



# ***THE NEW INSOLVENCY REGIME***

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## **The New Insolvency Regime**

### **Components of the Insolvency Regime**

- **Insolvency Act, 2003**
- **Insolvency (Amendment and Consequential Provisions) Act, 2004**
- **Insolvency (Transitional Provisions) Regulations, 2004**
- **Insolvency Practitioners Regulations, 2004**

*ALL CAME INTO FORCE ON 16 AUGUST, 2004*



## The New Insolvency Regime

### Components of the Insolvency Regime

In Addition;

The Insolvency Code of Practice

- Issued by the Commission

.....And To Come

The Insolvency Rules



## The New Insolvency Regime

Two parts of the Insolvency Act have not yet come into force

- Part III - The Administration Procedure
- Part XVIII - Cross-Border Insolvency Provisions



## The New Insolvency Regime

**The new insolvency regime does not cover**

- Solvent liquidations under the Companies Acts
- Licensing of receivers (other than administrative receivers)



## The New Insolvency Regime

### Features of the New Law

Alternative types of insolvency procedure

Licensing and regulation of insolvency practitioners

Director disqualification procedures

Official Receiver role



## **Features of The New Law**

**Alternative types of insolvency procedure**

Liquidation vs. Rehabilitation



## **Features of The New Law**

### **1. Alternative types of insolvency procedure**

- Liquidation (appoint by Court or by shareholders)
- Provisional liquidation
- Company creditor arrangements
- Administration
- Receivership (appointed by Court or by a secured creditor)
- Administrative receivership



## **Features of The New Law**

### **Licensing and regulation of insolvency practitioners**

#### **Requirements:**

- Experience
- BVI residency
- Professional Indemnity Insurance cover
- Fit and proper
- Joint appointments with overseas practitioners are allowed



## **Features of The New Law**

### **Director disqualification procedures**

- Application to Court by Official Receiver
- Prerequisite – the Company has entered an insolvency procedure
- Covers shadow and de facto directors
- Disqualification period of 2 to 10 years
- Personal liability for acting as a director when disqualified



## Features of The New Law

### Official Receiver's role

- To be appointed as Liquidator or Receiver by the Court
- Apply for director disqualification orders
- Other functions to promote the orderly operation of the insolvency sector



## The Commission's Responsibilities Include

- Licensing and regulation of insolvency practitioners
- Through the Official Receiver, to
  - act as liquidator or receiver when appointed by the Court
  - apply to Court for director disqualification orders



## **Insolvency Services Division Personnel**

**Licensing & Regulation**  
Floris Lettsome Lewis

**Official Receiver's Function**  
David Abednego  
Nigel Massicot

**Administrative Support**  
Janet Samuel



## **Points to Watch**

- If the insolvent company is a regulated person
  - Applications to Court to enter an insolvency procedure must also be served on the Commission
  - Commission to be given 5 business days notice of a resolution to appoint a liquidator
  - Notices and reports to creditors and periodic accounts must be copied to the Commission



## Points to Watch Cont'd

- BVI Business Companies Act requirement for the liquidator in a voluntary (solvent) liquidation to notify the OR if he concludes that the company is insolvent (S.209(2)).
  - The new liquidator will have to be licensed
- There is an obligation for Administrators, Administrative Receivers and Liquidators to notify the Commission if a company has carried out unlicensed financial services business.



## Points to Watch Cont'd

- General insurance companies
  - Must obtain the Commission's written consent before passing a resolution to appoint a liquidator
- Long term insurance companies
  - A liquidator may only be appointed by the Court



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## Why Do We Need It?

- BVI is the premier offshore incorporation jurisdiction
  - over 500,000 live companies
- Fair treatment and more options
- Gives confidence to suppliers of credit
  - their views are important in structuring transactions
- Makes the BVI an even more attractive place to register a company and do business