

## GHANA

## BENTSI-ENCHILL, LETSA &amp; ANKOMAH



## FIRM INFORMATION

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## COUNTRY INFORMATION

Ghana, a country on the West African coast, is a developing democracy. It shares boundaries with Togo to the east, La Cote d'Ivoire to the west, Burkina Faso to the north and the Gulf of Guinea to the south. Ghana is a significant petroleum and natural gas producer and one of the world's largest gold and cocoa producers.

## TYPE OF GOVERNMENT

The Republic of Ghana is a Constitutional Democracy.

## POLITICAL SYSTEM

Ghana is a multi-party, constitutional democracy. The 1992 Constitution, which is currently undergoing review, recognises the concept of a separation of powers between the executive, the legislature and the judiciary. It declares and promotes fundamental human rights and freedoms.

## LEGAL SYSTEM

Ghana's legal system is based on the common law.

## TESTS FOR INSOLVENCY

**What are the tests for insolvency?**

In Ghanaian law, where:

- A creditor to whom the company owes more than GHC100,000 serves a written demand on the company to pay the amount and the company, for 21 days after the demand, neglects to pay the money or to secure or compound for it to the creditor's reasonable satisfaction; or
- Execution in the country of a judgment of the High Court in favour of a creditor of a company wholly or partly fails; or
- It is proved to the registrar's satisfaction that the company is unable to pay its debts, the company will be held to be insolvent.

**What are the tests for financial distress?**

There is no concept of financial distress in Ghanaian law.

## INSOLVENCY AND RESTRUCTURING PROCEDURES

**Formal insolvency procedures**

Liquidation is the only formal insolvency procedure available in Ghana.

**Formal restructuring procedures**

The formal restructuring procedure available to a company in Ghana is that of a scheme of arrangement or amalgamation, with or without court approval and the acquisition of minority shareholder's shares.

**Informal insolvency or restructuring procedures**

The insolvency procedure under Ghanaian law is formal, as set out above.

**Restructuring procedures**

A scheme of arrangement or amalgamation without court approval arises when members pass a special resolution to put the company into voluntary liquidation and authorise the liquidator to sell all or part of the assets to another entity in exchange for shares in that entity. A scheme of arrangement or amalgamation with court approval arises when an arrangement or amalgamation is proposed and the company, a creditor, a member or the liquidator applies to the court requesting the court to order a meeting of its members and creditors in order for them to vote on the proposal.

A merger by acquisition of the minority shares of the company arises when a body corporate, upon the satisfaction of certain conditions, compulsorily acquires all the shares of the minority shareholders of the company.

## LIQUIDATION

**What is the aim of liquidation?**

To wind up the affairs of the company, distribute its assets, settle its debts and provide for any other related matters.

**Process required to commence a liquidation**

There are two types of liquidation in Ghanaian law - an official liquidation and a private liquidation. An official liquidation



commences when a:

- Special resolution is passed by the members of a company;
- Petition is made to the registrar by a creditor, member or contributory of company;
- Petition to High Court is made by the registrar, creditor, member, contributory or attorney-general; or
- Conversion is made from a private liquidation to an official liquidation.

#### **At what point does the liquidation process commence?**

An official liquidation commences -

- On the passing of a resolution for the winding-up of the company; or
- On the making of a winding-up order by the court.

A private liquidation commences at the time that the company (through its members) passes a special resolution to wind up the company by private liquidation.

#### **Duration of the liquidation process**

There is no specified duration for the liquidation process. The Bodies Corporate Act (Official Liquidations) Act, 1963 (Act 180) (Bodies Corporate Act) merely requires that the liquidator summon a general meeting of the company and a meeting of the creditors at the end of the first year from the date of the commencement of the winding-up, and of each succeeding year, or at the first convenient date within three months from the end of the year or a longer period that the Minister may allow.

#### **Extent of court involvement in the liquidation process**

The court's involvement in the liquidation process, depends on the manner in which the process is commenced, the nature of the affairs of the company and the position of the various stakeholders of the company. A court may be involved in the liquidation process in any of the following ways. A court may:

- Order the liquidation of the company;
- Appoint the registrar to exercise the powers of a liquidator;
- Order a person to comply with the liquidator's requirements;
- Direct the liquidator in respect of the carrying out of his functions;
- Direct the transfer of the balance of the company's assets to the fees account of the company and give directions for the disposal of property not converted into money, after payments to the creditors are made; and/or
- Order the termination of official liquidation.

#### **Management of the company whilst in liquidation**

During liquidation the powers of the board of directors of the company cease upon the liquidator's appointment and vest in the liquidator unless (a) the company in general meeting or the liquidator sanctions their continuance; or (b) it is necessary to enable the directors to prepare statements and accounts. The liquidator, during the liquidation procedure, may:

- Bring or defend legal proceedings on the company's behalf;
- Carry on the company's business as is necessary for the liquidation process;
- Pay creditors;
- Sell the company's property or assets;
- Execute deeds, receipts and other documents using the company's seal;

- Prove and rank claims in the bankruptcy, insolvency or sequestration of a contributory;
- Draw, accept, make and endorse a bill of exchange or promissory note;
- Raise money on the security of the company's assets; and
- Do anything necessary to liquidate and distribute the company's assets.

#### **Filing of claims**

As soon as possible after the winding-up order is made, the liquidator should settle a list of contributories unless he finds it unnecessary to do so. A creditor may present the liquidator with a statement, 'a proof of debt' containing brief particulars of the values and due dates of provable debts, securities and obligations alleged by the creditor to be outstanding in his favour and the details of the transactions from which those debts and obligations arose. The liquidator gives a copy of the proof to the company and each creditor; and the company notifies the liquidator if it thinks the proof is false. The liquidator examines the proof and if satisfied, notifies the creditor that he admits the proof of debt subject to verification.

The liquidator may by notice in the Gazette fix a time within which creditors should prove their claims or be excluded from the benefits of any distributions made before those debts are proved.

The liquidator calls a first meeting of creditors for a date not later than six weeks after the publication of the winding-up order to discuss pertinent issues or any arrangements the company has proposed to which the creditors may reject or approve with at least three-quarters of the votes cast. Each creditor with an admitted proof is entitled to be heard. The meeting should be closed not later than eight weeks after the publication of the winding-up order.

Regarding debts which rank for dividend payments, the liquidator should ascertain the class into which the whole or a part of the debt falls as provided by the Bodies Corporate (Official Liquidation) Act. Class A debts have priority over the claims of holders of debentures under a floating charge credited by the company and should be paid accordingly out of the property comprised in or subject to that charge.

Class A debts are:

- Remuneration not exceeding GHC6,000 owed to an employee of the company in respect of employment during the whole or a part of the four months preceding the commencement of the winding-up; and
- Rates, taxes or similar payments owed to the Republic or to a local authority which have become due and payable within the year preceding the date of the commencement of the winding-up.

The liquidator should from time to time, and as early as practicable, declare and distribute dividends to creditors in accordance with the classes into which the debts fall.



### **Factors which influence the period of the administration in a liquidation**

Court processes such as an application by an aggrieved person, a member of the company, the company or the liquidator to the High Court for the rectification of the register of members may contribute to the delays in the liquidation process. Other court processes include the summoning before the High Court by the liquidator of an officer of the company or a person known or suspected of possessing company property, indebted to the company and considered capable of giving information about the affairs of the company which may affect the duration of the liquidation process. Where a member of the company, or where the liquidator, applies to the court to stay liquidation proceedings, this may also affect the liquidation process.

### **Effect of liquidation on employees**

Remuneration not exceeding GHC 6000 owed to an employee in respect of employment during the whole or a part of the four months preceding the commencement of the winding-up is prioritised as a class A debt and paid when the first dividends are declared.

### **Effect of liquidation on contracts**

The company ceases to carry on business except that which is beneficial for the liquidation process but the corporate existence and corporate powers of the company continue until dissolution. The liquidator therefore has to terminate unbeneficial contracts if it so wishes or requires.

### **Effect of liquidation on shareholders**

Shareholders retain their shareholding in the company but cannot transfer their shares without the liquidator's sanction.

### **Effect of liquidation on creditors**

The debts of the company are ranked in an order of priority and creditors are paid dividends accordingly. A secured creditor can commence or proceed with an action against the company for the realisation of its security. The remainder of the creditors await the receipt of any dividend which is paid in accordance with the order of priority that arises by operation of the law.

### **Pending Claims, litigation and arbitration**

On the commencement of winding-up, civil proceedings against the company, other than proceedings by a secured creditor for the realisation of that secured creditor's security, shall not commence or proceed, except with leave of the High Court and subject to the terms that the Court may impose.

### **Voidable transactions**

The following transactions may be set aside by the liquidator and the proceeds recovered into the liquidated estate of the company:

- A floating charge created on the undertaking (that is, the business of the company) or over property belonging to the company within 12 months before liquidation commences;
- Money paid or property transferred to a creditor in the period beginning 21 days before the presentation of the petition to the court to wind up the company and ending when the winding up order is made;
- Dispositions of property otherwise than for full value or to settle any debt due (a) during the 2 years before the winding up order, or (b) between 2 and 10 years before the making of

the order and at the time when the company was insolvent; and

- Money paid or allowed by the company during the 10 years before the winding up order in respect of a loan, in circumstances where the High Court would have ordered the lender to repay the company.

### **How is the liquidation process terminated?**

An official liquidation terminates after the winding-up process is complete and once the final accounts have been passed by the Auditor-General, the liquidator applies to the High Court for an order terminating the liquidation proceedings. If satisfied, the court grants the application and sends a copy of the order to the registrar for registration. Private liquidations, on the other hand, terminate when the registrar is satisfied that the winding up process is complete and so strikes the company's name off the register and notifies the strike-off in the Government Gazette. The company is dissolved as at the date of the publication in the Government Gazette.

### **Director or officer liability**

A director or officer of a company will be liable for contravening a duty that is imposed on them by the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180). The officers who were knowingly party to any fraudulent conduct of the business are personally responsible for the debts or any of the debts or any other liabilities of the company that the court may direct.

### **Consequences of director or officer liability**

#### **Civil consequences**

Personal responsibility, without a limitation of liability, for the debts or any of the debts or liabilities of the company, that the court may direct may arise if the officer is found to have been knowingly a party to the business' fraudulent activities.

#### **Criminal consequences**

A director or officer of a company may be liable for a fine not exceeding 750 penalty units or a term of imprisonment not exceeding 3 years or to both the fine and imprisonment for contravening a duty imposed on that person by the Bodies Corporate (Official Liquidations) Act.

## **BUSINESS RESCUE / ADMINISTRATION**

There is no USA Chapter 11-style business rescue process in Ghana. The following answers are therefore based on an adaptation of the arrangement provisions under the Companies Act, 1963 (Act 179).

### **Process required to commence a scheme of arrangement**

A scheme of arrangement or amalgamation without court approval arises when members pass a special resolution to put the company into voluntary liquidation and authorise the liquidator to sell all or part of the assets of the company to another entity in exchange for shares in that entity. A scheme of arrangement or amalgamation with court approval arises



when an arrangement or amalgamation is proposed and the company, a creditor, a member or the liquidator itself applies to court to order a meeting of its members and creditors in order for them to vote on the proposal.

#### **At what point does the scheme of arrangement commence?**

Without court approval, it commences when the special resolution is passed. With court approval, it commences when the court makes an order confirming the arrangement or amalgamation. This order is binding on the company, its members and creditors.

#### **Duration of a scheme of arrangement**

A specific timeline has not been prescribed for either process. The court process may take about six weeks, depending on whether or not an interested party steps in to oppose the application. However, the pre and post —court procedures do not have any recommended timelines.

#### **Extent of court involvement in the process**

The court may make an order confirming an arrangement or amalgamation. In the order, the court may also make provision for all or any of the following matters:

- The transfer to the transferee company of the whole or a part of the undertaking, assets and liabilities of the transferor company;
- The allotting or appropriation by the transferee company of the shares, debentures or other like interests in that company which, under the arrangement or amalgamation, are to be allotted or appropriated by that company to or for a person;
- The continuation by or against the transferee company of legal proceedings pending by or against a transferor company;
- The dissolution, without winding up, of the transferor company;
- That provision be made for persons who, within the time and in the manner that the court directs, dissent from the arrangement or amalgamation; and
- The incidental, consequential and supplemental matters that are necessary to ensure that the arrangement or amalgamation is fully and effectively carried out.

#### **Management of the company**

There is no provision that regulates the manner in which a company is managed during an arrangement. This should be provided for in the scheme of arrangement.

#### **Filing of claims**

Again, the law does not provide a mechanism for the filing of claims of creditors. This should be provided for in and regulated by the scheme of arrangement.

#### **Factors which influence the period of arrangement**

The period of arrangement may be affected by either of the following things:

- Where a dissenting shareholder applies to court for redress;
- Where a dissenting shareholder gives a written notice of his dissent to the liquidator, within 28 days after the resolution is passed- the liquidator will abstain from carrying the resolution into effect or purchase the member's shares at an agreed price or at a price agreed upon during arbitration.

#### **Funding of the company**

There is no specific provision in the law which regulates how a company is to be funded whilst in arrangement. This should be provided for in and regulated by the scheme of arrangement.

#### **Effect of a scheme of arrangement on employees**

If the arrangement/amalgamation results in loss of employment or the workers suffer a diminution in the terms and conditions of employment, the workers are entitled to be paid a redundancy pay.

#### **Effect of a scheme of arrangement on contracts**

This should be provided for in the scheme. In an arrangement or amalgamation where the assets and liabilities of the company are transferred to another company, the transferee company would inherit the contracts.

#### **Effect of a scheme of arrangement on shareholders**

In an amalgamation, the shareholders may lose their shares in the company and gain shares, debentures of other like interests or cash in the transferee company.

#### **Effect of a scheme of arrangement on creditors**

Generally, the scheme of arrangement will provide for how creditors should be treated. Further, under an arrangement or amalgamation with court approval where the whole or part of the company's assets are to be transferred to another company, the liabilities of the company, including its debts will be transferred to the transferee company.

#### **Pending claims, litigation and arbitration**

Pending claims, litigation and/or arbitration will be provided for in the scheme of arrangement. But in the case of a transfer of assets from the distressed company to another, the liabilities of the company, including litigation, will be transferred to the transferee company.

#### **Effect of the moratorium**

No such moratorium arises by operation of the law and is not regulated or provided for in a scheme of arrangement.

#### **Voidable transactions**

Transactions concluded prior to the commencement of an arrangement are not susceptible to being set aside.

#### **The scheme of arrangement plan**

A scheme of arrangement would include a plan on how the claims of creditors will be settled, how the company will continue in existence on its own or as a consequence of an amalgamation or transfer of its assets and any other related matters.

#### **Voting on the scheme of arrangement**

In an arrangement or amalgamation without court approval, the vote of not less than three-fourths (75%) of the members of the company is required to pass the special resolution required.



In an arrangement or amalgamation with court approval, the votes of 75% of each class of members and 75% of each class of creditors is required to approve the arrangement or amalgamation.

#### **Cram down on creditors**

No such cram down arises by operation of the law and is not regulated or provided for in a scheme of arrangement.

#### **Implementation of the plan**

Once a scheme of arrangement has been proposed and the requisite approvals of creditors, members and/or the court have been obtained, the plan is implemented by the company in accordance with the implementation provisions in the scheme of arrangement.

#### **Discharge of claims**

The discharge of claims is not provided for or regulated by law but instead should be provided for in the scheme of arrangement.

#### **Effect on suretyships**

This should be provided for in the scheme of arrangement, but where the assets and liabilities of the company are transferred to another company, the transferee company would inherit the suretyships.

#### **How is the process terminated?**

The manner in which the arrangement process is terminated should be provided for in the scheme.

#### **What is the status of a scheme of arrangement?**

This will depend on the type of arrangement or amalgamation that is undertaken. The company may end up liquidated with its assets sold to another body corporate or the shareholding of the company may change hands if its shares are bought by a transferee company.

#### **Director and officer liability**

For either of the following things that occur during an arrangement, a director or officer may be liable:

- Where a director of the company and of a trustee for debenture holders of the company does not notify the company of his or her material interests and the effect of such interest on the arrangement or amalgamation;
- Where the company or its officer (including a liquidator or trustee of a deed) does not send the statement explaining the effect of the arrangement/amalgamation to its members or creditors or include in the statement, a notification of the place and manner in which the members or creditors may obtain copies of the statement;
- Where the court makes an order to facilitate the arrangement or amalgamation, and the company does not deliver an office copy to the registrar within 28 days after the order was made; and
- Where the court makes an order confirming the arrangement/amalgamation and the company does not annex a copy of the order to every copy of the company's regulations issued by the company after the order has been made.
- Where the company is put into voluntary liquidation, a liquidator may exercise his powers of summoning before the court, an officer of the company who is known or suspected

of possessing company property, indebted to the company or considered capable of giving information about the affairs of the company.

For either of the following acts or omissions that occur before an arrangement, directors may also incur contractual liability:

- Where the company continues to trade/conduct business when the directors have realised that the company will be unable to pay its debts as they fall due;
- Where a director gives a personal guarantee to a contract entered into by the company;
- Where the company transacts business, exercises a borrowing power or incurs indebtedness, except that which is incidental to its incorporation or to obtaining subscriptions to or payments for its shares, before it has met the minimum capital requirements; and/or
- Where the company does not pay a judgment debt obtained by the creditor against the company.

#### **Civil consequences**

Depending on the aforesaid act or omission, a director or officer could be personally liable for part of or the whole of the debts or liabilities of the company, or to a fine not exceeding GHC12 000 or to both a fine and imprisonment.

#### **Criminal consequences**

Depending on the aforesaid act or omission, a director or officer may be liable to a term of imprisonment not exceeding 5 years or to both imprisonment and a fine.

### **SECURITY**

#### **Types of security**

Security may be a fixed or floating charge, mortgage, pledge of title documents, outright conveyance, trust for sale on condition, lease, hire-purchase, conditional sale or sale with a right of repurchase or a lien.

#### **Taking of security**

Generally, a charge can be created on any asset of the borrower. Security may be taken against the movable property, immovable property or the intangibles of the chargor. Thus shares, accounts, intellectual property rights, land, receipts, receivables, goods and book debts may all be the subject matter of a security.

#### **Security trustees or special purpose vehicles**

Security trustees are usually employed in multiple lender situations such as syndicated loans. The appointment of a security trustee is a contractual matter between the parties to the agreement. Special purpose vehicles are recognized and utilised under Ghanaian law.

#### **Most robust form of security available to lenders**

The most robust form of security available to a lender is a fixed charge on a property. A fixed charge has priority over a floating charge affecting the same property unless the terms on which the floating charge was granted prohibiting the company from



granting a later charge having priority over the floating charge and the person in whose favour that later charge was granted to that person.

### Registration of security

A borrower must register a certified copy of a charge or collateral created by the borrower in favour of a lender with the Collateral Registry of the Bank of Ghana within 28 days after the charge is created. The registrar then issues a certificate which is evidence, in the absence of a copy of the document on the charge, that security is registered over such property.

- Registrar - General's Department - in addition to the Collateral Registry, the particulars and original or certified copies of a security instrument created by a company should also be registered with the Registrar of Companies within 28 days after creation, otherwise, the charge is void. This does not apply to a pledge of, or possessory lien on, goods, or to any charge, by way of pledge, deposit, letter of hypothecation or trust receipt, of bills of lading, dock warrants or any other documents of title to goods, or of bills of exchange, promissory notes or any other negotiable securities for money.
- Land Registry - where the charge is in respect of land, the borrower should also register the instrument at the Land Registry. Any instrument other than a will and a judge's certificate has no effect unless it is registered.
- Land Title Registration - a mortgage does not have an effect unless it is registered in accordance with the Land Title Registration Act. When a mortgage is registered as an interest in land, the mortgage instrument must be filed with the registry.

### Stamp duty

The Stamp Duty Act requires all agreements to be stamped within 2 months of being executed, either as chargeable or as exempt from stamp duty. An unstamped agreement is not available for any purpose including admissibility in civil proceedings in a Ghanaian court unless the unpaid duty and any penalty for late stamping is paid. The stamp duty should be paid by the person granting the charge and is payable to the Land Valuation Board of the Lands Commission. Calculation of duty is ad valorem. Duty of 0.5% and 0.25% is paid on principal and ancillary security respectively. The Stamp Duty Act provides guidelines on the calculation of stamp duty on property. The Lands Commission may vary the assessment if it considers that the property has been undervalued in the deed. In such an instance, the Commission may visit the land, re-value it and/or reassess the stamp duty that should be paid.

### Registration costs

- Registration at the Collateral Registry costs GHC10.00 and is processed online. The costs are payable online at the time of registration and should be done by the borrower. The Registry sends a confirmatory email to acknowledge payment.
- Registration at the Registrar-General's Department costs GHC 60.00. Payment is done physically at a payment point on the premises and a receipt is issued. Registration is done by the company which creates the charge.
- Registration at the Land Registry costs GHC 70.00. Payment is done at a payment point on the premises by the person creating the charge and a receipt is issued.

- Registration of mortgages at the Lands Commission costs GHC70.00 and should be done by the borrower. Payment is done physically at a payment point on the premises.

### Requirements for the assignment or transfer of security

Security can be transferred and/or assigned by virtue of an agreement to that effect. The assignment or transfer agreement should be stamped and registered in the relevant public office, depending on the nature of the security.

### Instances in which securities might be vulnerable to attack

- Where the security interest has not been stamped or registered. Stamped and registered interests are more robust.
- Where a third party has an interest in the secured property, he can initiate an interpleader action in court to prevent the security from being realised.

### Methods of enforcement of security

Where a borrower fails to pay an amount secured by a charge, the lender may:

- Sue the borrower on any covenant to perform under the credit agreement; or
- Realise the security in the property charged on notice to the person in possession of the property.

The Borrowers and Lender's Act requires the creditor to first give the borrower written notice requesting the borrower to pay the amount due within 30 days. If the borrower fails to pay or make satisfactory arrangements to pay the amount outstanding to the creditor within 30 days after receiving the notice, the creditor may sue the borrower on any covenant to perform under the credit agreement, or realise the security in the property charged on notice to any person in possession of the property. The security can be realised by making application to court to request a judicial sale of the property or taking possession of the assets over which one has security.

In the exercise of a right of possession to property that is subject to a charge to secure a borrower's obligations under a credit agreement, a lender is not obliged to initiate proceedings in court to enforce the right of possession and if it is unable to enforce the right in a peaceful manner, it may use the services of the police to evict the borrower or other person in possession of the secured property, pursuant to a warrant issued by a court.

### Problems experienced when enforcing security

The following problems may be experienced when one attempts to enforce one's security:

- Interpleader - where the lender initiates action in court to enforce the security, a third party claiming an interest in the property may initiate interpleader proceedings in court in order to be joined as a defendant or substituted for the defendant in the action;
- Where the property is already subject to other encumbrances with priority of time;



- Where the proceeds from the judicial sale of the property are exhausted before they can satisfy all of the encumbrancers;
- Where the property has already been disposed of or is otherwise unavailable; and
- Delays in the court process.

### Financial assistance requirements

The Companies Act prohibits a company from providing financial assistance, directly or indirectly, for the purchase of its shares or the shares of its holding company. However, a company may voluntarily acquire its own shares on its conversion to a company limited by guarantee<sup>1</sup>. Also, the prohibition against financial assistance does not prevent:

- The payment of commission or brokerage to a person in consideration of that person subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares in the company where the payment of commission or brokerage is authorised by the company's Regulations and does not exceed 10% of the price at which the shares are issued or a lesser rate as may be specified in the Regulations; or
- Where the lending of money is part of the ordinary business of the company, although the money may be used for the subscription or purchase of shares in the company or its holding company; or
- The provision by a company in accordance with a scheme for the time being in force, of money for the purchase of subscription of shares to be held for the benefit of the company's employees or employees of an associated company including a director holding a salaried employment in the company or an associated company; or
- The making by a company of loans to persons, other than directors, genuinely employed by the company or an associated company with a view to enabling those persons to purchase or subscribe for shares to be held by themselves beneficially and not as nominees for the company or any other person; or
- The payment by a company of a lawful dividend on its shares although the dividend received by a shareholder is used to discharge a liability on that shareholder's shares or to repay money borrowed for the purpose of subscribing or purchasing shares; or
- In the case of a public company some or all of whose equity shares are dealt in on an approved stock exchange or in respect of which an application has been made to an approved stock exchange for permission to deal in those shares, the payment of commissions, fees, costs and expenses and the giving of indemnities and warranties in each case to a person arranging or otherwise involved in an underwriting, placing or sale of securities in the company or any other similar transaction, provided that
  - An application for permission to deal in those securities has been or is to be made to an approved stock exchange, and
  - The financial assistance given is in good faith in the interests of the company.

Under the Companies Act, unless a company's regulations otherwise provide, the directors of a company need an ordinary resolution of the company to exercise the company's power to borrow money or to charge any of its assets, where the amounts to be borrowed or secured, together with the amount remaining undischarged of moneys already borrowed or secured (apart from temporary loans obtained from the company's bankers in the ordinary course of business), will exceed the stated capital of the company. Therefore, where the amounts will not exceed the stated capital, just a board resolution would suffice. However, for the sake of prudence, shareholders' approval is sought even when it is not essential.

## RECOGNITION OF FOREIGN JUDGMENTS

### Instances in which your court will recognize a foreign judgment

The courts in Ghana will recognise a foreign judgment when a judgment is final and conclusive and obtained in the superior courts of the countries listed under the Foreign Judgments and Maintenance Orders (Reciprocal Enforcement Instrument) 1993 (LI 1575) and once the judgment has been registered in the High Court of Ghana.

### Requirements for recognition of a foreign judgment

- The judgment should be final and conclusive.
- A foreign judgment may be final and conclusive although an appeal may be pending against it or it may be subject to appeal in the country of the original court.
- It should have been obtained in a superior court of the foreign country.
- The foreign country should be listed in the Foreign Judgments and Maintenance Orders (Reciprocal Enforcement Instrument) 1993 (LI 1575). The applicable countries for which a Ghanaian court will recognize a judgment are Brazil, France, Israel, Italy, Japan, Lebanon, Senegal, Spain, United Arab Emirates and the United Kingdom. This is on the basis of reciprocity.
- The judgment should be registered in the High Court of Ghana by the judgment creditor.
- The application for registration of the foreign judgment should be made within six years after the date of the judgment or where there has been an appeal, after the last judgment given in those proceedings.

### Requirements for the recognition of a foreign trustee, business rescue practitioner or insolvency practitioner

The law does not have specific requirements for the recognition of a foreign trustee, business rescue practitioner or insolvency practitioner.



<sup>1</sup>Companies Act, 1963 (Act 179), section 56(3).