CORPORATE RESCUE MECHANISMS IN NIGERIA: A COMPARATIVE APPROACH*

Abstract

Corporate rescue are strategies put in place to salvage financially distressed company in order for such company to remain a going-concern. The Companies and Allied Matters Act (CAMA)[1] 2020 introduced significant milestones / improvements in the corporate sphere of Nigeria. With the enactment of CAMA 2020, rescue mechanisms such as Company Voluntary Arrangement (CVA)[2] and Administration are now available to insolvent companies in Nigeria which if explored, can make such companies retain their viability. Considering the legal and institutional frameworks on corporate rescue mechanisms of some foreign jurisdictions, one would be left with no other option but to advocate for a further improvement on what is applicable in Nigeria. The objectives of this paper were to review the provisions of CAMA 2020 on corporate rescue in Nigeria and to highlight areas that need improvements comparing it with what is note-worthy from other jurisdictions. This paper adopted doctrinal research methodology with data sourced from primary sources such as statutes and case law as well as secondary sources which included textbooks, journal-articles and Internet materials. It is the finding of this paper that the existing provisions on corporate rescue mechanisms now in Nigeria are inadequate. This paper therefore recommends an independent moratorium for CVA, standalone legislation and a separate court for corporate rescue matters.

Keywords: Corporate Rescue, Distressed Company, Company Voluntary Arrangement, Administration, Liquidation

1. Introduction

Corporate Rescue is any action taken to resuscitate and revamp the financial viability of an insolvent company. The process of corporate rescue is based on the processes, mechanisms, and steps that are carried out as interventions necessary to avert eventful failure of a company.[3] It is the process of enabling companies in financial difficulties to return to a state of viability and to prevent them from sliding into insolvency.[4] Corporate Rescue mechanisms are tools employed to avert the eventual demise of a once viable business or company due to its inability to meet its financial needs and obligations. A company that is unable to meet its due financial commitments is said to be insolvent. An insolvent company is a company that is unable to pay its debt. On a company's inability to pay debts, section 572 (a)[5] provides that 'a company is deemed to be unable to pay its debts if a creditor to whom the company is indebted in a sum exceeding two hundred thousand naira (N200, 000), then due has served on the company, a demand under his hand requiring the company to pay the sum due, and the company has for three (3) weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor'. The sum that constitutes the debt should be a sum certain/ascertainable. In *Nigeria Postal Services v Insight Engineering Company Ltd*,[6] it was held that an action of debt lies where a person claims the recovery of a liquidated or certain sum of money affirmed to be due him. Previously, under the repealed CAMA,[7] insolvent companies were subjected to winding up, receivership, and arrangement and compromise. The process of winding up eventually terminates the life of such companies as it brings the activities of such companies to an end. A company that is wound up ceases to be a going concern and loses its legal personality status. But the enactment of CAMA 2020 made salient modifications and improvements on the ease of doing business in Nigeria. It equally introduced business rescue options aimed at reviving a financially moribund company. These newly introduced rescue mechanisms include Company Voluntary Arrangement and Administration. Companies that are struggling to meet their financial obligations can employ one of these to facilitate the recovery of their financial strength and to remain a viable going-concern. The provisions of CAMA 2020 on CVA are modeled after the practice in the United Kingdom (UK) under the United Kingdom Insolvency Act, 1986.[8]Considering the provisions of similar rescue mechanisms in the legal instruments of some jurisdictions like the United Kingdom (UK) and India, it is apparent that the existing legal framework in Nigeria on corporate rescue needs to be reviewed to incorporate those features that enhance the smooth implementation of the

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[1] Companies and Allied Matters Act 2020 hereinafter referred to as CAMA 2020.

[2] Company Voluntary Arrangement hereinafter referred to CVA.

[3]O C Aduma & H O Obi, 'Examining the Introduction of Company Voluntary Arrangement as a Rescue Mechanism under Company and Allied Matters Act (CAMA) 2020' (2022) 3 *International Journal of Law and Clinical Legal Education*<https://www.nigerianjournalsonline.com> Accessed July 4, 2024.

[4] O C Aduma & H O Obi (n 3).

[5] CAMA (n 1).

[6] (2006) 8 NWLR (Pt 983) p 438.

[7] CAMA Cap C20 LFN 2004.

[8]O O Chukwuocha, 'Company Voluntary Arrangement under CAMA 2020: A Review' (2023) 19 (2) *UNIZIK Law Journal*, 41 <https://journals.ezenwaohaetorc.org> Accessed July 8, 2024.

applicable provisions on corporate rescue in such jurisdictions which are lacking in the Nigerian principal legislation for corporate matters.

2. Company Voluntary Arrangements (CVA) under CAMA 2020

Meaning of CVA

Company Voluntary Arrangements (CVA) is one of the rescue mechanisms introduced by CAMA 2020 which does not have a particular definition but has been variously defined by authors. The statutory meaning of CVA is as stipulated in section 434 (1)[9] which provides thus: 'All directors of a company may make a proposal under this Part to its creditors for a composition in satisfaction of its debts or a scheme of arrangement of its affairs (in this Act referred to in either case, as a 'voluntary arrangement'). Simply put, a CVA refers to a composition in satisfaction of a company's debts or a scheme of arrangement of a company's affairs reached after the consideration of a proposal made to the company's creditors by the directors of the company. Such a proposal for a CVA may be made where an administration order is in force in relation to the company, by the administrator and where the company is being wound up, by the liquidator.[10] A CVA is a debtor in possession procedure where the debtor is left in control of its affairs while it continues its business as a going concern under the supervision of a nominee.[11] According to Olalekan,[12]a CVA is a binding agreement for debt repayment between a company and its secured creditors and provides an opportunity for the company to negotiate achievable repayment terms with its creditors and avoid insolvent liquidation.

The Process of CVA

Appointment of a Nominee

A proposal provides for some person ('the nominee') to act in relation to the voluntary arrangement either as trustee or otherwise for the purpose of supervising its implementation and the nominee shall be a person who is qualified to act as an insolvency practitioner in relation to the company.[13]

A Proposal for a CVA

To enable the nominee prepare his report, the person making the proposal shall submit to the nominee a document setting out the terms of the proposed voluntary arrangement; a statement of the company's affairs which shall contain particulars of its creditors, its debts and other liabilities, its assets and any other information as may be prescribed.[14] The proposal shall also contain the identification details for the company; explanation on why the proposer thinks that a CVA is desirable; and explanation on why the creditors are expected to agree to a CVA.[15] The proposal shall be authenticated and dated by the proposer.[16]

Submission of Report to the Court

The procedure where the nominee is not the liquidator or administrator of the company is that, within twenty-eight (28) days or more as the Court may allow, after the nominee has been given notice of the proposal, the nominee shall submit a report to the Court stating his opinion whether the meeting of the company and of its creditors should be summoned to consider the proposal and if in his opinion such meetings should be summoned, the date, time and venue of the meetings shall also be stated.[17] In the CVA pioneer case of Re: Seyi Akinwunmi & Okorie Kalu,[18]the Federal High Court had the opportunity to consider the issue of CVA and made relevant judicial pronouncement and directions.[19] The Court having listened to the arguments canvassed by Okorie Kalu the Nominees' counsel on record, granted the application and sanctioned the appointment of Mr. Seyi Akinwunmi and Mr. Okorie Kalu as Nominees of the company regarding the proposed CVA. The CVA procedure adopted in this CVA pioneer case had been somewhat criticized as being procedurally incorrect.[20] All the nominees needed to do in that case was to submit their report to the Court for the Court's endorsement which would be returned to the nominees and the nominees would deliver a copy of the endorsed report to the company and not to have applied to the Court to sanction their appointment as nominees. The Court also ordered the summoning of the

[9] CAMA (n 1).
[10] CAMA (n 1) section 434 (3) (a) & (b).
[11]K Udofia, 'Business Facilitation Act 2023: Appraisal of the New Threshold for Cash Flow Insolvency', Thisdaylive, February 2023 <https://www.thisdaylive.com> Accessed July 8, 2024.
[12]O E Olalekan, 'An Overview of Company Voluntary Arrangements under CAMA 2020'<https://www.mondaq.com> Accessed July 8, 2024.
[13] CAMA (n 1) section 434(2).
[14] CAMA (n 1) section 435(3)(a) & (b) (i) & (ii).
[15] Insolvency Regulations 2022, Part 2 @ regulation 2.00(1)(a-c).
[16] Insolvency Regulations (n 15) @ regulation 2.00(1)(d).
[17] CAMA (n 1) section 435(2) (a) & (b).
[18]FHC/L/CS/1250/2021 cited by Ayodele in 'Court Delivers Ruling on Pioneer Company Voluntary Arrangement (CVA) in Nigeria' <https://punuka.com>. Accessed on July 10, 2024.
[19] Ayodele (n 18).
[20] O O Chukwuocha (n 8).

meetings of the creditors of the company and of the company. The summoning of the meetings of the company's creditors and that of the company should have been done by the nominees themselves and not by the order of Court as stipulated in section 436 (1)(a).[21]

Summoning of Meetings

Where the nominee is not the liquidator or the administrator and the report has been submitted to the Court that the meetings be summoned, the person making the report shall (unless the Court otherwise directs) summon those meetings for the time, date and place proposed in the report.[22] Where the nominee is the liquidator or administrator, he shall call for the meetings of the company and of its creditors to consider the proposal for such a time, date and place as he thinks fit.[23] In considering the proposal by the company's members and creditors, the nominee shall invite the members of the company as well as the creditors by summoning separate meetings of both parties to consider the proposal.[24] The meetings summoned shall decide whether to approve the proposed voluntary arrangement with or without modifications.[25] At the conclusion of either meeting in accordance with the rules, the chairman of the meeting shall report the result of the meeting to the Court, and, immediately after reporting to the Court, shall give notice of the result of the meeting to such persons as may be prescribed.[26]

Approval of Proposed Voluntary Arrangement

The decision of the meetings at the consideration of the proposals has effect, if in accordance with the rules, it has been taken by both meetings summoned under section 436 or subject to any order made under subsection (4) it has been taken by the creditors' meeting summoned under that section.[27] If the decision taken by the creditors' meeting differs from that taken by the company meeting, a member of the company shall apply to the Court.[28] The Court may order the decision of the company meeting to have effect instead of the decision of the creditors' meeting; or make such other order as it deems fit.[29]

Effect of the Approval of the Voluntary Arrangement

The order of the Court that the decision of the company meeting should have effect instead of the decision of the creditors' meeting takes effect as if made by the company at the creditors' meeting; and binds every person who, in accordance with the rules was entitled to vote at the meeting (whether or not he was present or represented at it), or would have been so entitled if he had had notice of it, as if he was a party to the voluntary arrangement.[30] The effect of the approval of the arrangement is that it binds all unsecured creditors. Company Voluntary Arrangement does not bind secured and preferential creditors. A meeting summoned shall not approve the proposal or modification which affects the right of a secured creditor of the company to enforce his security, except with the consent of the concerned creditor.[31] Similarly, a meeting so summoned shall not approve any proposal or modification under which any preferential debt of the company is to be paid otherwise than in priority to such of its debts as are not preferential debts.[32] Where the company is being wound up or is in administration, the Court may by order, stay all proceedings in the winding- up or provide for the appointment of the administrator to cease to have effect; or give such directives with respect to the conduct of the winding-up or the administration as it considers appropriate for facilitating the implementation of the order the of Court that the decision of the company meeting should have effect instead of the decision of the creditors' meeting on the voluntary arrangement.[33]

Objections to the Decision

The decision may not be generally accepted by all concerned. Those not satisfied with the voluntary arrangement may decide to challenge the decision. Any of such persons entitled to challenge the decision[34] may do so by an application to the Court on the ground that a voluntary arrangement which has effect under section 437 unfairly prejudices the interests of a creditor, member or contributory of the company; or there has been some material irregularity at or in relation to either of the meetings.[35] In *Prudential Assurance Company Ltd. & Ors v PRG Powerhouse Ltd. & Ors*[36]the creditors of Powerhouse challenged the validity of a Company Voluntary

[21] CAMA (n 1).
[22]CAMA (n 1) section 436(a).
[23] CAMA (n 1) section 436(b).
[24] Insolvency Regulations (n 15) Regulation 2.11 (1&2).
[25] CAMA (n 1) section 437 (1).
[26] CAMA (n 1) section 437 (6).
[27] CAMA (n 1) section 438(1) & (2).
[28] CAMA (n 1) section 438(3).
[29] CAMA (n 1) section 438(5).
[30] CAMA (n 1) section 439(1) & (2). See also Insolvency Regulations (n 15) regulation 2.26.
[31] CAMA (n 1) section 437(3).
[32] CAMA (n 1) section 437(4).
[33] CAMA (n 1) section 439(4).
[34] CAMA (n 1) section 440(2).
[35] CAMA (n 1) section 440 (1).
[36] [2007] EWHC 1002 (Ch).

Arrangement approved on February 17, 2006. The main issue was whether the CVA effectively released PRG from liability under guarantees provided to landlords of premises leased by Powerhouse. The Court found that the CVA unfairly prejudiced the creditors' interests as it undervalued the guarantees, resulting in a fraction of their value being paid to landlords. Also, in *Re Mizen Design/Build Ltd*,[37] the High Court considered two separate challenges to a CVA, one of which was successful. In the successful one, the Court held that whilst there were no direct disclosure obligations on the shareholder (as it was the Company's CVA), the failure to disclose adequate information regarding the shareholder amounted to a material irregularity. In *Lazari Properties 2 Ltd & Ors v New Look Retailers Ltd & Ors*,[38] the challenge of the CVA on the ground of being unfair treatment was rejected by the Court. The Court held that any potential prejudice was sufficiently addressed by offering a termination right in the CVA proposal in return for imposing lease modifications, provided that the terms offered for the notice period were better than the alternative the landlord would receive on an administration or liquidation.[39] Where the Court is satisfied with the application on either of the grounds, the Court may revoke or suspend any decision approving the Voluntary Arrangement which has effect under section 437or, in a case of material irregularity, any decision taken by the meeting in question which has effect under that section.[40] The Court may also give a direction to any person for the summoning of further meetings to consider any revised proposal the person who made the original proposal may make or, in the case falling under material irregularity in relation to either of the meetings, a further company's or creditors' meeting to reconsider the original proposal.[41]

3. Corporate Rescue in the United Kingdom

CVA (With and Without Moratorium)

The CVA process in Nigeria is substantially similar to that obtainable in the UK (although with some differences) since the provisions of CAMA 2020 on CVA are patterned after the practice in the United Kingdom (UK) under the United Kingdom Insolvency Act, 1986 and the England and Wales Insolvency Rules 2016.The UK Company Voluntary Arrangement is an insolvency process pursuant to the Insolvency Act.[42] The procedure was later consolidated in the Act as Part 1.[43] With the amendment of Part 1 of the Act by the Insolvency Act 2000, there are now two (2) types of CVA procedures.[44] Firstly, CVA without moratorium which was introduced into law by the Insolvency Act of 1986 and is regulated by Part 1 of the Insolvency Act 1986 as amended by Insolvency Act 2000 and secondly, the CVA with moratorium which is governed by Insolvency Act 2000[45] (but only became available for use as and from 1st January, 2003). A CVA without moratorium does not provide the company an authorized period of delay in repaying its debt, and the creditors are not prevented from enforcing their rights even during the negotiation.[46] CVA with moratorium is designed for those companies which satisfy two or more requirements for being a 'small' company.[47] A company is regarded as a small company if it satisfies two or more of the following requirements:[48] (a) Turnover not more than 10.2million euro (b) Balance sheet total not more than 5.1 million euro (c) Number of employees not more than 50

Statutory Moratorium (Free-Standing Moratorium)

Apart from the CVA and the Administration Order tools of corporate rescue in the UK, the Companies Insolvency and Governance Act (CIGA) 2020 which came into force on June 26, 2020 in the UK introduced both permanent measures to update the UK restructuring and insolvency regime, as well as temporary measures relating to insolvency law and corporate governance to assist businesses during the covid-19 pandemic.[49] One of the reforms introduced by CIGA is the free-standing moratorium.[50] The moratorium aims to provide distressed but viable companies with breathing space from creditor action to enhance a rescue of the business as a going concern or preparation for a restructuring.[51] This moratorium being a free-standing process does not need to be combined

[37]*Newlon Housing Trust v Mizen Design/ Build Ltd* [2023] EWHC 127 (Ch): cited by A Jacks & N Hughes in 'Company Voluntary Arrangement (CVA) Successfully Challenged on Grounds of Material Irregularity and under Unfair Prejudice' <https://www.mayerbrown.com> Accessed July 11, 2024.
[38][2021] EWHC 1209 (Ch): cited by O Clarke in 'Appeal on Landlord's Challenge to UK Company Voluntary Arrangement Settles Night Before Hearing' <https://www.osborneclarke.com> Accessed July 11, 2024.
[39] [2021] EWHC (n 1).
[40] CAMA (n 1) section 440 (4) (a).
[41] CAMA (n 1) section 440 (4) (b).
[42] Insolvency Act 1986 at sections 20 – 26.
[43]S Shadman, 'The Legal Framework of Corporate Rescue Procedure: A Brief Overview' <https://www.banglajol.info> Accessed July 12, 2024.
[44] S Shadman (n 43).
[45] S Shadman (n 43).
[46] S Shadman (n 43).
[47] S Shadman (n 43).
[48]M McCreadie, 'What is a Company Voluntary Arrangement? What You Need to Know' <https://www.credifix.co.uk> Accessed July 15, 2024.
[49]M Czyzyk *et al*, 'England & Wales: Overview of Restructuring Mechanisms and Recent Developments' <hhtps://www.lexology.com> Accessed July 11, 2024.
[50] M Czyzyk *et al* (n 49).
[51] M Czyzyk *et al* (n 49).

with any other corporate rescue mechanism.[52] The purpose of the new moratorium is to provide struggling companies with a 'streamlined moratorium procedure that keeps administrative burdens to a minimum, makes the process as quick as possible and does not add disproportionate costs on to struggling businesses'[53].

Eligible Companies for a Statutory Moratorium

The moratorium can be used by UK companies of any size but, it is not available to certain entities (e.g. financial services firms) or (generally) to companies that have already commenced winding-up proceedings.[54]A moratorium is open to companies upon filing documents at the Court or making an application at the Court where the directors provide confirmation in documents filed with the Court that the company is, or likely to become unable to pay its debts; and the 'monitor', a licensed insolvency practitioner who supervises the moratorium, confirms that it is likely that the moratorium would bring about the rescue of the company.[55] If the moratorium is granted, the moratorium will run for an initial period of 20 business days, which can be extended by another 20 business days by the directors.[56] A longer extension can be obtained in certain instances, nevertheless, it will need to be approved by either the Court or by the company's creditors.[57] The appointed insolvency practitioner oversees the moratorium in his role as the monitor, although, the company will continue to operate under the control of the directors with certain restrictions on borrowing money and disposing of the assets of the company.[58] During the pendency of the moratorium, no insolvency proceedings (including compulsory liquidation by a winding-up petition) can be taken against the company; secured creditors cannot take any action to repossess goods or otherwise use the power of their security; no litigation can be brought against the company; ongoing litigation action must be stayed; landlords cannot forfeit an ongoing lease agreement; and most existing (pre-moratorium) debts will be subject to a payment holiday.[59]The moratorium will be brought to an end if the monitor believes the company is past the point of rescue; if rescue of the company has been achieved; if the moratorium period comes to an end without being extended or if the company enters into a formal insolvency process such as a CVA or a restructuring plan.[60]

Administration of Companies in Nigeria and the UK Compared

Administration of companies is a more elaborate procedure akin to the Chapter 11 proceedings of the United States Bankruptcy Code and the Administration proceedings under schedule B1 to the United Kingdom Insolvency Act 1986.[61] Company Administration is one of the business rescue procedures introduced into the Nigerian corporate legal regime by CAMA 2020.[62] An administration order is usually made by the Court where the Court is satisfied that the company is or is likely to become unable to pay its debts.[63] Administration of Companies attempts to prevent or delay the winding up of a company by serving as a rescue mechanism for insolvent companies and providing them the prospect of discharging their debts and restructure the company with the aim of reviving it while still being in business instead of packing up.[64] Administration of Companies is regulated by the provisions of Chapter 18 of CAMA (sections 443 to 549).[65] The procedure and process of Administration of companies in Nigeria under CAMA[66] are similar to that in the UK.

Appointment of an Administrator

A person may be appointed as administrator of a company by an administration order of the Court; the holder of a floating charge; or the company or its directors.[67] 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.[68] Only a person qualified to act as an insolvency practitioner in relation to the company should be appointed as administrator.[69] An

[52] M Czyzyk *et al* (n 49).
[53]A Shalchi, 'Corporate Insolvency and Governance Act 2020' <https://researchbriefings.files.parliament.uk> Accessed July 13, 2024.
[54] (n 53).
[55] M Czyzyk *et al* (n 49).
[56]J Munnery, 'Understanding the Standalone Moratorium for UK Companies' <https://begbies-traynorgroup.com> Accessed July 11, 2024.
[57] J Munnery (n 56).
[58] J Munnery (n 56).
[59] J Munnery (n 56).
[60] J Munnery (n 56).
[61]I Wilson & I Ibiyemi, 'Business Rescue and Continuity in Nigeria: Keeping the Lights on' <https://www.templars-law.com> Accessed July 15, 2024.
[62]J S Tolulope & C R Elendu, 'Company Voluntary Arrangements (CVA) & Administration of Companies: An Appraisal of the Innovative Corporate Insolvency Procedures under the Companies and Allied Matters Act 2020' (2023) 13 (1*) Nigerian Bar Journal*, 143 <https://www.ajol.info> Accessed July 15, 2024.
[63] CAMA (n 1) section 449.
[64] J S Tolulope & C R Elendu (n 62).
[65] CAMA (n 1).
[66] CAMA (n 1).
[67] CAMA (n 1) section 443.
[68] CAMA (n 1) section 444 (1).
[69] CAMA (n 1) section 447(1).

insolvency practitioner is defined as a legal practitioner within the meaning of the Legal Practitioners Act or a member of the Institute of Chartered Accountants of Nigeria or such other professional bodies of accountants as are established by an Act of the National Assembly.[70] An administrator is an officer of the Court, whether or not he is appointed by the Court.[71]

Objectives of Administration

The administrator shall perform his functions with the objective of rescuing the company, the whole or 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.[72] But the rescue of the company should be the primary objective of the administrator in the performance of his duties, except where he is of the opinion that it is not reasonably practicable or a better result can be achieved for the company's creditors by pursuing some other course in priority as stated in that subsection.[73]

The Process of Administration

An administrator of a company shall not later than fourteen (14) days, send a notice of his appointment to the company; publish a notice of his appointment in the prescribed manner; obtain a list of the company's creditors; and send a notice of his appointment to each creditor whose claim and address he is aware of.[74] The administrator is also required to send a notice of his appointment to the Commission, publicizing the notice before the end of fourteen (14) working days from the date of his appointment.[75] The administrator shall by notice, require one (1) or more relevant persons to provide the administrator with a statement of affairs of the company.[76] The requirement to furnish the statement of affairs of the company may be revoked and the period may be extended by the administrator or by the Court on application.[77] The administrator shall make a statement setting out the proposals for achieving the purpose of the administration.[78]The administrator shall send a copy of the statement of his proposal to the Commission; every creditor of the company whose address he is aware of; and every member of the company whose address he is aware of within thirty (30) days from the day the company entered into administration.[79] The administration shall summon a meeting of the creditors of the company where the statement of the proposals will be considered which may be approved with or without modifications.[80] The administrator shall report any decision taken to the Court; the Commission; and such other persons as may be prescribed by the minister.[81] Where there is failure to obtain approval of administrator's proposals, the Court may provide that the administrator's appointment shall cease from a specified time; adjourn the hearing with or without conditions; make an interim order; make an order on a petition of winding-up suspended; or make any other order that the Court deems appropriate.[82]

Moratorium in Administration

Where a company is in administration, no resolution shall be passed or order made for the winding-up of the company in administration except on a petition made on grounds of public interest or under special banking and financial provisions of the Banks and Other Financial Institutions Act, the Nigerian Deposit Insurance Corporation Act, or any other financial services and markets related Act.[83] Additionally, except with the consent of the administrator or permission of the Court, where a company is in administration, no step shall be taken to enforce security over the company's property; repossess goods in the company's possession under a hire purchase agreement; a landlord shall not exercise a right of forfeiture by peaceable entry in relation to the company let to the company; no legal process, including legal proceedings, execution, distress and diligence shall be instituted or continued against the company or property of the company.[84] In the UK, the Administration Order is regulated by the Insolvency Act 1986 and the Enterprise Act 2002. The Enterprise Act[85]provides for the application of the Administration of Companies to foreign companies outside the UK as well as non-companies in the UK.[86] The

[70] CAMA (n 1) section 868.
[71] CAMA (n 1) section 446.
[72] CAMA (n 1) section 444 (1).
[73] CAMA (n 1) section 444(2).
[74] CAMA (n 1) section 483(2).
[75] CAMA (n 1) section 483(3).
[76] CAMA (n 1) section 484(1).
[77] CAMA (n 1) section 485(2) & (3).
[78] CAMA (n 1) section 486(1).
[79] CAMA (n 1) section 486(4) & (5).
[80] CAMA (n 1) sections 487 – 490(1).
[81] CAMA (n 1) section 490(2).
[82] CAMA (n 1) section 492.
[83] CAMA (n 1) section 479.
[84] CAMA (n 1) section 480.
[85] Enterprise Act 2002.
[86]U Ijeoma & N Haliru, 'Survival a Fall: Administration of Companies as a Rescue Strategy' < https://www.templars-law.com> Accessed July 16, 2024.

UK Secretary of State may by order provide for a provision of the Insolvency Act 1986 to apply (with or without modification) in relation to a company incorporated outside Great Britain.[87] Section 255[88] provides for the application of the law over company arrangement or administration to non- company. Non-company includes both registered and unregistered friendly societies. In contrast, the law regulating insolvency in Nigeria (CAMA) does not have similar provision for foreign companies and non – companies.

Furthermore, while CAMA provides for the qualification and requirements to practice as an Insolvency Practitioner in Nigeria,[89]it does not make provision for the conditions that disqualify a person from practicing as Insolvency Practitioner similar to that applicable to directors and liquidators, the UK Insolvency Act provides conditions that disqualify a person from practicing as Insolvency Practitioner.[90] The UK Insolvency Act[91]provides for both the qualification and requirements for Insolvency Practitioner[92]as well as conditions for disqualification.[93] Such conditions for disqualification of a person from practicing as Insolvency Practitioner in the UK include a person that is not an individual (an artificial person); a bankrupt; a person of unsound mind; a person disqualified to be a director, etc. Although section 708(4) of CAMA[94]empowers the Commission to withdraw an authorization granted to a person to practice as an Insolvency Practitioner where it appears to the Commission that the person is not fit and proper to act as an Insolvency Practitioner, CAMA is silent on what conducts constitute not being fit and proper to warrant the withdrawal of authorization from a person practicing as an Insolvency Practitioner.[95] Moreover, CAMA[96]only makes provision for a single process of obtaining authorization to practise as an Insolvency Practitioner in Nigeria.[97] Such authorization can only be obtained from the Corporate Affairs Commission, whereas the UK Insolvency Act[98]provides a double requirement for a person to be qualified to practise as an Insolvency Practitioner.[99] A person is qualified to practice as an Insolvency Practitioner under the UK Insolvency Act[100] if he is authorized to so act by virtue of membership of a professional body recognized by the Secretary of State as eligible to practice as Insolvency Practitioner or an authority is granted him to act as an Insolvency Practitioner.[101] In addition, acting as an Insolvency Practitioner without qualification is an offence punishable with imprisonment or a fine or both under the UK Insolvency Act.[102] The CAMA[103] neither criminalizes nor prescribes any sanction against any person who acts as an Insolvency Practitioner in Nigeria without satisfying the requirements for appointment as an Insolvency Practitioner as provided in section 705.[104]

4. Corporate Insolvency Resolution Process (CIRP) of India

The Code makes provision for a Corporate Insolvency Resolution Process (CIRP) with the resultant effect of either a plan to rehabilitate the corporate debtor or the initiation of liquidation of the corporate debtor.[105] The specialized commercial Court known as the National Company Law Tribunals (NCLT) were established under the Companies Act of 2013 while the Code provides them with jurisdiction over insolvency cases.[106] Nigeria in contrast, maintains the use of a single Court (the Federal High Court) for all corporate cases whether it involves matters of failed contracts, incorporation, insolvency, etc. Besides, the Code established the Insolvency and Bankruptcy Board of India (IBBI) which has the regulatory oversight over the corporate rehabilitation processes and professionals/ practitioners.[107] The IBBI is a unique body combining rule-making powers and supervisory and disciplinary powers over participants in the ecosystem.[108] In Nigeria, the regulatory oversight function over the rescue of financially distressed companies is conferred on the Corporate Affairs Commission. The Corporate Affairs Commission is a regulatory body charged with the responsibilities of incorporation, supervision and dissolution of companies in addition to overseeing the corporate rescue procedures as empowered by CAMA. The

[87] Enterprise Act (n 85) section 254.
[88] Enterprise Act (n 85).
[89] CAMA (n 1) section 705.
[90]U Udoma & B Osagie, 'Innovations in Corporate Insolvency in Nigeria under the Companies and Allied Matters Act, 2020- Insolvency Practitioners' <https://www.uubo.org> Accessed July 16, 2024.
[91] Insolvency Act (n 42).
[92] Insolvency Act (n 42) section 388.
[93] Insolvency Act (n 42) section 390.
[94] CAMA (n 1).
[95] U Udoma & B Osagie (n 90).
[96] CAMA (n 1) section 705.
[97] U Udoma & B Osagie (n 90).
[98] Insolvency Act (n 42).
[99] U Udoma & B Osagie (n 90).
[100] Insolvency Act (n 42).
[101] U Udoma & B Osagie (n 90). See also Insolvency Act (n 91) sections 390(2)(a) & 392.
[102] Insolvency Act (n 42) section 389.
[103] U Udoma & B Osagie (n 90).
[104] U Udoma & B Osagie (n 90).
[105] M Sahoo & A Guru (n 105).
[106]J Garrido & A Rosha, 'Strengthening Private Debt Resolution Frameworks' <https://www.elibrary.imf.org> Accessed July 19, 2024.
[107] M Sahoo & A Guru (n 105).
[108] J Garrido & A Rosha (n 108).

creditors must agree on a resolution plan within one hundred and eighty (180) days, which can be extended for a further additional period of ninety (90) days and should not last more than a maximum period of three hundred and thirty (330) days.[109]The corporate insolvency resolution process under the Code provides a timeline of three hundred and thirty (330) days to commence and conclude the process including time spent on litigation.[110]

In India's Corporate Insolvency Resolution Process, a creditor (financial or operational),[111] or the company debtor itself, presents an application to the adjudicating authority (NCLT). A moratorium is imposed for the duration of the process. A resolution plan needs to be approved by the NCLT to be effective. India's CIRP is a creditor in possession process while Nigeria's CVA is a debtor in possession process. The Court is also actively involved in the process while in Nigeria, the Court is involved in CVA for administrative purposes only. Only the meeting of the committee of creditors is convened in CIRP of India whereas in Nigeria, both members and creditors' meeting are convened separately under the CVA. Registered valuers are used to compute the value of the assets of the debtor company unlike Nigeria and UK that do not appoint registered valuers for the purposes of computing the value of the assets of the debtor company but rely on the nominee for that. This process as adopted in India promotes transparency. The moratorium binds all the creditors including the financial creditors which also include the secured creditors, unsecured creditors, and claims for deficiency in the case of insufficient value of the collateral. Moratorium is only available in Nigeria's Administration and not in CVA.

Pre-pack Insolvency Resolution Process in India

Pre-pack process is hybrid kind of corporate rescue that combines the benefits of a private restructuring with some of the official procedure's features.[112] It proposes that a distressed company's debt be resolved through a direct arrangement between secured creditors and existing owners or outside investors.[113] This form of insolvency resolution process has been in use in the UK and other parts of Europe for the past decade.[114] The Insolvency and Bankruptcy Code Act 2016 of India was amended to include Chapter III-A to deal with pre-packaged insolvency resolution. Pre-pack procedure was added to give micro, small, and medium-sized businesses (MSMEs) an effective alternative insolvency resolution strategy.[115] Its objective is to provide cost-effective, fast, and value-maximizing process for resolving insolvency with little or no company disruption.[116] The highlights of the Pre-pack procedure include the moratorium being in place from the start of the Pre-pack through the conclusion of the process; in contrast to the usual CIRP, the promoters and management of the debtor company retain control and possession of the company's business during the Pre-pack process; and before considering a petition for a CIRP, the NCLT will have to accept or reject a pre-pack insolvency process application.[117] The process must be completed within one hundred and twenty (120) days after admission: ninety (90) days for committee of creditors' approval of the resolution plan and thirty (30) days for adjudication by the adjudicating body (NCLT).[118] Where the committee of creditors fails to adopt a resolution plan within ninety (90) days, the resolution professional must file an application to terminate the Pre-pack procedure.[119] Corporate rescue mechanisms in Nigeria do not include similar provision as Pre-pack process practised in India. It is hoped that Nigeria may adopt the process in the near future for the sake of the survival of micro, small, and medium enterprises (MSMEs).

Insolvency Resolution Regime in India and Nigeria Compared

The Insolvency and Bankruptcy Code 2016 of India (the Code) reformed the existing institutional structure for insolvency and bankruptcy resolution and replaced the former regime with a modern and well-structured law.[120] The Code consolidates laws on insolvency and is applicable to companies, limited liability partnership firms, other body corporate, personal guarantors, partnership firms and individuals.[121] This is unlike the practice in Nigeria where separate legal frameworks exist for individual bankruptcy and corporate insolvency.

[109] J Garrido & A Rosha (n 108).
[110] M Sahoo & A Guru (n 105).
[111]Financial creditor refers to any person to whom a business debt is owed or a person to whom such amount is legally assigned. Banks or other financial institutions are examples of financial creditors. Operational creditor refers to a person to whom an operational debt is owed and includes any person to whom such amount has been legally assigned or transferred for goods or services done by them. Vendors and suppliers, employees, government, etc are examples of operational creditors. See 'Corporate Insolvency Resolution Process' <https://www.indiafilings.com> Accessed July 21, 2024.
[112] A Subbarayudu, 'Corporate Rescue & Pre-pack Paradigm in India' <https://www.taxmann.com> Accessed July 22, 2024.
[113] A Subbarayudu (n 114).
[114] A Subbarayudu (n 114).
[115] A Subbarayudu (n 114).
[116] A Subbarayudu (n 114).
[117] A Subbarayudu (n 114).
[118] A Subbarayudu (n 114).
[119] A Subbarayudu (n 114).
[120] M Sahoo & A Guru, 'Indian Insolvency Law' <https://www.ies.gov.in> Accessed July 19, 2024.
[121] M Sahoo & A Guru (n 105).

5. Conclusion and Recommendations

The introduction of corporate rescue into the corporate sphere of Nigeria has been one of the significant improvements made in extant corporate legal framework (CAMA 2020). The Company Voluntary Arrangement and Administration of Companies being the prominent corporate rescue procedures available for distressed companies in Nigeria as have been examined and also compared with two foreign jurisdictions in this paper, have some legal and operational gaps that need to be filled in order to make the rescue procedures more robust, effective, value-maximizing and result-oriented. Therefore, this paper recommends that Nigerian corporate regime borrows a leaf from countries like the UK and India to fine-tune the already legal framework put in place in Nigeria. The CAMA 2020 should be amended to incorporate the application of moratorium in CVA for the ease of achieving the intention of having a CVA instead of insolvent company going through the process of Administration first before transiting to CVA in order to utilize the benefit of moratorium provided under Administration. Fast-tracking the rescue and recovery process of insolvent companies in Nigeria should be imbibed through the amendment of the extant company law to include time limit for pursuing the rescue procedures. This is to facilitate the quick recovery of the distressed company for it to get back to its feet as a going concern. This paper also recommends that the Nigerian National Assembly consolidates all legislations relating to corporate rescue and restructuring in a single enactment (a standalone legislation) rather than having provisions and stipulations on corporate rescue in different legislations, regulations and rules for the purpose of enhancing the accessibility of the law(s) governing this aspect of corporate law. Specialized courts should be created by the Nigerian legislature to handle corporate rescue matters to promote the expeditious trial and disposition of rescue cases. This is because, the Federal High Court (FHC) conferred with the jurisdiction of handling such matters is also saddled with the responsibility of handling other cases it exercises jurisdiction over. The volume of cases in the FHC is enormous therefore, cases that need speedy trial there such as corporate rescue matters are not always accorded the speed they deserve. In addition, a separate regulatory body independent of the Corporate Affairs Commission should be established by the legislative arm of government which will regulate and oversee the corporate rescue processes and the practitioners in Nigeria.