

## A Call to reinvigorate corporate rescue in Uganda as an emerging economy

When the Ugandan government commissioned the Uganda Law Reform Commission (ULRC) to review and make recommendations for reform of Uganda's company and insolvency laws at the turn of the millennium, the business and legal sectors, had envisaged a future that represented modern insolvency laws and procedures that could [foster business growth, continuity and support, where businesses experienced financial difficulties](#).<sup>1</sup> This was because, since Uganda's independence from the British rule in 1962, the main legislation that dealt with corporate insolvency and bankruptcy matters, the Bankruptcy Act 1931 and Companies Act 1961 were over seventy and forty years old respectively and were total replicas of the English Bankruptcy Act 1914 and the English Companies Act 1948. Therefore, the provisions they prescribed on corporate insolvency and business rescue did not match modern insolvency challenges and a review was top of the agenda.

The review by the ULRC led to the tabling of [the Insolvency Bill in 2009](#)<sup>2</sup> that led to the enactment of the Insolvency Act 2011. The aims and objectives of the IA 2011 are summarised as:

[“\[A\]n Act to provide for receivership, administration, liquidation, arrangements, bankruptcy, the regulation of insolvency practitioners and cross border insolvency; to amend and consolidate the law related to receiverships, administration, liquidation, arrangement and bankruptcy; and to provide for other related matters.”](#)<sup>3</sup>

The Insolvency Act 2011 prescribes processes, such as provisional administration,<sup>4</sup> administration,<sup>5</sup> voluntary arrangements,<sup>6</sup> receivership,<sup>7</sup> liquidation<sup>8</sup> and cross-border insolvency proceedings.<sup>9</sup> The IA 2011 is supplemented by the Insolvency Regulations 2013 (IR 2013) that regulate and guide insolvency proceedings and the Companies Act 2012 which prescribes provisions that deal with creditor compromises and arrangements,<sup>10</sup> reconstructions and amalgamation<sup>11</sup> and voluntary winding-up.<sup>12</sup> The IA 2011 therefore, forms the bedrock for Uganda's modern insolvency framework. However, a decade since its passage, its impact, especially on shaping Uganda's corporate rescue and rescue culture remains to be seen. Hundreds of businesses and companies have collapsed in the years prior to the outbreak of the global COVID19 pandemic and [many are projected to collapse due to financial difficulties exacerbated by the impact of the global COVID19 pandemic](#).<sup>13</sup>

There was great optimism from extant stakeholders and policy makers within the business and legal spheres that rescue procedures introduced by the IA 2011, such as administration, would invigorate corporate rescue as it introduced features, such as moratoria protection and inclusivity of collective creditor interests when the company, to which they held interests, filed for insolvency proceedings. However, despite these safeguards, administration as a collective procedure has not been fully embraced and used by the business/corporate sector as [its adoption and usage, and those of other formal corporate](#)

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<sup>1</sup> Uganda Law Reform Commission: *A Study Report on Insolvency Law*, (Law Com Pub No. 13 of 2004).

<sup>2</sup> Insolvency Bill 2009 (Bill No. 11, 3 July 2009).

<sup>3</sup> IA 2011, Preamble.

<sup>4</sup> IA 2011, Part VI, ss.139 – 161.

<sup>5</sup> IA 2011, ss.140 – 162.

<sup>6</sup> IA 2011, ss. 125 – 137.

<sup>7</sup> IA 2011, Part VII, ss. 180 – 197.

<sup>8</sup> IA 2011, ss. 56 – 124.

<sup>9</sup> IA 2011, Part IX, ss. 212 – 252.

<sup>10</sup> CA 2012, s.234.

<sup>11</sup> CA 2012, ss. 236 – 245.

<sup>12</sup> CA 2012, Part XI, ss.268 – 272.

<sup>13</sup> Lydia Wamono, “Save that business on the brink of collapse” *Daily Monitor* (Kampala, 20 April 2021) <https://www.monitor.co.ug/uganda/business/prosper/save-that-business-on-the-brink-of-collapse-3370144> (accessed 2 June 2021).

[rescue processes has been relative low](#).<sup>14</sup> There has been a particular preference from financially struggling businesses and professional insolvency practitioners to favour receivership and administrative receivership over administration [yet most receivership proceedings result in liquidations](#).<sup>15</sup>

There's therefore, a call to reinvigorate corporate rescue in Uganda, such that the policy objectives of the IA 2011 as envisaged by the ULRC and transposed into the IA 2011 could be achieved. To support business continuity as one of the objectives of corporate rescue, debtors ought to be given the opportunity to make a fresh start – a so-called second chance culture (discharge) and opportunities to restructure potentially viable businesses. This would be in the form of preventive restructuring opportunities through the introduction of preventive insolvency frameworks in Uganda's insolvency model.

Unfortunately, this is largely missing and there are no planned reviews tabled by the ULRC at the time of writing. There's also a call for the office of the official receiver, who is the government regulator on matters relating to company registrations, insolvency and receiverships to raise more awareness on matters relating to company administration and insolvency, such that the policy objectives of corporate rescue as sought by the IA 2011 are well articulated to sector actors and stakeholders to reinvigorate corporate rescue.

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<sup>14</sup> C. Nyombi, "The Objectives of Corporate Insolvency Law: Lessons for Uganda" (2018) 60 (1) *International Journal of Law and Management* 2, 18.

<sup>15</sup> D. Nyakairu and T. Kakongi, "Guide To Insolvency And Business Rescue In Uganda" *Mondaq* (13 August 2020) <<https://www.mondaq.com/insolvencybankruptcy/973362/a-101-guide-to-insolvency-and-business-rescue-in-uganda>> (accessed 30 June 2021).