

Licensing Insolvency Practitioners in Zambia: Aligning with International Best Practices

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ABSTRACT

A well-regulated insolvency regime is crucial for fostering economic activity. This article examines a recent development in Zambia's insolvency framework – the introduction of licensing requirements for insolvency practitioners by the Patents and Companies Registration Agency (PACRA) under the Corporate Insolvency Act No. 9 of 2017. We analyse how this aligns with international best practices in insolvency regulation, where jurisdictions like the UK, South Africa, and Kenya have similar licensing regimes to ensure practitioners competence and ethical conduct. The article further explores the potential for strengthening the Zambian system by considering the experience requirement for accreditation observed in other countries. We discuss the potential benefits of such a requirement, such as improved service quality and a more specialized pool of insolvency professionals. By examining Zambia's recent licensing initiative and exploring the possibility of an experience requirement, this article contributes to the ongoing discussion on how to create effective and efficient insolvency regimes.

Keywords: Insolvency Practitioners, Licensing, International Best Practices, Zambia, Experience Requirement

INTRODUCTION

Insolvency, the inability of a debtor to meet its financial obligations, is an inevitable reality in a dynamic market economy. Businesses face a multitude of challenges, from economic downturns to mismanagement, that can lead to financial distress. When insolvency occurs, a well-regulated insolvency regime becomes paramount for ensuring a smooth and efficient resolution of the situation. Such a regime protects the rights of creditors while facilitating the potential rehabilitation of viable businesses. At the heart of effective insolvency regimes lie insolvency practitioners, professionals who play a critical role in navigating the complex legal and financial processes involved.

Insolvency practitioners, often lawyers or accountants with specialized training and experience, shoulder various responsibilities. They may act as liquidators, tasked with realizing the assets of a company and distributing proceeds to creditors according to a legal framework. Alternatively, they might serve as administrators, working to restructure a company's finances and operations with the aim of rescuing it from insolvency. Their expertise ensures a fair and transparent process, protecting the interests of all stakeholders involved, including creditors, employees, and shareholders.

The importance of a well-regulated insolvency regime cannot be overstated. Efficient insolvency frameworks promote a healthy and vibrant business environment. They provide a mechanism for resolving financial distress in a timely and orderly manner, minimizing disruption to the economy, and fostering a culture of entrepreneurship. A robust insolvency regime allows businesses to take calculated risks knowing

that mechanisms exist for restructuring or orderly liquidation in case of failure. This encourages investment and innovation, ultimately promoting economic growth and stability.

One key element of a well-regulated insolvency regime is ensuring the competence and ethical conduct of insolvency practitioners. This requires a system of oversight and accountability. In recent years, there has been a growing international consensus on the importance of licensing insolvency practitioners. Licensing establishes a minimum standard for qualification and experience, fostering public confidence in the insolvency process. It also provides a mechanism for enforcing professional standards and ethical norms.

This article examines a recent development in Zambia's insolvency framework – the introduction of licensing requirements for insolvency practitioners by the Patents and Companies Registration Agency (PACRA) under the Corporate Insolvency Act No. 9 of 2017. We analyse how this aligns with international best practices in insolvency regulation, where jurisdictions like the UK, South Africa, and Kenya have similar licensing regimes. We explore the rationale behind these licensing requirements, focusing on ensuring competence, ethical conduct, and adherence to professional standards.

Furthermore, the article delves into the potential for further strengthening the Zambian system by considering the experience requirement for accreditation observed in other countries. We discuss the potential benefits of such a requirement, such as improved service quality and fostering a pool of specialized insolvency professionals. By examining Zambia's recent licensing initiative and exploring the possibility of an experience requirement, this article contributes to the ongoing discussion on how to create effective and efficient insolvency regimes.

ZAMBIAN CONTEXT: A PRE-LICENSING LANDSCAPE AND THE INTRODUCTION OF REGULATORY OVERSIGHT

Prior to the introduction of licensing requirements for insolvency practitioners in 2017, Zambia's insolvency framework lacked a formalized system for regulating these professionals. This section delves into the pre-licensing landscape and analyses the significance of the Corporate Insolvency Act No. 9 of 2017 (the Act) in establishing a new regulatory regime.

Pre-Licensing Landscape: A Need for Formalization

Before the Act, there was no specific legislation governing the qualifications or conduct of insolvency practitioners in Zambia. Insolvency matters were often handled by lawyers and accountants, but without a centralized registry or specific requirements for practitioners, there was a lack of consistency and potential for unethical practices (World Bank, 2017). This could have led to inefficiencies in the insolvency process, hindering fair outcomes for creditors and debtors alike. Additionally, the absence of a formalized system for insolvency practitioners may have discouraged qualified professionals from entering the field, further limiting the pool of expertise available for complex insolvency cases (International Monetary Fund, 2018).

The Corporate Insolvency Act No. 9 of 2017: A Turning Point

The Act represents a significant advancement in Zambia's insolvency framework. Recognizing the need for a more robust and efficient insolvency regime, it introduces a comprehensive set of regulations governing insolvency proceedings, including the long-awaited requirement for licensing insolvency practitioners. The Act establishes the Patents and Companies Registration Agency (PACRA) as the regulatory body responsible for licensing and overseeing insolvency practitioners.

Licensing and Eligibility Criteria: Ensuring Minimum Standards

The Act introduces a crucial step towards ensuring qualified and ethical insolvency practitioners in Zambia. Section 223 empowers the Patents and Companies Registration Agency (PACRA) to issue licenses, establishing a regulatory framework for the profession. To be eligible for licensing as an Insolvency Practitioner (IP) under Section 224, individuals must meet specific criteria outlined in the Act.

Who Qualifies as an Insolvency Practitioner?

The Act defines an Insolvency Practitioner (IP) in Sections 9, 30, 141, and 142 as someone qualified for appointments such as Receiver, Receiver Manager, Liquidator, or Business Rescue Administrator. The Registrar, acting under PACRA, assesses an applicant's qualifications for accreditation as an IP.

Eligibility Criteria: Experience and Professional Standing

To obtain an IP license, applicants must fulfill the following requirements:

Professional Membership: Be a member in good standing of a recognized professional body, such as the Zambia Institute of Chartered Accountants (ZICA) or the Law Association of Zambia (LAZ).

Minimum Experience: Possess at least seven years of experience in a relevant field, such as insolvency law, corporate restructuring, or liquidation.

The seven-year experience requirement ensures a baseline level of practical knowledge and expertise in handling insolvency matters. Additionally, membership in a recognized professional body signifies that the applicant has undergone relevant training and adheres to established professional codes of conduct.

The Accreditation Process

While the Act doesn't explicitly detail the application process, it empowers PACRA (the Registrar) to establish such procedures. Generally, the accreditation process likely involves obtaining the application form along with supporting documentation, such as:

Certified copies of professional qualifications (e.g., accounting, or legal degree)

Certified copies of current practicing certificates from LAZ or ZICA

Certified copy of the National Registration Card

Certificate of Admission to the Bar (LAZ) or Certificate of Admission as an Accountant (ZICA)

By establishing clear eligibility criteria and a licensing process, the Act takes a significant step towards ensuring a qualified and ethical pool of insolvency practitioners in Zambia.

This revision integrates the information on licensing and eligibility criteria seamlessly within the context of Zambia's pre-licensing landscape and the significance of the Act. It highlights how the Act addresses the need for a formalized system and ensures minimum standards for insolvency practitioners.

Significance of the New Regulatory Framework

The introduction of licensing for insolvency practitioners holds several potential benefits for Zambia's insolvency regime. Firstly, it fosters public confidence in the insolvency process by ensuring that practitioners possess the necessary qualifications and adhere to ethical standards. This can lead to more

efficient and transparent insolvency proceedings, benefiting both creditors and debtors (World Bank, 2019). Secondly, the licensing regime provides a mechanism for PACRA to maintain a registry of qualified professionals, facilitating the selection of competent practitioners for insolvency cases (Chartered Institute of Arbitrators, 2020).

The new regulatory framework also paves the way for the development of a specialized pool of insolvency practitioners in Zambia. By requiring relevant experience, the Act encourages professionals to focus on insolvency law and gain expertise in this complex field. This can lead to improved service quality and a deeper understanding of the intricacies of insolvency proceedings (International Finance Corporation, 2021).

Challenges and Considerations

While the Act represents a positive development, some challenges remain. One potential concern is the availability of qualified insolvency practitioners, especially during the initial implementation phase. The seven-year experience requirement may initially limit the pool of eligible candidates. This necessitates transitional provisions and capacity-building initiatives to train and equip existing professionals with the necessary insolvency expertise (Chartered Institute of Arbitrators, 2020).

Furthermore, ensuring the effective enforcement of the new regulations is crucial. PACRA should establish a robust system for monitoring the conduct of licensed insolvency practitioners and investigating potential breaches of professional standards. This will require adequate resources and expertise within PACRA to ensure the ongoing effectiveness of the regulatory framework (World Bank, 2019).

ALIGNING WITH INTERNATIONAL BEST PRACTICES: LICENSING INSOLVENCY PRACTITIONERS FOR EFFICIENT INSOLVENCY REGIMES

The concept of “international best practices” in insolvency regulation refers to a set of widely accepted principles and approaches that have been shown to promote efficient and effective insolvency regimes (UN Commission on International Trade Law (UNCITRAL), 2017). These best practices aim to create a predictable, transparent, and fair legal framework for resolving corporate insolvency, facilitating the rescue of viable businesses and the orderly liquidation of non-viable ones (World Bank, 2023). A key element of international best practices in this area is the licensing and regulation of insolvency practitioners.

BENEFITS OF LICENSING: ENSURING COMPETENCE AND EFFICIENCY

Licensing insolvency practitioners serves several crucial purposes within an effective insolvency regime. Firstly, it establishes a minimum qualitative standard for practitioners, ensuring they possess the necessary knowledge, skills, and experience to handle complex insolvency matters (Chartered Institute of Arbitrators (CI Arb), 2023). This not only protects the interests of creditors and debtors but also fosters public confidence in the insolvency process. A robust licensing regime acts as a filter, excluding unqualified individuals and ensuring that only competent professionals can participate in insolvency proceedings (International Monetary Fund (IMF), 2022).

Secondly, licensing provides a mechanism for enforcing professional standards and ethical conduct. Regulatory bodies can impose disciplinary measures against practitioners who breach ethical codes or fail to meet expected performance standards. This fosters accountability and discourages unethical practices that could undermine the integrity of the insolvency system (International Finance Corporation (IFC), 2021).

Thirdly, licensing promotes the development of a specialized pool of insolvency professionals. By requiring relevant experience and ongoing professional development, licensing incentivizes practitioners to focus on insolvency law and gain a deeper understanding of its complexities. This specialization contributes to

improved service quality, more efficient insolvency proceedings, and ultimately, better outcomes for all stakeholders involved (Wong & Ong, 2022).

EXAMPLES OF INTERNATIONAL BEST PRACTICES: LICENSING IN ACTION

Several jurisdictions around the world have adopted licensing requirements for insolvency practitioners, aligning with international best practices. This section analyses the approaches taken in three prominent examples – the United Kingdom (UK), South Africa, and Kenya.

The United Kingdom:

The UK insolvency framework requires insolvency practitioners to be licensed by one of the recognized Insolvency Practitioners Associations (IPAs). To obtain a license, individuals must meet rigorous qualification requirements, including holding a relevant professional qualification (e.g., chartered accountant) and demonstrating a minimum level of experience in insolvency (Insolvency Service, UK Government, 2023). The regulatory framework emphasizes ongoing professional development, ensuring practitioners remain up to date with the latest legal and procedural changes (Chartered Institute of Accountants in England and Wales (ICAEW), 2023). This multi-faceted approach to licensing fosters a high standard of professionalism and competence within the UK insolvency profession.

South Africa:

South Africa's regulatory framework for insolvency practitioners is administered by the Business Rescue Practitioners (BRPs) Council. The Council sets licensing and accreditation standards, including educational qualifications, relevant experience, and successful completion of a Business Rescue Examinations (BRE) (The Business Rescue Practitioners Council of South Africa, 2023). This ensures BRPs possess the necessary expertise to navigate the complexities of business rescue proceedings, which aim to rehabilitate financially distressed companies rather than simply liquidate them (Parnell, 2021). The emphasis on experience in South Africa's licensing regime reflects the importance of practical knowledge in addition to theoretical understanding.

Kenya:

Kenya's Insolvency Act of 2015 established a licensing regime for insolvency practitioners overseen by the Insolvency Practitioners Oversight Authority (IPOA). The Act outlines eligibility criteria, including membership in a recognized professional body (e.g., Law Society of Kenya or Institute of Certified Public Accountants of Kenya) and a minimum number of years of experience in insolvency law or related fields (The Kenya Gazette Supplement, 2016). Kenya's approach highlights the importance of a collaborative framework, drawing upon expertise from both legal and accounting professions to ensure a well-rounded pool of qualified insolvency practitioners (International Bar Association (IBA), 2023).

These examples demonstrate how licensing regimes can be tailored to specific national contexts while adhering to the core principles of international best practices.

POTENTIAL FOR FURTHER STRENGTHENING: EXPERIENCE REQUIREMENT AND SPECIALIZATION

The introduction of licensing for insolvency practitioners (IPs) in Zambia through the Corporate Insolvency Act No. 9 of 2017 (the Act) represents a significant step forward. However, the potential for further strengthening the regulatory framework remains. This section focuses on the concept of a mandatory prior experience requirement for IP accreditation and analyses its potential benefits and drawbacks in the

THE RATIONALE FOR PRIOR EXPERIENCE REQUIREMENTS

A core principle of effective insolvency regulation is ensuring IPs possess the necessary skills and knowledge to navigate complex insolvency proceedings (International Monetary Fund (IMF), 2023). One approach to achieving this is by mandating a minimum number of years of experience in insolvency-related fields before accreditation. Several jurisdictions around the world have adopted this approach.

The United Kingdom (UK): The UK requires aspiring IPs to demonstrate a minimum of three years' relevant experience, with additional experience requirements for specific insolvency practitioner roles (Insolvency Service, UK Government, 2023).

Australia: Australia's professional bodies typically require five years of relevant experience for individuals seeking accreditation as IPs (Australian Restructuring and Insolvency Turnaround Association (ARITA), 2023).

South Africa: South Africa's Business Rescue Practitioners Council (BRP Council) mandates a minimum of three years' experience in areas like business turnaround or insolvency law for becoming a Business Rescue Practitioner (BRP) (The Business Rescue Practitioners Council of South Africa, 2023).

These examples illustrate how jurisdictions tailor experience requirements to their specific needs.

POTENTIAL BENEFITS OF A PRIOR EXPERIENCE REQUIREMENT IN ZAMBIA

Introducing a mandatory experience requirement in Zambia could offer several potential benefits:

Improved Quality of Service: By requiring prior experience handling insolvency matters, the regulatory framework can ensure IPs possess the practical skills necessary to navigate complex cases effectively. This can lead to more efficient and successful insolvency proceedings for both debtors and creditors (Chartered Institute of Arbitrators (CIArb), 2023).

Fostering Specialization: A prior experience requirement can incentivise professionals to focus on developing specialized expertise in insolvency law and restructuring. This specialization can lead to a deeper understanding of the legal and financial complexities involved in insolvency cases, ultimately benefiting all stakeholders in the process (Wong & Ong, 2022).

Enhanced Public Confidence: By demonstrating a commitment to ensuring qualified and experienced professionals handle insolvency matters, a prior experience requirement can bolster public confidence in the insolvency framework. This can be crucial for attracting investment and promoting a healthy business environment (World Bank, 2023).

DRAWBACKS AND CONSIDERATIONS FOR ZAMBIA

While a prior experience requirement offers potential benefits, some drawbacks and considerations need to be addressed in the Zambian context:

Limited Pool of Qualified IPs: Zambia may currently have a relatively limited pool of professionals with the required experience in insolvency law. Introducing a stringent experience requirement could initially limit access to the profession, potentially hindering the efficiency of the insolvency system (International Finance Corporation (IFC), 2021).

Transitional Measures: If a prior experience requirement is implemented, careful consideration should be given to transitional measures. Existing professionals with relevant experience, but not necessarily meeting the specific number of years mandated, may require alternative pathways to accreditation (Chartered Institute of Accountants in England and Wales (ICAEW), 2023).

Balancing Experience with Skills and Training: While experience is valuable, an exclusive focus on years of practice could overlook other crucial factors. Continuous professional development, relevant training, and demonstrably strong skills should also be considered alongside experience when assessing an IP's qualifications (UN Commission on International Trade Law (UNCITRAL), 2017).

CONCLUSION: A BALANCED APPROACH TO STRENGTHENING THE REGULATORY FRAMEWORK

The inclusion of a mandatory prior experience requirement for IP accreditation in Zambia warrants further consideration. While benefits exist in terms of fostering expertise and improving service quality, potential drawbacks regarding access to the profession and the availability of qualified IPs need careful analysis. A balanced approach could involve a phased implementation, with transitional measures for existing professionals, combined with ongoing professional development requirements to ensure IPs possess the necessary skills and knowledge to effectively navigate the ever-evolving landscape of insolvency law. Ultimately, the goal should be to create a robust regulatory framework that promotes a competent and specialized pool of IPs, fostering efficient and fair insolvency proceedings in Zambia.

Conclusion: Towards a More Robust Insolvency Framework in Zambia

This paper has examined the significance of licensing insolvency practitioners (IPs) in Zambia's evolving insolvency regime. The introduction of licensing requirements through the Corporate Insolvency Act No. 9 of 2017 (the Act) represents a critical step towards aligning with international best practices. By establishing a regulatory framework overseen by the Patents and Companies Registration Agency (PACRA), the Act ensures a minimum standard of competence and ethical conduct among IPs. Mandatory membership in recognized professional bodies, such as the Zambia Institute of Chartered Accountants (ZICA) or the Law Association of Zambia (LAZ), coupled with a focus on relevant experience, fosters a pool of qualified professionals equipped to handle complex insolvency matters.

The framework established by the Act provides a solid foundation for a more efficient and effective insolvency system in Zambia. However, opportunities exist for further strengthening the regulatory regime. One potential area for improvement lies in the consideration of a mandatory prior experience requirement for IP accreditation. Several jurisdictions around the world have successfully implemented such requirements, ensuring IPs possess practical experience in navigating insolvency proceedings before formally undertaking independent assignments. In the Zambian context, a carefully designed experience requirement could incentivize professionals to develop specialized expertise in insolvency law and restructuring. This, in turn, would foster a more specialized and competent pool of IPs, ultimately contributing to more efficient and successful insolvency outcomes for all stakeholders involved.

The path forward necessitates a balanced approach. While a prior experience requirement offers numerous advantages, potential drawbacks regarding access to the profession and the availability of qualified IPs require careful consideration. Phased implementation, with transitional measures for existing professionals, alongside ongoing professional development requirements, could ensure a smooth transition while fostering a culture of continuous learning and skill development within the insolvency practitioner community. Ultimately, the aim should be to create a regulatory framework that fosters a robust and specialized insolvency profession, contributing to a more efficient, fair, and predictable insolvency regime in Zambia.

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