DISTRESSED MERGERS AND ACQUISITIONS (M&A): LEVERAGING M&A AS A STRATEGIC MECHANISM FOR BUSINESS RESCUE

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Abstract

Distressed mergers and acquisitions (M&A) are a critical but underutilized approach for business rescue, particularly in developing markets such as Ghana. While distressed companies traditionally rely on debt rescheduling, refinancing, or equity injection to restore viability, M&A offers an equally reasonable pathway, one that preserves enterprise value, provides enhanced capacity, and facilitates transmission of skills and technology. Globally, distressed M&A has demonstrated its capacity to revive companies on the brink of collapse, reflecting its potential to blend capital support, operational expertise, and governance renewal. Though Ghana has recorded notable M&A activity in regulated sectors, distress transactions remain nascent, constrained by cultural aversion to relinquishing ownership and governance gaps. Nonetheless, emerging domestic cases illustrate growing recognition of M&A as a viable turnaround mechanism.

This article examines the full architecture of distressed M&A, detailing the legal frameworks that collectively shape deal execution. It further evaluates common transaction structures such as asset sales, share deals, and loan-to-own models alongside the distinctive valuation, financial, and risk dynamics inherent in distressed environments. Recognizing that successful outcomes hinge on coordinated engagement, the paper articulates the evolving roles of directors, insolvency practitioners, creditors, regulators, and operational teams throughout the transaction lifecycle.

By integrating global lessons, Ghana-specific insights, and practical restructuring considerations, the article positions distressed M&A as a strategic, value-accretive, and a creative mechanism capable of reshaping corporate rescue practices in Ghana and comparable emerging markets.

1. INTRODUCTION

Distressed businesses have several restructuring options, with the selected approach largely dependent on the nature of the distress and the alignment of stakeholder interests. Traditional restructuring strategies often involve debt restructuring, such as rescheduling repayments, negotiating waivers, debt refinancing, or securing new super-priority post-commencement financing. Equity restructuring, including fresh capital injections and debt-for-equity swaps, can also provide critical balance sheet relief, albeit at the risk of diluting existing ownership interests. Additionally, M&A offers a powerful alternative for distressed companies seeking business rescue.

Despite M&As being a powerful mechanism for business rescue, they are often overlooked due to several factors. Historically, Ghana's business landscape is shaped by a conservative, proprietorship-driven culture that resists relinquishing control. Additionally, widespread mistrust, weak corporate governance, and fragile post-merger management structures undermine confidence in such collaborative deals. Compounding this is the heavily bureaucratic nature of the regulatory landscape, particularly in more regulated sectors like mining and financial services, which creates procedural hurdles that discourage M&A discussions. For SMEs, the challenges are even more acute. Many SMEs operate with limited strategic foresight, viewing challenging times in business as usual. As a result, even when M&A presents viable opportunity for survival in difficult times, these businesses frequently lack the institutional capacity and readiness to navigate such transactions effectively. Further, while some company directors may appreciate the strategic logic of an M&A, secured lenders often exploit their rights under the company law to appoint receivers and quickly realize collateral, cutting short any contemplation of long-term restructuring options.

M&As can be a gamechanger in transforming the restructuring landscape if more restructurings are pursued through this approach. Unlike liquidation or court-mandated rescue proceedings, M&A transactions provide distressed companies with a viable pathway to preserve value, protect jobs, and maintain business continuity. In addition, acquirers often bring stronger balance sheets, robust governance frameworks, and technical expertise, which collectively stabilize distressed operations and restore stakeholder confidence.

2. CASE STUDIES OF DISTRESSED M&A – GLOBAL LESSONS

Over the past three decades, distressed M&A has gained prominence across the globe as an effective mechanism for distressed companies to regain stability and achieve growth. A notable example is Fiat's acquisition of a controlling stake in Chrysler in 2009, rescuing Chrysler from near-bankruptcy. Leveraging its manufacturing expertise and global supply chain, Fiat restructured operations, introduced new models, and ultimately merged the two firms into Fiat Chrysler Automobiles, transforming it into a profitable global automotive group.[1] Similarly, in 2010, Brookfield Asset Management acquired a bankrupt real estate investment trust, General Growth Properties (GGP), for $6.5 billion. Over time, Brookfield restructured GGP's operations and improved its financial performance, eventually merging GGP with another of its real estate portfolios to create one of the largest retail real estate platforms in the U.S.[2]

In 1997, Apple acquired NeXT for US$429 million. At the time, Apple was struggling with internal dysfunction, declining market share, and strategic incoherence. The acquisition of NeXT, a struggling software company founded by Steve Jobs after his ousting from Apple, was as much a technological acquisition as it was a leadership reset. The deal not only brought Jobs back to the helm but also introduced the NeXTSTEP operating system, which eventually formed the foundation for Mac iOS. This acquisition was instrumental in reviving Apple's innovation pipeline, leading to the launch of transformative products like the iPod, iPhone, and iPad.

Another case is Disney's acquisition of Marvel Entertainment in 2009 for US$4 billion. Marvel, despite its extensive reservoir of intellectual property and iconic characters, was navigating operational and financial challenges following a decade-long bankruptcy. This acquisition revitalized Marvel's brand, enabling the creation of the Marvel Cinematic Universe, and significantly increased Disney's revenue streams through blockbuster films, and merchandise offerings.

In 2013, Apollo Global Management, alongside Metropoulos & Co., acquired the assets of Hostess Brands following its 2012 bankruptcy. Hostess had struggled with labour disputes, rising costs, and declining sales, leading to its financial collapse. Apollo, alongside Metropoulos & Co., executed a turnaround strategy

[1] Matheau J. W. Stout, *'Distressed M&A: Acquiring Companies in Financial Trouble' (San Francisco Post)* (7 October 2024) Distressed M&A: Acquiring Companies in Financial Trouble accessed 13 May 2025.

[2] Ibid.

involving operational streamlining and brand revitalization, resulting in a return to profitability and a successful public listing with attractive returns to investors. [3]

More recently, in 2024, Saudi-based Mithaq Capital acquired a 54% stake in a distressed U.S. retailer, The Children's Place. The transaction was supported by a US$90 million term loan to restore liquidity.[4] That same year, Thames Water, the UK's largest water utility, averted administration amid a £20 billion debt crisis through a £3 billion creditor-led rescue package. It subsequently pursued equity investment, attracting interest from major investors, including Stonepeak, FitzWalter Capital, KKR, CKI, Covalis Capital, and Castle Water.[5]

Moreover, distressed M&A has helped preserve millions of jobs across industries and regions. The 2008 financial crisis marked one of the most significant distressed acquisitions when Nomura acquired Lehman Brothers' European and Asian divisions. This transaction saved over 2,500 jobs in London and helped stabilize financial markets during a period of extreme uncertainty.

In the UK hospitality sector, the Azzurri Group, owner of Zizzi and ASK Italian, was rescued in July 2020 through a pre-pack administration sale to TowerBrook Capital Partners, preserving around 5,000 jobs. Similarly, Casual Dining Group, operator of Bella Italia and Café Rouge, was acquired by Epiris from administration, saving approximately 4,000 jobs.[6]

The global healthcare industry has also witnessed critical distressed M&A interventions. In 2024, Germany's AbisDu Pflege GmbH was acquired post-insolvency by Ambiente Mobile Care GmbH. The transaction preserved 105 of 135 jobs and ensured the continuation of essential patient services.

[3] Ibid.

[4] Jeffrey Goldfarb, *'How one firm made child's play of tricky M&A games' (Reuters)* (25 April 2024) How one firm made child's play of tricky M&A games | Reuters accessed 13 May 2025.

[5] Helen Cahill, *'Thames Water: investors circle debt-laden utility' (The Times)* (19 March 2025) Thames Water: investors circle debt-laden utility accessed 13 May 2025.

[6] Brice Engel, Eugene Leone, David Pezza, Dr. Holger Wolf, *'Pandemic fuels real estate and hospitality turnaround M&A activity' (White & Case)* (1 June 2021) Pandemic fuels real estate and hospitality turnaround M&A activity | White & Cas... | M&A Explorer accessed 15 May 2025.

3. CASE STUDIES OF DISTRESSED M&A – GHANAIAN SCENARIOS

In Ghana, there has been a notable record of M&As predominantly in the banking and telecommunication sectors primarily driven by regulatory changes and a rising need for technological transfusion. The 2017 banking sector cleanup exercise led to several cases of mergers.

A typical case is the merger of UniBank Ghana Ltd, Royal Bank Ltd, Beige Bank Ltd, Sovereign Bank Ltd, and Construction Bank Ltd to form Consolidated Bank Ghana Ltd, improving operational and financial efficiency. Also, in the quest to enhance customer experience, provide advanced innovation and positive disruption, Telecel group acquired 70% of Vodafone's shares in February 2023. this paved way for improvement in technical capacity, coverage, and delivery of digital solution. However, distress-driven M&A is young in Ghana, but holds prominence. The practical case for consideration is the arrangement by Government of Ghana to merge AirtelTigo with Telecel as a turnaround strategy for AirtelTigo's over $10 million accumulated losses.[7]

These cases of advanced economies and the emerging domestic scenarios demonstrate that distressed M&As can serve as a creative means for effective business rescue. It also presents a viable and practically plausible model in the expediated restructure requirements as outlined by CIRA, 2020 (section 45).

4. LEGAL CONSIDERATIONS IN DISTRESSED M&A IN GHANA

While there are several legal provisions and specific sectoral legislations that have either direct or indirect bearing on M&A transactions in Ghana, the core legal and regulatory structure for facilitating M&A is based on two key statutes: the Companies Act, 2019 (Act 992), and the Securities Industry Act, 2016 (Act 929), as amended by the Securities Industry (Amendment) Act, 2021 (Act 1062).[8] The Companies Act offers a robust

[7]Ghana Broadcasting Corporation, 'Ghana to merge Telecel and AT Ghana to build stronger telecom operator' (4 September 2025) Ghana to merge Telecel and AT Ghana to build stronger telecom operator accessed 12 November, 2025.

[8] Legalstone Solicitors, 'Mergers And Acquisitions In Ghana: A Guide For Investors And Corporations' *(Mondaq)* (16 December 2024) Mergers And Acquisitions In Ghana: A Guide For Investors And Corporations - Shareholders - Ghana accessed 20 May 2025.

statutory provision for both solvent and distressed corporate combinations. A particularly relevant provision for distress-driven transactions is Section 238(1) of Act 922, which allows a distressed company to initiate a merger through voluntary liquidation by transferring its assets to a solvent transferee company, with shareholders of the distressed entity receiving consideration in the form of shares, debentures, or similar securities in the acquiring company.

Crucially, the Companies Act mandates detailed disclosure and procedural rigor in all merger proposals, with Section 242 of the Act outlining exhaustive information that must be in a merger proposal, which includes share exchange ratio, terms of allotment, governance structure of the resulting entity, and financial entitlements of shareholders.[9] This requirement serves to eliminate information asymmetry – a common risk in distressed deals – and ensure that all stakeholders have clarity on the merger's terms.

The courts retain residual authority under Section 251 of the Companies Act to intervene in merger processes where there is risk of unfair prejudice to members, creditors, or any party owed an obligation.[10] A merger is not valid if, within one year of the passing of a special resolution for voluntary liquidation an order is made by the court regarding a member's rights or an order is made for the winding up of the company under the Corporate Insolvency and Restructuring Act, 2020 as amended by the Corporate Insolvency and Restructuring (Amendment) Act, 2020.[11] This judicial oversight serves as a vital recourse in distressed M&A, where transactions can disproportionately affect creditors or minority shareholders.

Complementing the Companies Act is the Securities Industry Act, 2016 (Act 929) and its accompanying regulatory instrument, notably the SEC Takeover Code, which governs public M&A activity. The Takeover Code prescribes rigorous procedures for acquiring control, beginning with a mandatory offer rule that is triggered when an acquirer seeks to obtain 30% or more of a public company's voting shares within a period of 12 months, or acquire voting shares that result in ownership of more than 50% of the voting shares of a public company.[12] This rule is designed to protect minority shareholders by ensuring they are offered an exit opportunity on equitable terms.

[9] Companies Act 2019, s 242.
[10] Companies Act 2019, s 251.
[11] Companies Act 2019, s 238 (3) (a).
[12] Securities and Exchange Commission Code on Takeovers & Merger, Part II (4.2).

In distress scenarios involving public companies, this regulatory overlay becomes pertinent. The process begins with a public announcement, followed by the submission of an offeror's statement to the target company, SEC, and the stock exchange on which the Offeree and Offeror are listed on.[13] The Takeover Offer Document, containing material information as stipulated in the SEC Takeover Code, must then be submitted to the SEC for approval.[14] Importantly, shareholders are entitled to receive the offer document along with an independent adviser's opinion, ensuring transparency and fairness in the offer evaluation process. The offer must remain open for at least 30 days[15], providing shareholders with sufficient time to evaluate the offer.

Whether executed through voluntary liquidation under the Companies Act or via mandatory takeover procedures under the Securities Industry Act, the success of distressed M&A transactions in Ghana are underpinned by statutory clarity and regulatory diligence. These frameworks not only enable distressed firms to restructure or transfer operations efficiently but also ensure that stakeholders are not disadvantaged in the process by assuring them of fairness, accountability, and continuity in enterprise value.

5. COMMON DISTRESSED M&A STRUCTURING OPTIONS

Distressed M&A transactions are commonly implemented through three deal structures: asset sales, share deals, and loan-to-own structures. Each of these structures presents distinct legal, commercial, and practical considerations that must be carefully evaluated based on the nature and extent of financial distress and the parties' strategic objectives.

Asset sales are the most prevalent structure for distressed M&A, particularly once a business has entered formal insolvency. This structure enables buyers to acquire selected assets and avoid assuming legacy liabilities. This 'cherry-picking'[16] capability of asset deals is particularly attractive where due diligence is constrained by time or disclosure limitations. However, asset transactions can trigger the need for third-party consents. In certain contexts, such as under the Transfer of Undertakings (Protection of Employment)

[13] Securities and Exchange Commission Code on Takeovers & Merger, Part II (5.1).
[14] Securities and Exchange Commission Code on Takeovers & Merger, Part II (7.1).
[15] Securities and Exchange Commission Code on Takeovers & Merger, Part II (8.1).
[16] Note: The term "cherry-picking" is the author's colloquial description a buyer's ability to selectively acquire only the most attractive assets of a distressed business.

Regulations (TUPE) in the United Kingdom, employees associated with the transferred business may automatically shift to the buyer.[17]

Additionally, asset sales may attract tax obligations such as capital gains taxes. Nevertheless, many jurisdictions, including Ghana, allow for structuring asset transfers as 'going concern' transactions to mitigate such tax exposure, provided certain conditions are met. In distressed scenarios, asset deal can also be executed via formal insolvency proceedings or through consensual out-of-court processes. In the latter, competitive bidding processes may be employed to enhance transparency and limit subsequent clawback risks.[18]

Share deals, by contrast, involve the acquisition of equity in the target company, including both its assets and liabilities. While this structure lacks the liability ring-fencing benefits of an asset deal, it simplifies transactional logistics by preserving contractual relationships, licenses, and corporate identity. Share acquisitions are commonly used in pre-insolvency contexts. In more complex scenarios, a 'hive-down' structure may be employed, whereby a company transfers desired assets into a newly formed subsidiary that is then acquired by the buyer. This approach merges the liability isolation benefits of asset deals with the procedural simplicity of share transfers, although care must be taken to avoid crystallising unnecessary tax liabilities.[19]

The loan-to-own structure introduces a distinct angle, whereby the acquirer purchases the target's distressed secured debt, often at a discount, and subsequently converts the debts into equity or seizes collateral through security enforcement. This structure can be executed consensually or via judicial or statutory restructuring procedures, such as schemes of arrangement or company voluntary arrangements. In Ghana, while formal frameworks for statutory cram-downs are less frequently applied compared to developed jurisdictions, loan-to-own models may still be viable through contractual swaps and security enforcement, subject to regulatory and court oversight. Loan-to-own documentation typically follows

[17] Lexology GTDT, Distressed M&A (Law Business Research 28 November 2022) Distressed M&A

[18] Ibid.

[19] Ibid.

normal loan terms, although depending on how it is structured, it may be necessary to obtain shareholders' approval to allot shares and disapply pre-emption rights.

In jurisdictions with comprehensive insolvency regimes, such as Portugal, the United Kingdom, and France, distressed M&A can occur under pre-insolvency arrangements. Although Ghana's insolvency framework is still developing in scope and judicial application, opportunities do exist to adopt similar mechanisms under the Companies Act, 2019 (Act 992) and the Corporate Insolvency and Restructuring Act, 2020 (act 1015). Whether implemented through formal processes or out-of-court arrangements, the choice of structure must align with the company's stage of distress, investor preferences, and the long-term business rescue plan.

6. FINANCIAL AND VALUATION CONSIDERATIONS IN DISTRESSED M&A

The valuation of distressed companies in the context of M&A requires a beyond usual valuation technique that accounts for both the financial instability of the target and the strategic intentions of the acquirer.

Valuation professionals must begin by determining whether the distressed business can realistically be viewed as a going concern. This assessment influences the choice of methodologies and assumptions that underpin the valuation. Where there is a plausible path to operational recovery, a going concern valuation may be appropriate. Conversely, if the probability of continued operations is low, an asset-based valuation becomes more relevant.[20] Importantly, this bifurcation is not clear-cut, and blended approaches are often employed to reflect a range of possible outcomes.

Traditional valuation tools such as the Discounted Cash Flow (DCF) analysis, Comparable Company Analysis, and Precedent Transaction Multiples must be adjusted significantly in a distressed context. For instance, DCF analysis is particularly sensitive to cashflow volatility and discount rate assumptions in distressed situations. Therefore, the forecast period may be shortened to reflect the company's limited runway, and the discount rate should be adjusted to capture heightened financial, operational, and market

[20] Stephen Cork, 'How to Value Distressed Companies' *(Cork Gully)* (5 January 2025) How to Value Distressed Companies - Cork Gully accessed 21 May 2025.

risks. Analysts may incorporate scenarios of probability-weighted models such as expected values and Monte Carlo simulation, among others, to account for potential recovery or liquidation.

Similarly, the market-based approach must be handled with caution. Transactions involving distressed targets are often executed at steep discounts and under pressured circumstances, skewing the comparability of multiples. Moreover, few market comparables may exist for businesses in a similar state of financial distress, making normalization difficult. As such, these comparables, when applied, require adjustments for differences in capital structure, liquidity, and business model resilience.

Asset-based valuation methodologies, particularly the Adjusted Net Asset Value (ANAV) approach, gain prominence when the going concern thesis weakens. This method entails revaluing assets to their market-based realizable values, often in a forced-sale context.[21] In cases of deep distress, valuation through option pricing models (OPM) can be used to conceptualize equity as a call option on the company's assets.[22] This approach is particularly relevant where debt levels approach or exceed the asset base.

Realistic valuation in distressed M&A also necessitates a thorough normalization of the target's financial statements. Reported earnings, asset values, and liabilities often deviate from economic reality due either to aggressive accounting practices or a rapid deterioration in business conditions. For instance, non-recurring income items must be excluded from operating earnings. Similarly, overvalued inventory or impaired goodwill needs to be written down to reflect fair market value, and contingent liabilities should be accounted for. Adjustments for non-operating expenses and changes in capital expenditure are also required to develop a clearer view of sustainable free cash flows. Further, while distressed companies may carry deferred tax assets, their realizability must be carefully assessed in light of ongoing losses and the uncertain future of the business.

Beyond intrinsic valuation considerations, distressed M&A transactions are heavily influenced by external factors such as market sentiments, investor appetite, and the availability of financing. Therefore, 'testing the

[21] Stephen Cork, *'How to Value Distressed Companies' (Cork Gully)* (5 January 2025) How to Value Distressed Companies - Cork Gully accessed 21 May 2025.

[22] FasterCapital, *'Going Concern Valuation: Going Concern Valuation: Assessing Viability in Distressed M&A'* (9 April 2025) Going Concern Valuation: Going Concern Valuation: Assessing Viability in Distressed M A - FasterCapital accessed 21 May 2025.

market'[23] through a structured or accelerated M&A process becomes essential.[24] Not only does this provide an empirical gauge of market interest, but it also helps establish a price floor and identify credible buyers.

These adjustments in distressed M&A inform critical questions around integration costs, synergies, and post-transaction strategy. In essence, the successful valuation of distressed companies hinges on the nuanced understanding of business fundamentals, risk dynamics, and market context. It is this analytical sophistication that enables stakeholders to execute distressed M&A transactions that are financially sound and strategically transformative.

7. STAKEHOLDER ROLES AND COLLABORATION

Distressed M&A is a collaborative, phased transformation effort requiring the deliberate coordination of all stakeholders, including strategic decision-makers, restructuring advisors, legal and financial consultants, creditors, regulators, and employees. Understanding how these stakeholder roles shift – pre and post deal execution – is essential to positioning distressed companies proactively for acquisition, mergers, and operational turnaround.

In the initial phase of a distress M&A transaction, the process is led by strategic planners – typically the Directors in informal restructuring situations and the Administrator in formal proceedings – who must first acknowledge the company's deteriorating financial condition and assess the viability of a merger or acquisition as a strategic alternative to insolvency. Their roles also involve initiating a strategic assessment that frames the opportunity in a way that aligns with potential acquirers' expectations. In developing economies like Ghana, where many distressed companies face an underdeveloped institutional rescue framework, the proactive stance of these strategic planners could be the catalyst that shifts the narrative from collapse to transformation.

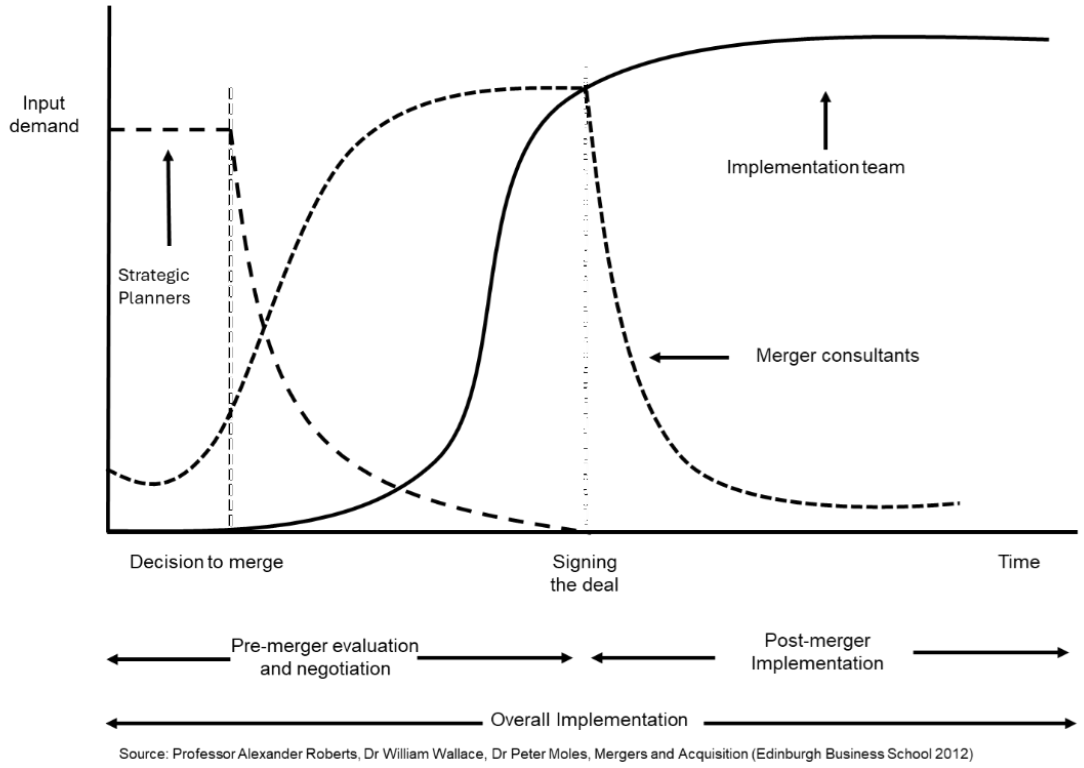
Under the Corporate Insolvency and Restructuring Act, 2020 (Act 1015), a licensed Insolvency Practitioner must be appointed as an Administrator or Restructuring Officer when a company is insolvent or at risk of insolvency to oversee the restructuring process. These experts are responsible for evaluating and

[23] Note: *"Testing the market" means engaging a select group of potential buyers or investors.*

[24] Stephen Cork*, 'How to Value Distressed Companies' (Cork Gully)* (5 January 2025) How to Value Distressed Companies - Cork Gully accessed 21 May 2025.

implementing the appropriate restructuring strategy. However, creditors hold significant sway in the restructuring strategy, as any proposed restructuring plan must receive the approval of a three-fourths majority of the creditor class for it to become binding.[25]

Figure 1: Type of Stakeholder Involvement Pre and Post Transaction



Source: Professor Alexander Roberts, Dr William Wallace, Dr Peter Moles, Mergers and Acquisition (Edinburgh Business School 2012)

Once the M&A pathway is approved, responsibility transitions to the implementation team – including the Administrator or Restructuring Officer in formal restructuring proceedings, and the Directors in informal scenarios – who are tasked with translating the strategic intent into executable deal mechanisms. These experts play a critical role in structuring the transaction, managing creditor expectations, and navigating regulatory and compliance issues. As part of their roles, the Directors and Administrator must ensure that the proposed merger serves the best interests of the company and its stakeholders. They must also certify the solvency of the new entity post-merger and ensure compliance with all legal requirements, including the

[25] Corporate Insolvency and Restructuring Act, 2020 (Act 1015).

submission of necessary documents to the Registrar of Companies for approval and registration of the merger.

As the deal structure solidifies and negotiations progress, the integration team, comprising mainly of operational people, should be brought into the process as early as possible. Their practical insights into the day-to-day operations, systems compatibility, and personnel alignment are crucial to assessing the timescales and the magnitude of cost involved. Early engagement of these operational stakeholders not only facilitates more realistic planning and budgeting but also serves as a check against the over-optimism that strategic planners may inject into the deal valuation.

8. RISK CONSIDERATIONS OF DISTRESSED M&A

Distressed M&A carries a unique and increased risk profile that stems not only from the precarious financial condition of the target but also from the urgency and uncertainty that accompany distressed scenarios.
The most immediate concern for buyers in distressed M&A transactions is the limited access to information and perceived mistrust of the data provided. Distressed companies often provide incomplete, outdated, or unaudited financial records, restricting the scope and reliability of due diligence. Coupled with compressed transaction timelines driven by cash flow pressures or creditor actions, buyers are frequently required to make investment decisions based on partial information. Consequently, transactions are typically concluded on an 'as-is, where-is'[26] basis, with minimal representation and warranties, leaving buyers exposed to unknown liabilities that may not surface until post-closing. Similarly, buyers may also face succession risk if they acquire substantial assets outside court-supervised processes, especially if those assets include obligations like unpaid taxes, employee entitlements, or environmental liabilities. To mitigate some of these exposures, the transaction must be carefully structured, potentially through statutory 'free and clear'[27] sales or asset ring-fencing.

[26] Note: The term 'as-is, where-is' means the buyer acquires the target business or its assets in their existing condition and location at the time of purchase, and with all existing faults.
[27] Note: The term 'free and clear' means free from pre-existing claims, liens, encumbrances, and liabilities that are attached to those assets.

Further compounding this buyer exposure is the post-acquisition integration challenges. Often, the same factors that led to the seller's financial distress do not immediately vanish upon acquisition. In fact, these issues may intensify, particularly if the transaction itself triggers supplier withdrawals, customer attrition, or staff departures. Where the transaction is not court-sanctioned, these reputational and commercial risks can also be amplified by stakeholder scepticism.

For sellers, the principal exposure is execution risk. Distressed companies usually lack the runway to weather a failed sale process. If a buyer withdraws or conditions are not met swiftly, the distressed company may be forced into involuntary liquidation. As such, deal certainty becomes essential, requiring sellers to tightly manage liquidity and negotiate closing conditions that minimise the buyer's ability to terminate based on minimal adverse changes or regulatory delays. If possible, sellers may also need to negotiate bridge financing or debtor-in-possession funding from the buyer to keep operations afloat pending transaction completion. Additionally, sellers face legal and fiduciary exposure. Directors may be held personally liable for approving transactions that are later deemed prejudicial to creditors, especially in cases where asset transfers benefit related parties or appear undervalued. To help mitigate this, transactions must be conducted with robust documentation that evidences fair value and a commercial rationale.

In brief, the risk matrix in distressed M&A is multi-dimensional and highly case-specific and thus requiring an acute understanding of the exposures in order to be able to successfully execute a distressed M&A. For a start, early engagement with restructuring advisors and transparent communication with creditors can be very helpful in pre-empting many of these challenges.

CONCLUSION

Distressed M&A represents a strategically feasible rescue model, offering distressed companies a realistic means to preserve value, maintain operations, and reposition for long-term stability. Global precedents demonstrate that, when effectively structured and supported by robust governance and capital, distressed M&A can revive failing enterprises and restore market confidence. Although Ghana's application of this mechanism remains limited, the country's evolving legal and regulatory frameworks, particularly under the

Companies Act, Securities Industry Act, and CIRA provide a strong foundation for its wider adoption. With coordinated participation from directors, creditors, regulators, and restructuring professionals, distressed M&A can become a central pillar in Ghana's corporate rescue landscape and a catalyst for building more resilient enterprises.