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COMPANY ADMINISTRATION IN NIGERIA, A VIABLE CORPORATE INSOLVENCY ALTERNATIVE IN PURSUING OR PROTECTING COMPANIES THAT ARE UNABLE TO PAY THEIR DEBT.

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Prior to 2020, when a company is in financial distress and unable to pay its debt, the company's creditors can choose to go after the company to recover their funds by initiating a liquidation process or receivership (if the debt is secure). In such instance, the creditor or creditors would typically approach the court under a liquidation process for an order winding up the company and appointing a liquidator with the objective of realizing the company's assets to pay off the debts to the creditor(s) and distribute the remaining funds among the shareholders if anything is left. Consequently, the liquidator winds up the business and brings it to an end.[1]

Secured creditors, who hold charges or security over the insolvent company's asset(s), have an additional option. They can initiate receivership process, which typically enables them to appoint a receiver to recover the debt owed. When a company is placed in receivership, the receiver appointed by the secured creditor gathers the company's assets, manages them, sells them, and uses the proceeds to settle the debt owed by the company.[2]

Although the process of liquidation is different from the process of receivership and the category of creditors that can pursue liquidation is different from the category of creditors that can pursue receivership, both insolvency processes share a common goal – to repay the creditors' debt, with no regard to the life of the company after the process. In fact, in the case of liquidation, the job of the liquidator is akin to that of an undertaker who gently leads the company to its grave. The situation seems a bit milder with receivership, where the receiver only proceeds against the assets of the company and would only manage the company's business or assets for the limited purpose of paying the debt of the secured creditors and not to keep the company afloat. Hence, companies that undergo receivership often later slide into liquidation.

The implication therefore is that companies in financial distress have zero or infinitesimal chance of survival once they are launched into corporate insolvency by their creditors in the years preceding 2020 in Nigeria.

[1] See sections 409 and 410 of the Companies and Allied Matters Act 1990 ("CAMA 1990").
[2] See section 209(3) of CAMA 1990.

Corporate insolvency took a progressive shift in Nigeria when Company Administration was introduced under the Companies and Allied Matters Act of 2020 ("CAMA 2020"). The introduction of Company Administration was designed to meet the need that liquidation and receivership processes do not care about, that is ensuring the survival of the company after the creditors' debts have been paid or settled.

Under company administration, an administrator is appointed by the creditors in the same manner as a liquidator and receiver. However, the distinguishing factor is that the administrator is required to balance the interest of the creditors with the survival of the company by ensuring that the company remains a going concern after the creditors' debts have been settled or after the Administration process. In essence, administration is designed to rescue a company in financial distress through corporate restructuring or refinancing or both, while simultaneously meeting the needs of the creditors.

In a recent decision of the Federal High Court of Nigeria in Suit No: ***FHC/L/CS/2446/2023 Mr. Okorie Ezenwa Andrew (Trading under the name and style of Andrecynth Enterprises) v. Emerald Leasing Limited,*** the Court emphasised the fact that the objective of Administration proceedings is "corporate rescue" and proceeded to point out that everything done in administration proceedings must be geared towards this objective. On this premise, the Court proceeded to hold that before it (the Court) considers and grants any application in an Administration proceeding, it must be shown that such application would contribute to the actualisation of the purpose of Administration. This decision does not only show that administration aims towards company rescue, but it also shows that it prioritizes company rescue and enjoys judicial support.

The law, as contained in the provisions of section 444(1) of CAMA 2020, places the primary obligation of meeting the objective of company administration on the Administrator. This explains why the law specifically provides that only a person qualified to act as an insolvency practitioner can be appointed administrator.[3] Thus, once an administrator is appointed, he has a duty to manage the company's affairs, businesses and properties with the primary goal/objective of rescuing the company from its financial debts while also settling the debts of the creditors.

[3] See section 447 of CAMA 2020.

The legislative purpose of company administration was copiously stated in the provisions of section 444(1) (a) – (c) as follows:

> *"The administrator of a company may do all such things as may be necessary for the management of the affairs, business and property of the company, and shall perform his functions with the objective of –*
>
> - *Rescuing the company, the whole or any part of its undertaking, as a going concern:*
> - *Achieving a better result for the company's creditors as a whole than would be likely if the company were wound up, without first being in administration; or*
> - *Realizing property in order to make a distribution to one or more secured or preferential creditors."*

A reading of the provisions of section 444(1) set out above, especially subsection 1(b) shows that company administration was designed to provide an alternative to receivership and liquidation which by their very nature put an end to the affected companies, unlike administration that is aimed at rescue.

Although the provisions of section 444(1) of CAMA 2020 do not expressly mandate creditors to pursue company administration as a first step towards corporate insolvency, however, going by the language of the legislation, it is easy to decipher that the expectation, intention and innovation evinced is to ensure that creditors explore and exhaust the administration process before advancing to liquidation. This option, therefore, serves as a viable alternative to liquidation and receivership options. In fact, the provisions of section 452 and sections 472 – 476 of CAMA 2020 expressly provide for the right of appointment of an administrator for the purpose of carrying out similar function as that of a receiver. This means that company administration serves as a viable alternative to both liquidation and receivership. The viability of administration as an option is not far-fetched, that is because it seeks to protect and give lifeline to a struggling business rather than terminate it. From a socio-economic standpoint, administration helps to improve the nation's economy because the survival of a company is the survival of the employees, contractors, consultants, etc., who lean on the company for their own survival and livelihood. In a progressive society, company administration is an option that should be celebrated, explored and exhausted before liquidation or receivership is explored.

When administration is unable to achieve its objective

When a person is appointed administrator, he has a period of twelve (12) months to perform his functions.[4] If after the exercise of his best endeavour, it is not feasible to rescue the company in administration, the administrator will give his report and exit his role as administrator by an application to the Court.[5] At this stage, the creditors may initiate a liquidation process to recover their funds if such recovery could not be achieved during administration.

Effect of administration on directors

Once an administrator has been appointed, the directors of the company become suspended until the objective of the administration is achieved or by effluxion of time, when the duration of the administration expires.

Why creditors should proceed against debtor companies through Company Administration.

Under the provisions of section 449of CAMA 2020, a creditor may force a company into Administration by applying to the court for the appointment of an administrator in relation to the company, where the company is unable to pay its debt(s) or is likely to become unable to pay its debts.

For a creditor, the rationale behind the choice of administration over liquidation is very simple. If there is a potential to rescue the company after recovering the debts owed, why would a creditor want to opt for liquidation that aims to permanently shut down the company?

Secondly, administration is more likely to yield a better result for creditors because the company can continue to do business during administration, unlike liquidation and receivership that focus mainly on gathering and selling the assets of the company.

Administration is therefore particularly beneficial in cases where the company has a long list of creditors that may not all be settled if the assets are sold and wound up, unlike the opportunity for wider settlement where the company is restructured.

[4] See section 460 and 461 of CAMA 2020.
[5] See section 517(2)(a-b) of CAMA 2020 and Regulation 3.54 of the Insolvency Regulations of 2022.

Thirdly, even if the restructuring may not immediately provide settlement opportunity for all creditors, financial restructuring of the business during administration can make the business more attractive to potential buyers who may settle outstanding debt obligations of the company upon purchase.

Challenges associated with company administration for creditors

There are no significant challenges or disadvantages with creditors pursuing debtor companies through administration. However, the following may be worth noting:

- Administration could be expensive, especially when the administrator's fees and the creditor's legal fees are put into consideration.
- More time could be spent on the insolvency process if nothing significant is realised during the administration and the creditors have to proceed to liquidation.
- The suspended directors of the debtor company may take steps to stifle the administration process. For example, they may refuse to present or timeously present the administrator with statement of affairs that would enable restructuring of the company as required or mount legal resistance on the administrator in court.

Why financially distressed companies should voluntarily submit to Company Administration.

Just as a company has the right to voluntarily wind up its affairs whether or not it is solvent and a going concern, so also does a company or its directors have the right to voluntarily submit a company to administration when it is in financial distress.[6]

It is important to note that the administrator, upon appointment, becomes an officer of the court (whether or not he was appointed by the court)[7] and an agent of the company.

The fact that a company can voluntarily enter into administration upon determining that it is insolvent or may likely be, is a big advantage that companies can now explore.

[6] See section 459 of CAMA 2020.
[7] See section 446 of CAMA 2020.

than suffer the risk or exposure to winding up for inability to pay debt through a liquidation process, companies can now submit to administration and enjoy the opportunity to regain stability without the risk or fear of liquidation during the administration period.

When can a company opt for Administration?[8]

A company may appoint an administrator without an order of the court when:

- It is insolvent or likely to become insolvent.
- It believes that administration will rescue the business or achieve better outcomes for the creditors than immediate liquidation.
- No winding up petition is pending at the time of the appointment.

Once appointed, the administrator is granted control of the company for a statutory period of 12 months. During the 12-month period, legal proceedings or enforcement actions against the company's assets is prohibited without the leave of the court and because the administrator acts as an agent of the company,[9] the potentiality of achieving corporate rescue becomes more realistic.

Advantages of Administration for financially distressed companies

The benefits enjoyed by a company in administration, whether voluntarily or by order of court are as follows:

- The company has the opportunity of survival and business continuity after the administration.[10]
- No winding-up resolution can be passed during the administration period;[11]
- Any winding up petition or legal proceedings brought against the company, while in administration will be dismissed by the court, subject to certain conditions contained in section 477 (1) (a) & (b) of Companies and Allied Matters Act 2020.
- Creditors are barred from enforcing debts or seizing the company's assets without the court's approval;[12]

[8] See Regulation 3.20 (f-g) of the Insolvency Regulation 2022 and sections 449(a) & (b) and 462 of CAMA 2020.
[9] See section 461(1) of the CAMA 2020.
[10] See section 444 of CAMA 2020 and the Tenth Schedule of the Companies and Allied Matters Act 2020.
[11] See section 479(2) of the CAMA 2020.
[12] See section 480(2) of the CAMA 2020.

- The administrator works towards rescuing the company, selling its assets in a manner that maximizes value, or proposing a reorganization plan;[13]
- By preserving the company, employees' jobs are also preserved.

There may not be a reported case in Nigeria that shows how the protection accorded to companies undergoing administration has been tested, however, other jurisdictions like England that has practiced administration as part of corporate insolvency longer than Nigeria have reported cases that demonstrate the Court's protective cover for companies undergoing administration. For instance, in a very recent decision handed down by the Court of Appeal, England and Wales, namely, the case of Kingston S.A.R.L & 2 Ors v. Thames Water Utilities Holdings Ltd & Others [2025] EWCA Civ 475, the Court highlighted some of the benefits of administration in favour of the company under administration (and undertaking corporate restructuring). These benefits include:[1] (i) inability of creditors to enforce security over the company's property without proper notice; (ii) inability of the Court to make winding up order during administration. Essentially, the case underscores the protective arm of administration, which prevents piecemeal attacks on company assets and allow the administrator to act in the interest of all stakeholders, not just individual creditors.

Disadvantages of administration for a financially distressed company

The disadvantages of administration are quite few and insignificant compared to the advantages. Some of the disadvantages are:

- The directors of the company are immediately suspended upon the appointment of a liquidator.[15]
- It might be an expensive venture, especially with regard to the administrator's fees.

[13] See section 444(1) (c) and the Tenth Schedule of CAMA 2020.
[14] See paragraphs 38, 39 etc., of the judgment.
[15] See section 627(2)

Conclusion

Company Administration under CAMA 2020 offers a practical and structured alternative to insolvency proceedings, both for creditors and companies facing financial distress. It basically gives both sides an opportunity to achieve their objectives, i.e., getting repayment of their funds and keeping the company alive through restructuring. This corporate insolvency option provides companies with the time and opportunity to assess their options and leverage restructuring as a way of resolving their financial crisis, rather than sliding into liquidation that puts an end to the company.

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