DIRECTORS' DUTIES AND INSOLVENT TRADING UNDER GHANA'S ACT 1015: A CRITICAL APPRAISAL

Martin Waana-Ang

LLM Candidate, Yale Law School, New Haven, CT, USA; Barrister & Solicitor, Ghana; LL.B, Kwame Nkrumah University of Science and Technology; Teaching Assistant—University of Ghana School of Law & Ashesi University

Correspondence
Email:
waanaangmartin@gmail.com

Abstract

This paper critically examines the statutory obligations of company directors under Ghana's Corporate Insolvency and Restructuring Act, 2020 (Act 1015), with a focus on the offence of insolvent trading. Section 119 of the Act imposes personal liability and criminal sanctions on directors who continue to incur debts when they knew or ought to have known the company was insolvent. Drawing on comparative insights from the UK and Australia, the study analyses whether the Ghanaian provisions strike an appropriate balance between protecting creditors and encouraging entrepreneurial risk-taking. It further interrogates the absence of a formal "safe harbour" defence and the practical enforceability of the duties in Ghana's commercial and legal context. The paper concludes with recommendations for refining the law to better support corporate rescue while holding directors accountable.

1. INTRODUCTION

Corporate insolvency law serves a critical function in regulating the affairs of companies facing financial distress. Traditionally, insolvency regimes primarily focused on the liquidation of failed entities, aiming for an orderly winding-up and distribution of remaining assets.[1] However, there has been a global shift towards incorporating mechanisms that facilitate the rescue and restructuring of viable but distressed businesses. Ghana's Bodies Corporate (Official Liquidations) Act, 1963 (Act 180), initially followed this traditional approach.[2] According to Adarkwah, citing Date-Bah, the remedy by the law was too drastic and required significant reforms.[3] He argued further that this may have accounted for the rise in bursting of companies in Ghana between 2000 and 2010.[4]

Ghana's Corporate Insolvency and Restructuring Act, 2020 (Act 1015), therefore, represents a modern approach, moving from an older liquidation-only framework to a regime that includes administration and restructuring alongside official liquidation.[5] This shift necessitates a closer examination of the responsibilities placed upon those who govern companies, particularly when insolvency becomes a real prospect.

The role of directors is paramount in navigating a company through financial difficulties. While directors traditionally owe duties primarily to the company and its shareholders, the approach of insolvency brings the interests of creditors into sharper focus.[6] Act 1015 specifically addresses this by imposing duties on directors related to insolvent trading. The criminalisation of "insolvent trading" by directors under Act 1015 requires them to cease incurring debts if they had reasonable grounds to know that the company was insolvent.[7] The Act aims to balance the need to rescue viable businesses with the essential protection of creditors.

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[1] Comparative Insolvency Law, *'Corporate rescue – the new orientation of insolvency'* (2016)< https://doi.org/10.4337/9781781007389.00008>accessed 15 May 2025.

[2] The Bodies Corporate (Official Liquidations) Act, 1963 (Act 180), s 9.

[3] Samuel Boadi Adarkwah, *'The Development of Insolvency Law in Ghana'* (2016) 42 Commw L Bull 485.

[4] Ibid 516.

[5] Corporate Insolvency and Restructuring Act, 2020, Act 1015 (CIRA), ss 2-80

[6] *BTI 2014 LLC v. Sequana SA and others* [2022] UKSC 25.

[7] CIRA, s 119.

This paper explores the provisions of Ghana's Act 1015 concerning directors' duties, with a particular focus on the prohibition of insolvent trading under section 119. It seeks to understand the statutory obligations imposed on directors in the context of a company facing financial distress and evaluate the adequacy of the framework in balancing corporate rescue efforts with director accountability. The paper is organized in 7 parts. Part 1 is this introduction. Under part 2, I discuss the duties of directors, generally, when a company is a going concern. I discuss insolvent trading generally in part 3, while part 4 discusses the liability of directors for insolvent trading under Ghana's Act 1015. Part 5 considers comparative insights on insolvent trading and lessons that Ghana could draw from these normative frameworks, while part 6 discusses some recommendations for refining the provisions of insolvent trading under the Act 1015. Finally, I conclude the paper in part 7 by summarizing the central discussions and recommendations.

2. THE DUTIES OF DIRECTORS WHEN THE COMPANY IS A GOING CONCERN

Directors' duties are generally derived from common law, particularly principles of equity, imposing fundamental fiduciary obligations.[8] Under Ghanaian law, and as with many other jurisdictions, these duties have been given statutory backing.[9] The duties typically require directors to act in good faith in the interests of the company, diligently, and honestly.[10] Diligence encompasses duties of skill and care, judged by the skill consistent with a director's personal qualifications and abilities, as well as what would be expected of a reasonably diligent person.[11] Directors must also use company powers properly,[12] avoid conflicts of interest (requiring disclosure),[13] and not misapply any property or seek personal profits.[14]

Under Ghanaian law, directors' duties are owed to the company as a separate legal entity and not to the individual shareholders.[15] In other words, the directors must be faithful to the success of the company when

[8] *Bristol & Westminster Properties v. Mothew* [1996] EWCA Civ 533.
[9] The Companies Act 2019 (Act 992), s. 190-199.
[10] *Bristol & Westminster Properties v. Mothew* [1996] EWCA Civ 533; *Permanent Building Society v. Wheeler* (1994) 11 WAR. 187.
[11] Act 992, s 190(2).
[12] Ibid s 190(5), 191.
[13] Ibid 192-194; *Commodore v. Fruit Supply* [1977] GLR, 241, CA; *Aberdeen Railway v. Blaikie Bros*. (1854) 1 Paterson 394.
[14] Act 992, s 198.
[15] Ibid s 190(4).

acting. They are not bound to consider the individual interests of the shareholders when acting, considering the directors were engaged by the company. Equally, directors' duties are not owed to creditors or employees of the company. This view was expressed in *Percival v. Wright*,[16] and affirmed in the case of *Adams v. Tandoh.*[17] The only exception, however, to this rule is that if the directors are selling shares for a shareholder or shareholders, then they must consider the interest of the shareholder(s).[18] While section 190(4) of the Act requires the directors to take the views of shareholders, creditors, and employees into consideration in acting, that does not mean the directors must relegate the interest of the company to that of the interest of shareholders.

The U.K. Supreme Court has, in recent times, taken the view that while directors duties are generally owed to the company and not the members when the company remains a going concern, if the company is on the verge of insolvency, there will be a paradigm shift towards protecting the interests of creditors. This view was expressed in *BTI 2014 LLC v. Sequana SA and others*,[19] where the Court opined that when the company is 'bordering on insolvency,' or if insolvent liquidation or administration is probable (not merely if there is a risk of insolvency at some point in the future), the directors would be bound to consider the interest of creditors in taking any decision.[20]

Essentially, it means that creditors interest becomes paramount when the company is insolvent or about to be insolvent. This explains why directors must avoid reckless trading or any act or omission that would jeopardize creditors interest. The question however is the extent to which directors must refrain from trading especially considering that they also have a duty to take steps to rescue the company and ensure it remains a going concern. The next section would consider this question in detail.

[16] 2 Ch. 421.
[17] [1984-86] 2 GLR 561-606.
[18] *PS Investment Limited v. CEREDEC* [2012] DLSC11112.
[19] [2022] UKSC 25.
[20] Ibid.

3. OVERVIEW OF INSOLVENT TRADING AND RATIONALE (PROTECTION OF CREDITORS VS. ENCOURAGING RISK-TAKING)

Insolvent trading, sometimes referred to generically by that term or as 'illicit trading' along with wrongful trading, involves a director allowing a company to incur a debt when the company is insolvent or becomes insolvent by incurring that debt. To constitute insolvent trading, there are reasonable grounds for suspecting that the transaction or trade took place when the company was at the point of collapse.[21] It differs from fraudulent trading primarily in that it does not require proof of fraudulent conduct or dishonesty on the part of the director for her to be liable.[22] Stacey Steel & others posit that focus of insolvent trading provisions is on the timing of incurring a debt when the company is insolvent and the prospects of repayment.[23] This may take any of the following forms:

(a) Payment of dividends

(b) Reduction in the company's stated capital

(c) Redemption of redeemable preference shares

(d) Financially assisting a person to acquire the shares of the company.

(e) Executing uncommercial transactions or any other transaction that may likely become a debt to the company.[24]

Historically, the approach of the legislature to commercial practice at the time of ***Salomon v. Salomon & Co. Ltd.***[25] was generally 'creditor beware.' However, there has been a gradual movement towards increased creditor protection, starting with recommendations for legal changes even in reports that favored the 'creditor beware' approach.[26] This shift has been justified by proponents as necessary because, without such a prohibition, creditors might be unable to protect themselves against a director who incurs debts

[21] Andrew Keay & Michael Murray, 'Making company directors liable: A comparative analysis of wrongfultrading in the United Kingdom and insolvent trading in Australia' (2005) 14 Int'l Insolvency Rev 27.

[22] Stacey Steele, Ian Ramsay & Miranda Webster, 'Insolvency Law Reform in Australia and Singapore: Directors' Liability for Insolvent Trading and Wrongful Trading' (2019) 28 Int'l Insolvency Rev 363 .

[23] Ibid 364.

[24] Australia Corporations Act, 2001.

[25] [1897] AC 22.

[26] David Morrison, 'The Australian insolvent trading prohibition: why does it exist' (2002) 11 Int'l Insolvency Rev 153.

without the means to repay them, allowing the company to 'stagger on' while knowing it cannot pay its debts.[27]

The key rationale for insolvent trading laws includes, first, the desire to protect creditors, particularly unsecured creditors, who often receive little to nothing in liquidation after secured and preferential claims are settled. They are seen as necessary to protect creditors against the abuse of the privilege of limited liability.[28]

Second, insolvent trading provisions encourage directors to diligently monitor and manage the company's affairs, deterring them from trading on regardless of the consequences when the company is in financial difficulty. The threat of personal liability compels directors to be attentive to the company's financial performance and potential future risks.[29]

Third, it is to encourage directors to take action as early as possible when facing financial difficulties, potentially by pursuing corporate rescue procedures.[30]

In Australia, for instance, section 588G of the Corporations Act prohibits insolvent trading while the company is at the point of liquidation. The Act applies if a person is a director of a company when it incurs a debt, and the company is insolvent at that time or becomes so by incurring that debt. It also requires that at that time, there are reasonable grounds for suspecting that the company is insolvent or would become so.[31]

The U.K.'s Insolvency Act of 1986 is not different. The Act prohibits directors from trading at a time when the directors knew or ought to have known that the company would be unable to pay its debt. Whereas insolvent trading is expressly referred to in the Australian Act, the UK Insolvency Act makes reference to wrongful trading under section 214.[32] The Australian provisions actually use the term 'insolvent trading' and define what it amounts to, whereas the UK provision does not explicitly explain what constitutes wrongful trading.

[27] Ibid.

[28] J. S. A. Fourie, 'Limited Liability and Insolvent Trading' (1994) 5 Stellenbosch L Rev 148.

[29] David Morrison, 'An Historical and Economic Overview of the Insolvent Trading Provision in the Corporations Law' (2002) 7 Int'l Trade & Bus L Ann 91.

[30] Ibid.

[31] Australia Corporations Act, 2001, no. 50.

[32] Insolvency Act, 1986, s 214.

The UK wrongful trading provision allows the court to declare a director liable to contribute to the company's assets if, at some time before winding up, they knew or ought to have concluded that there was no reasonable prospect of the company avoiding insolvent liquidation, but they failed to take every step to minimize potential loss to creditors. [33]

A key difficulty with the effective operation of insolvent trading prohibitions, according to Morrison, is the challenge for directors, seeking to comply with the law, to have access to clear and meaningful boundaries for the terms 'solvent' and 'insolvent.'[34] If directors were to cease trading during times of financial uncertainty, it would lead to many unnecessary business closures. This difficulty in determining the precise time of an insolvency event makes legislating for insolvent trading very difficult. The indeterminate nature of the definition of insolvency results in the failure of the legislature to clearly provide a legal remedy for individual creditors within the complexity of business enterprise. Morrison posits that a key fact to enable directors make decisive decision is when there is a clear distinction between 'solvent and insolvent'.[35] Thus, while aiming to protect creditors by encouraging early action, it is necessary that clear metrics are provided by the legislature in determining solvency and the availability of procedures that might allow directors to avoid liability.

This is necessary to avoid tension between encouraging entrepreneurial risk-taking and the need to avoid liability on the part of the directors. There are concerns that laws on insolvent trading, especially those with a lower threshold for liability or a lack of clear safe harbours, could make directors overly cautious and potentially lead to premature liquidation of companies that might otherwise have been saved.

[33] Ibid.

[34] Morrison (n 26) 157.

[35] Ibid 157.

4. LIABILITY FOR INSOLVENT TRADING UNDER THE CORPORATE INSOLVENCY & RESTRUCTURING ACT, 2020 (ACT 1015)

The primary legislation governing insolvency in Ghana is the Corporate Insolvency and Restructuring Act, 2020, (Act 1015) and the Companies Act, 2019, (Act 992).[36] Act 1015 provides for the administration and official winding-up of insolvent companies and other bodies corporate. While directors have general duties under the Companies Act, 2019 (Act 992), Act 1015 introduces specific responsibilities in the context of insolvency and restructuring. Act 1015 addresses the conduct of persons in relation to the company, including directors, particularly when the company is in distress or undergoing insolvency proceedings. Crucial among these duties is the duty related to insolvent trading.[37]

Section 119 of Act 1015 imposes a duty on directors to prevent insolvent trading. This section states that a director who causes a company to engage in any form of business or trade or incur a debt or liability contravenes this duty if that director has reasonable grounds to believe that the company is insolvent or ought to have known at the time of causing the company to engage in the business or trade or incur the debt or liability that the company was insolvent or would become insolvent as a result of incurring that debt commits an offense.

This provision is designed to protect the interests of creditors and maintain financial discipline within companies by ensuring that directors exercise proper caution before allowing the company to incur additional liabilities. This ensures that any decision leading to insolvent trading is both deliberate and well-founded. Failure by directors to fulfill this duty directly impacts the company's financial health and can lead to significant legal liabilities, thereby reinforcing the broader policy of promoting responsible corporate governance and minimizing the exposure of creditors and other stakeholders to undue risk.

The Act does not, however, define insolvent trading to provide the contours of transactions that may be subject to the prohibition. It appears that the Act imposes an objective test on the director. This is typically considered by investigating if the directors had reasonable grounds to believe that the transaction would bring a debt on the company for which the company would be unable to pay but decided to proceed with

[36] See generally, section 274-289.

[37] CIRA, ss 118 and 119.

transaction. This test is primarily due to the poignant role played by directors in managing the affairs of the company. They are, basically, the directing minds of the cocompany, and they are therefore in a privileged position to acacquaint themselves with the financial position of the company.[38] It must be noted that it is not the duty of persons dealing with the company to make that determination, considering that they may not have access to the relevant company information to make an assessment of the company's solvency position before proceeding with a particular transaction.[39] The only exception is when they were put on inquiry by virtue of prior knowledge that they had at the time of dealing with the company.[40]

This test appears to follow the standard in the UK's Insolvency Act on wrongful trading by requiring, at the time of the transaction, that there must have been 'no reasonable prospect' of avoiding insolvent liquidation based on what a reasonably diligent person would know or ascertain, combined with the director's actual knowledge and experience.

Accordingly, the core trigger is the director having reasonable grounds to believe the company is unable to pay its debts. This aligns with the notion that a director should be proactively monitoring the company's financial state. [41] Reasonableness under the common law has always been a question of fact, judged from the point of view of an objective third party. This view appears to contrast sharply with business judgment rule in corporate governance. This rule confers directors with the discretion to make decisions that they believe to be in the interest of the company. Where, however, the directors honestly believe that the act was in the best interest of the company and the act is permitted by the company's constitution, the directors are entitled to do that act, notwithstanding any resolution of the shareholders opposing the doing of the act.[42] The rule acknowledges that the daily operation of a business requires making complex and controversial decisions that have the propensity to put the company at huge risks but highly guarantee huge profits to the company. The business judgment rule serves as a protection for the business decisions of corporate directing minds who are sued by members of the companies they manage on the basis that they have

[38] Act 992, s 144-148; *Lenard's Carriage v. Asiatic Petroleum Co. Ltd* [1915] AC 705.

[39] Act 992, s 150.

[40] Ibid.

[41] Stefan HC Lo, 'Proposals for Insolvent Trading Laws in Hong Kong: A Comparative Analysis' (2020) 7 J Int'l & Comp L 229

[42] *Lee v. Chou Wen Hsien* [1984] 1.

breached their duties and fiduciary obligations owed to the companies as directors.[43] The rule ensures that if the actions of the directors in question are supported by an appropriate degree of due diligence, are in good faith, and do not create a conflict of interest, such directors should not be held responsible. After all, running a business is a risk and therefore, it is always uncertain whether a particular transaction would result in a loss.

Therefore, it is submitted that the Act should provide clearly defined metrics as to what constitutes unreasonableness. While it may be argued that the reasonableness test allows for adaption to different scenarios, it has the potential to generate inconsistent decisions, while also given unfettered judicial discretion to the judiciary – who have no technical expertise in business management – to impose abstract standards on businessmen. The inevitable result would be stifling innovation.

Under Act 105, a director who causes a company to trade or incur debt under the conditions described in section 119 commits an offence and upon conviction, is liable to pay a fine or serve a term of imprisonment, as the case may be. While the primary emphasis for section 119 is criminal sanctions for the guilty director, section 116 allows court inquiry into conduct, and section 117 allows orders against fraudulent or delinquent persons, which can include directors who caused trading knowing the company was insolvent. These orders can compel persons to repay, restore, or account for company money or property. Beyond that, directors could be disqualified from being appointed as directors in line with section 177 of the Companies Act, 2019 (Act 992).[44] Furthermore, the liquidator has the power to reverse transactions that were fraudulently entered if such a course is necessary for a successful winding-up of the company.

5. COMPARATIVE ANALYSIS

Examining how other common law jurisdictions address similar issues provides valuable context for Ghana's Act 1015.

[43] Reginald Nii Odoi, 'Shielding Directing Minds of Companies against Liability: The Business Judgment Rule and the Duty of Care in Ghana' (May 10, 2024)<https://ssrn.com/abstract=4824179>accessed 12 May 2025.

[44] *Derick Adu-Gyamfi v. Attorney General* [2023] DLSC16991.

a. **United Kingdom: Wrongful trading under the Insolvency Act 1986, Section 214**

Unlike Ghana's focus on incurring a debt while insolvent, the UK provision applies when a director knew or ought to have concluded, at some time before winding up, that there was no reasonable prospect that the company would avoid going into insolvent liquidation.[45] If this condition is met, the director may be held liable to contribute to the company's assets unless they can satisfy the court that they took every step with a view to minimizing the potential loss to creditors. The test for knowledge is based on a dual objective/subjective standard.[46] The onus shifts to the directors to prove they took the necessary steps. This in effect means that the onus of proof is on the directors to establish the reasonableness of their behavior. Wrongful trading is primarily a civil liability, with a compensatory aim.[47] The UK approach potentially allows directors some latitude to continue trading while insolvent if they believe there's a prospect of avoiding liquidation or if continuing minimizes creditor losses, provided they take appropriate steps.[48] This position seems to align with Ghana's provision which prohibits any form of trading at a time when the company was insolvent or likely to be insolvent. Andrew and others, commenting on the UK provision posits that it imposes a positive duty on directors to take active role in the affairs of the company and to monitor its financial statements.[49]

b. **Australia: Insolvent trading under the Corporations Act 2001**

Australia's regime, particularly section 588G of the Corporations Act 2001, imposes a positive duty on directors to prevent their company from incurring debts while the company is insolvent. Liability arises if a director is involved when the company incurs a debt, the company is insolvent or becomes so by incurring the debt, and there are reasonable grounds for suspecting (or the director ought reasonably to have been

[45] Paul R. Ellington & Ian M Fletcher, 'I. Responsibility and Liabilities of Directors and Officers of Insolvent Corporations in the UK' (1988) 16 Int'l Bus Law 491.
[46] Ibid.
[47] Ibid.
[48] Andrew Keay & Michael Murray, 'Making company directors liable: A comparative analysis of wrongful trading in the United Kingdom and insolvent trading in Australia' (2005) 14 Int'l Insolvency Rev 27.
[49] Ibid 34.

aware) of the insolvency. This approach directly targets the act of incurring a debt when the company is insolvent.[50]

Australia has both civil and criminal sanctions for insolvent trading. Civil penalties can be substantial, and civil compensation can be ordered.[51] The liquidator has the primary right to pursue claims for the benefit of unsecured creditors, although creditors can pursue claims with leave of the Court. Australian law also addresses holding company liability for the insolvent trading of subsidiaries.[52] Notably, Australia introduced a safe harbour in 2017, allowing directors relief from liability for debts incurred while insolvent if incurred in connection with a course of action reasonably likely to lead to a better outcome for the company than immediate liquidation.[53] Compensation ordered in Australia is linked to the loss suffered by the creditor.[54]

c. **Lessons and possible adaptations for Ghana**

First, while under section 119, the director's duty only arises when the they have grounds to believe that the company is insolvent or likely to be insolvent, the U.K's position seem a bit narrow in the sense that the actual duty on the directors come into play if it is believed that the company would go into liquidation at all costs. Under this framework, it follows that directors can continue to trade even if the company is insolvent, provided they reasonably believe on objective grounds that despite the insolvency, the company would not go into liquidation or that the said transaction may take them out of insolvency. Ghana's position seems to stifle innovation and may potentially be a fetter on the business judgment rule. In other words, due to the fear of being sanctioned for trades that go sour, directors may exercise extreme caution in dealing with the company, and therefore abandonding their primary duty of acting in the best interest of the company.

Second, Ghana's criminal focus on section 119 contrasts with the civil focus in UK wrongful trading and the separated civil/criminal sanctions in Australia. The criminal threat might deter bona fide rescue attempts by directors who fear incurring debts even with a view to saving the business. Furthermore, while it is believed the threat of punishment may deter directors from reckless conduct, it does not directly confer creditors

[50] Ibid. 34.
[51] Justin Dabner, 'Trading Whilst Insolvent - A Case for Individual Creditor Rights against Directors' (1994) 17 UNSWLJ 546
[52] Andrew (n 48) 33.
[53] Ibid 33.
[54] Ibid 33.

with the standing to sue directors for compensation or damages arising out of director's conduct. Since creditors interest becomes paramount during insolvency, directors owe them a duty of care to act with reasonable diligence. Therefore, if this duty is breached which results in losses to creditors, then it should be possible for creditors to claim monetary compensation personally from the directors whose conduct occasioned the loss. It is therefore submitted that criminal sanctions alone may not effectively address the interest of creditors.

The Australian approach of linking civil compensation to creditor loss provides a different model for remedy compared to that of Ghana's focus on only criminal sanctions. Ghana's section 119, while well intentioned, was poorly drafted in overly vague and terse terms and does not seem to advance the policy objectives behind the provision. The Act failed to identify the relevant times of insolvency or the point of no return relegating that to broad speculation. It also fails to provide relevant metrics for measuring which conducts of directors are acceptable, and which others are not. Secondly, the exclusion of monetary compensation to creditors while focusing solely on criminal sanctions does not effectively address the fact that the whole purpose of the provision is to protect creditors interest. This is because, fining or imprisoning a director would not address the fact that the creditor has lost huge investments in the company which may not be irrecoverable.

Recommendations for Improvement

Firstly, it is recommended that there should be an introduction of a statutory safe harbour provision to protect directors who incur debts while the company is insolvent but are pursuing a course of action reasonably likely to result in a better outcome for creditors than immediate liquidation. This could be modelled on aspects of the Australian, potentially including seeking qualified professional advice as a key element. This would encourage bona fide restructuring attempts.

It is also suggested that the law should provide further legislative guidance or foster judicial interpretation to clarify the 'reasonable grounds to believe' standard under section 119, perhaps explicitly adopting the 'knew or ought to have known' language and clarifying the objective/subjective elements, drawing lessons from comparative approaches regarding the threshold. Furthermore the law should provide clear scenarios that fall within the purview of insolvent trading under the law to guide director's decision making.

It is also recommended that there should be an evaluation of the law to ascertain whether the primary criminalisation of section 119 is the most effective approach for all instances of contravention. While criminal sanctions are appropriate for deliberate or dishonest conduct, a greater emphasis on civil compensation – perhaps directly linked to creditor loss, similar to Australia – alongside regulatory penalties might provide a more flexible and commercially sensitive enforcement mechanism that better serves the compensatory aim for creditors.

6. CONCLUSION

Ghana's Corporate Insolvency and Restructuring Act, 2020 (Act 1015) represents a significant modernization of the country's insolvency framework, moving towards a system that facilitates rescue and restructuring. A cornerstone of this reform is the imposition of a specific statutory duty on directors to prevent insolvent trading under section 119. This duty requires directors to refrain from causing the company to trade or incur debts if they have reasonable grounds to believe it cannot pay its debts.

While the imposition of this positive duty is a critical step towards enhancing director accountability and protecting creditors from the abuse of limited liability, the framework under Act 1015, particularly concerning section 119, presents potential challenges. The strong emphasis on criminal sanctions for contravention and the apparent lack of a structured safe harbour for directors undertaking bona fide rescue attempts raise questions about the balance between encouraging corporate rescue and deterring irresponsible conduct.

Drawing on experiences from UK and Australia, Ghana could consider clarifying the standard of knowledge required under section 119, introducing a statutory safe harbour to protect legitimate rescue efforts, and potentially recalibrating the balance between criminal and civil consequences to ensure the regime is both effective in protecting creditors and conducive to a healthy entrepreneurial environment that encourages the rescue of viable businesses.