the Companies Bill including:

- **Change from 'Regulations' to 'Constitution' and abolition of the need to file a constitution as part of the incorporation process.**
- **Full Abolition of the "ultra vires" rule:** makes provision that a company may be incorporated without an objects clause.
- **Proposed suffixes to company names:** currently every company limited by shares must have the suffix 'limited' or 'ltd'. The draft Bill proposes new suffices that help distinguish the types of companies including 'plc' representing public companies limited by shares, 'ltd' for private companies limited by shares and 'lbg' for companies limited by guarantee.
- **The requirement for "Major Transactions" to receive the authorization of shareholders:** the proposed Bill categorizes any transaction to acquire, dispose of or incur liabilities of more than 75% of the value of the company as 'major transactions' which require special resolution by members (shareholders). This is to shift the balance of power from board of director to majority of shareholder to promote shareholder democracy.
- **"Buy-out" remedy for dissenting minority shareholders:** this proposal will enable shareholders who have been out-voted in a 'major transaction' to be bought-out to reduce dissention and oppression of minority shareholders
- **Creation of the Office of the Registrar of Companies:** this is a proposed departure from having a Registrar General to a Registrar of Companies dedicated exclusively to administering the new Companies Act responsible for registration and regulation of all kinds of businesses.
- **Electronic or digital means of registration, communication, and service:** proposals have been made to enable the Registrar of Companies to authorise electronic transmission of business incorporation, payment of fees and submission of annual returns and filing of any notice or document.
- **Updating the accounting terminologies and the financial reporting standards to include a Statement of Cash Flows, among others.**

- **Abolition of the practice of issuing a certificate to commence business and the requirement to publish such certificate.**
- **New provisions enabling shareholders to enforce the rights of their company through derivative actions, among others.**
- **Proposed qualifications and regulations for company secretaries.**
- **Enhanced corporate governance requirements for directors.**

(2) CORPORATE INSOLVENCY BILL

The Corporate Insolvency Bill is aimed at improving the quality of the legal regime for corporate bodies and their administration when they become insolvent. The Bill seeks to provide a framework for restructuring distressed but viable businesses, closing and transferring assets of failed businesses. The formal restructuring procedures seek to balance the right of creditors to enforce their security and the public interest in ensuring the survival of viable businesses for the benefit of employees, creditors, and the economy in general.

The Bill does not cover companies in financial services industry such as banks and insurance companies which have separate laws covering their restructuring and insolvency proceedings.

Selected highlights of the proposed Corporate Insolvency Bill include:

- **Introduction of the legal framework for corporate restructuring in Ghana (generally described as Chapter 11 or Administration under the US and UK laws respectively).**
- **Retention of the Official Liquidation provisions of the current Bodies Corporate (Official Liquidations) Act 180.**
- **Introduction of a special division within the Office of the Registrar of Companies to be known as the Insolvency Service Division.**
- **Introduction of qualifications and regulations of private insolvency practitioners in Ghana.**
- **Provision of cross-border insolvency proceedings.**

The Attorney General and Minister of Justice, Hon. Gloria Akuffo, in her speech, assured stakeholders that the Bills which are before Cabinet would be sent to Parliament for consideration in due course.

About AMCHAM Ghana

The American Chamber of Commerce (AMCHAM) Ghana is a representative arm of the US businesses and subsidiaries in the country including Ghana Businesses with Strong US ties. It is affiliated with the United States Chamber of Commerce, which is the World's largest business organization representing over 3 million members and 177 affiliates all over the world. AMCHAM Ghana is also an active member of Africa Business Center which is the continent's arm of the US Chamber of Commerce.

The core mandate of AMCHAM is to advocate for U.S businesses and by extension the promotion of the Foreign Direct Investments (FDI's) into Ghana; creating enabling environment for businesses in which Ghanaian and US businesses can thrive, promoting the spirit of free enterprise, creating opportunity and prosperity for our two countries.

About GARIA

GARIA is an association of professionals with an interest in restructuring and insolvency established to play a leadership role in corporate restructuring, business recovery and insolvency advisory in Ghana. GARIA is a member of the INSOL International, the Global body of Restructuring and Insolvency Professionals.

GARIA's goals are: to encourage restructuring of distressed entities including state-owned enterprises and other business establishments; to promote and play a thought leadership role in connection with and in relation to business turnarounds and insolvencies; to promote law reforms in effective business recovery measures and insolvency; to provide a forum for practitioners engaged in business recovery and insolvency practice; and, to promote international cooperation with respect to insolvency or business recovery and related cross border matters.

The AMCHAM – GARIA Collaboration Initiative is aimed at creating a platform for stakeholders in public, private dialogue to enhance the ease of doing business in the country.

Simon Madjie

Executive Secretary, AMCHAM
P.O. Box CT 2869
Cantonments, Accra
amchamghana.com

Felix Addo

President, GARIA
7th Floor, SSNIT Emporium,
Airport City, Accra.
garia.org