

CORPORATE RESCUE OF FAILED CORPORATE ENTITIES IN NIGERIA: A PATHWAY TO ECONOMIC SUSTAINABILITY

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Abstract

Corporate insolvency law traditionally focuses on winding-up (commonly referred to as liquidation in comparative insolvency literature) as the primary legal response to corporate financial distress. However, contemporary insolvency systems increasingly recognize that winding-up is not always the most economically efficient outcome where financially distressed firms remain viable. Modern insolvency frameworks therefore incorporate rescue mechanisms designed to rehabilitate distressed companies and preserve them as going concerns. This paper examines corporate rescue as a pathway to economic sustainability and argues that the effective activation of rescue mechanisms is essential for strengthening Nigeria's corporate insolvency regime. The study adopts a doctrinal and comparative analytical approach, drawing primarily from Nigerian statutory law, particularly the Companies and Allied Matters Act 2020, while incorporating insights from established rescue regimes in the United Kingdom, United State, and South Africa. The paper analyses the conceptual foundations of corporate rescue and winding-up, evaluates relevant scholarly perspectives, and examines the causes and consequences of corporate insolvency. It further explores

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the economic and social implications of winding-up and assesses the role of rescue-oriented mechanisms in preserving viable enterprises. The study finds that although Nigeria has formally introduced modern rescue procedures such as administration and company voluntary arrangements, their practical utilization remains limited due to institutional constraints, professional capacity gaps, and the persistence of a winding-up-oriented culture. The paper concludes that activating corporate rescue mechanisms is critical to preserving productive enterprises, protecting employment, improving creditor recovery, and promoting sustainable economic development in Nigeria.

Keywords: *Corporate Rescue; Insolvency Law; Winding-Up; Economic Sustainability*

1. Introduction

Corporate insolvency law provides the legal framework governing companies that are unable to meet their financial obligations as they fall due. The law seeks to regulate the distribution of a debtor company's assets among creditors while balancing competing interests within the commercial system. In Nigeria, the statutory basis for corporate insolvency law is primarily contained in the Companies and Allied Matters Act (CAMA 2020).¹ Section 571 provides that a company may be wound up by the court if it is unable to pay its debts or if the court considers it just and equitable to do so.

Historically, insolvency law in many jurisdictions developed around liquidation as the dominant legal response to corporate failure. Liquidation involves the termination of the corporate entity, the realization of its assets, and the distribution of those assets among

¹ S571 Companies and Allied Matters Act 2020

creditors according to established statutory priorities.² While liquidation plays an important role in protecting creditor interests and ensuring orderly asset distribution, it frequently results in the destruction of economically viable enterprises.

The economic consequences of liquidation extend beyond the immediate interests of creditors. The collapse of a corporate enterprise may lead to large-scale job losses, disruption of supply chains, and reduction of investor confidence within the broader economy. In developing economies such as Nigeria, where corporate entities play an important role in employment generation and economic productivity, these consequences may be particularly severe.³

Judicial decisions have also recognized the economic implications of corporate insolvency proceedings. In *Savannah Bank Ltd v Ajilo*, the Nigerian Supreme Court acknowledged the broader commercial consequences of strict creditor enforcement where such enforcement undermines economic stability.⁴ Similarly, courts in other jurisdictions have emphasized the need for insolvency frameworks that preserve viable business enterprises where possible.

Over the past four decades, insolvency law has undergone significant transformation across many developed economies. Rather than treating corporate insolvency as the inevitable end of a company's existence, modern legal systems increasingly recognize that financially distressed companies may still possess significant economic value. Consequently, many jurisdictions have adopted corporate rescue mechanisms designed to restructure distressed companies and preserve them as going concerns.⁵

² J O Orojo, *Company Law and Practice in Nigeria* (5thedn, LexisNexis 2008) 463 - 470.

³ V Finch and D Milman, *Corporate Insolvency Law: Perspectives and Principles* (3rdedn, Cambridge University Press 2017) 18 – 25, 451 - 456.

⁴ *Savannah Bank Ltd v Ajilo* (1989) 1 NWLR (Pt 97) 305.

⁵ R Goode, *Principles of Corporate Insolvency Law* (5thedn, Sweet & Maxwell, London 2018) 3 – 7, 54 – 60.

Corporate rescue therefore represents a fundamental shift in insolvency jurisprudence. Instead of focusing exclusively on creditor enforcement and asset liquidation, rescue-oriented regimes seek to balance creditor recovery with broader economic considerations such as employment preservation and economic productivity. According to Roy Goode, modern insolvency law increasingly aims to maximize the value of distressed enterprises by preserving viable businesses rather than dismantling them through liquidation.⁶

This transformation is particularly evident in jurisdictions such as the United Kingdom, the United States, and South Africa, which reflect a growing recognition that corporate rescue mechanisms can produce better outcomes for creditors and the economy.

Nigeria historically maintained a winding-up-oriented insolvency framework inherited from colonial company legislation, particularly the Companies and Allied Matters Act 1990. Under that regime, corporate rehabilitation mechanisms were largely absent or ineffective. As a result, many companies experiencing temporary financial difficulties were liquidated even where restructuring might have preserved the enterprise.

The enactment of CAMA represents a major reform of Nigerian corporate law. One of the most significant innovations introduced by the CAMA is the creation of modern corporate rescue mechanisms, including administration and company voluntary arrangements. These procedures were intended to align Nigeria's insolvency framework with contemporary global trends emphasizing business rescue rather than premature winding-up.

Despite these reforms, the practical utilization of rescue mechanisms in Nigeria remains limited. Many financially distressed companies continue to proceed directly to winding-up without

⁶ V Finch and D Milman (n 3).

exploring available restructuring options. This situation raises important questions regarding the effectiveness of Nigeria's rescue framework and the broader role of corporate rescue in promoting economic sustainability. This paper therefore examines corporate rescue as a pathway to economic sustainability and argues that greater activation of rescue mechanisms is necessary within the Nigerian insolvency system.

2. Corporate Rescue

Corporate rescue refers to legal procedures designed to rehabilitate financially distressed companies that remain economically viable. The central objective of corporate rescue is to restructure the affairs of a distressed company in a manner that allows it to continue operating while addressing its financial obligations to creditors.⁷

According to Vanessa Finch, corporate rescue reflects the modern recognition that the preservation of economically viable enterprises may produce better outcomes for creditors than immediate liquidation.⁸ Corporate rescue mechanisms may involve several restructuring strategies, including:

- i. Renegotiation of debt obligations
- ii. Restructuring of corporate management
- iii. Disposal of non-core business assets
- iv. Injection of new capital investment
- v. Restructuring agreements with creditors

These measures are intended to restore the financial viability of the distressed enterprise while preserving its productive capacity.

2.1 Winding-up

Winding-up (or liquidation in general insolvency terminology) refers to the legal process through which a company's assets are realised, and distributed among creditors following the termination

⁷ J O Orojo (n 2).

⁸ V Finch and D Milman (n 3).

of its business operations. Once a company enters winding-up, it ceases to operate as a going concern and exists solely for the purpose of winding up its affairs.⁹ It is a precursor to dissolution, where the company's legal entity ceases to exist.

Section 564, CAMA provides for three principal modes of winding-up, namely:

- i. Winding-up by the court, (Compulsory winding-up): It is the process whereby the court orders the winding-up of a company upon a petition presented before it.
- ii. Voluntary Winding-up: Voluntary winding-up occurs where the company itself resolves to wind-up without court intervention.
- iii. Winding-up subject to the supervision of the court: Although retained in CAMA, this mode is largely obsolete in practice. It arises where a voluntary winding-up is commenced but the court intervenes to supervise the process.

Although winding-up serves the important function of ensuring creditor recovery, critics argue that it often destroys economic value by dismantling viable enterprises.

2.2 Corporate Insolvency

By the provisions of sections 572(a-c)¹⁰, corporate insolvency arises when a company is deemed to be unable to pay its debts if:

- a) a creditor by assignment or otherwise, to whom the company is indebted in a sum exceeding #200,000, then due, has served on the company, by leaving at its registered office or head office, a demand under his hand requiring the company to pay the sum due, and the company has for three weeks

⁹ R Goode (n 5).

¹⁰ S 572 (a-c) CAMA 2020

thereafter neglected to pay the sum or to secure or compound it to the reasonable satisfaction of the creditor.

- b) Execution or other process issued on a judgement, act or order of any court in favor of a creditor of the company is returned unsatisfied in whole or part; or
- c) The court, after taking into account any contingent or prospective liability of the company, is satisfied that the company is unable to pay its debts.

Insolvency therefore represents a state of financial distress that requires legal intervention to determine how financial losses should be distributed among creditors and other stakeholders.

3. Theoretical Foundations of Corporate Rescue

Corporate rescue mechanisms are supported by several theoretical principles within modern insolvency jurisprudence.

3.1 Positive Theory of Corporate Rescue

The Positive Theory of Corporate Rescue provides a structured and economically grounded explanation for the emergence and operation of modern insolvency systems. Unlike normative theories which prescribe how insolvency law ought to function, positive theory explains how insolvency system actually operate in practice, particularly in response to the incentives and behavior of creditors, debtors, and other institutional actors.¹¹

At the core of this theory is the law-and-economics approach to insolvency, particularly the “creditors bargain theory” advanced by Thomas Jackson and Douglas Baird. This theory posits that insolvency law reflects a hypothetical agreement among rational creditors who, acting *ex ante*, would prefer a collective system that maximizes overall returns rather than a fragmented regime of

¹¹ R Goode (n5)

individual enforcement actions.¹² The collective process prevents a “race to the court house” and preserve values that would otherwise be dissipated through piecemeal asset realization.

Within this framework, corporate rescue mechanisms emerge as economically rational tools designed to preserve going-concern value. A distressed company that remains viable often possess greater value as an operating enterprise than if its assets are broken up and sold. Consequently, restructuring mechanisms such as administration under the CAMA are designed to facilitate coordinated creditor action, stabilize the company, and maximize returns¹³.

The Positive Theory therefore explain corporate rescue as a response to three key economic realities. First, liquidation (winding-up) often leads to the destruction of going-concern value. Second, multiple creditors acting individually create coordination problems that reduce overall recovery. Third, viable firms can generate higher returns through restructuring than immediate dissolution.¹⁴ These realities justify the development of rescue-oriented insolvency procedures across modern legal system.

In the Nigerian context, judicial decisions, although traditionally aligned with credit or enforcement, provide implicit support for the economic logic underpinning corporate rescue. In *Savannah Bank Ltd v Ajilo*, the Supreme Court emphasized the importance of strict compliance with legal and financial obligations in secured credit transactions. While the decision reinforced creditor rights, it also illustrates the rigid enforcement environment that may precipitate corporate collapse where restructuring alternatives are not available.¹⁵

¹² T H Jackson, *The Logic and Limits of Bankruptcy Law* (Harvard University Press 1986)7-19

¹³ V Finch and D Milman (n3)

¹⁴ A Keay, The Objectives of Insolvency Law: “A Review of the Debate” (1999)3 *Journal of Corporate Law Studies* 141,150-152

¹⁵ n4

Similarly, in *Bentworth Finance (Nig) Ltd v De Bank Ltd*, the court upheld the rights of creditors to enforce security interest, reflecting a traditional insolvency culture centered on debt recovery.¹⁶ From a positive theory perspective, such decision highlight the consequences of a system that prioritizes individual enforcement over collective restructuring, often leading to inefficient economic outcomes.

However, Nigerian courts have also demonstrated sensitivity towards broader commercial realities. In *Union Bank of Nigeria Ltd v Tropic Foods Ltd*, the court acknowledged the need to balance strict legal rights with equitable considerations in commercial transactions.¹⁷ This reflects an emerging judicial awareness of the economic implications of insolvency, which aligns with the underlying assumptions of corporate rescue theory.

The enactment of CAMA represents a significant legislative shift consistent with Positive Theory. The introduction of administration and company voluntary arrangements reflects an institutional recognition that preserving viable businesses produces better economic results than immediate winding-up¹⁸. These provisions create a framework for collective creditor participation, temporary moratoria on enforcement, and structured restructuring processes.

Nevertheless, the limited practical utilization of these mechanisms in Nigeria reveals a gap between law in the book and law in action. Positive theory emphasize that the effectiveness of insolvency law depends not only on statutory provisions but also on institutional capacity, judicial expertise, and professional competence.¹⁹ Where

¹⁶ *Bentworth Finance (Nig) Ltd v De Bank Ltd* (1992)9 NWLR(Pt,1039)380

¹⁷ *Union Bank Ltd v Tropic Foods Ltd* (1992)3NWLR(Pt,228)231

¹⁸ S434-449 CAMA 2020

¹⁹ V Finch, *Corporate rescue: Who is Interested?* (2012) 25 *Insolvency Intelligence* 190,195

these supporting structures are weak, rescue mechanisms may remain underutilized despite their economic advantages.

Furthermore, the theory underscores the importance of incentives. Creditors may prefer immediate enforcement where there is uncertainty about recovery under rescue procedures. Similarly, debtors may delay seeking restructuring due to stigma or lack of awareness. These behavioural dynamics significantly influence the success or failure of corporate rescue practice.²⁰

Accordingly, corporate rescue in Nigeria should be understood not merely as a legal reform but an economic governance mechanism. Its effectiveness depends on aligning legal rules with market realities, strengthening institutional capacity, and fostering a cultural shift from liquidation (winding-up) to restructuring. Where properly implemented, corporate rescue mechanisms can enhance creditor recovery, preserve employment, and promote sustainable economic development.

3.2 Going Concern Value Theory

One of the most influential theories supporting corporate rescue is the concept of going-concern value. This theory suggests that a functioning business enterprise may possess greater value when operated as an integrated whole than when its individual assets are sold separately through liquidation. Courts have recognised the importance of preserving going-concern value. In *Re Atlantic Computer Systems Plc*, the Court of Appeal emphasized that administration procedures are intended to preserve viable companies wherever possible.²¹

²⁰ A O Ayoade, *Corporate Rescue Mechanisms in Nigeria: A Critical Analysis* (2019) Nigeria Business Law Review 112,120-122

²¹ *Re Atlantic Computer Systems Plc* [1992] Ch 505 at 542 – 545 (CA)

3.3 Economic Efficiency Theory

Economic efficiency theory suggests that insolvency law should facilitate the efficient allocation of resources within the economy. Liquidating viable firms may result in the destruction of productive assets and economic value. Corporate rescue mechanisms therefore enable viable businesses to continue operating while restructuring their financial obligations.²²

3.4 Stakeholder Protection Theory

Modern insolvency systems increasingly recognize that corporate insolvency affects a wide range of stakeholders beyond creditors alone. Employees, suppliers, customers, and host communities may suffer significant losses when a company collapses. Corporate rescue mechanisms therefore seek to mitigate these broader social and economic consequences.

4. Causes of Corporate Insolvency

Corporate insolvency may arise from several interrelated factors:

- i. **Poor Corporate Governance:** Weak corporate governance structures may contribute significantly to corporate financial distress. Ineffective oversight by directors, lack of financial discipline, and managerial incompetence may gradually undermine the financial stability of a firm.²³
- ii. **Excessive Debt Financing:** Companies that accumulate unsustainable debt obligations may become financially vulnerable during periods of economic downturn. High interest obligations may also limit the firm's ability to reinvest in productive activities.²⁴
- iii. **Macroeconomic Instability:** Economic conditions such as inflation, currency depreciation, and economic recession

²² V Finch and D Milman (n 3).

²³ J O Orojo (n 2).

²⁴ R Goode (n 5).

may place severe financial pressure on corporate enterprises, particularly in developing economies.²⁵

5. Corporate Rescue Mechanisms as a Pathway to Economic Sustainability: Review of Comparative Insolvency Scholarship

Comparative insolvency scholarship provides an essential analytical lens for evaluating the evolution of corporate rescue as a dominant response to corporate financial distress. Drawing on rescue-oriented jurisdictions such as the United Kingdom and other advanced insolvency systems, comparative literature exposes the structural and normative limitations of liquidation-centered insolvency regimes, while emphasizing the role of institutional design, judicial discretion, and policy alignment in facilitating corporate rehabilitation. This comparative influence is evident in Nigeria's insolvency reforms under the Companies and Allied Matters Act, particularly the introduction of administration and statutory moratoria under sections 434 – 449,²⁶ which expressly prioritize business rescue and creditor value maximization over immediate liquidation. Nigerian scholars increasingly rely on comparative analysis to justify these reforms, presenting CAMA as a deliberate rescue framework consistent with global insolvency best practices.

This section reviews leading scholarly contributions on corporate rescue in the United States, the United Kingdom, and South Africa, jurisdictions commonly referenced in Nigerian insolvency discourse due to their developed rescue frameworks and shared common law heritage.

5.1 United States

United States insolvency scholarship is widely regarded as the intellectual foundation of modern corporate rescue theory. Chapter 11 of the US Bankruptcy Code has generated extensive academic debate, with scholars portraying reorganization as a central policy

²⁵ V Finch and D Milman (n 3).

²⁶ Ss 434-449 CAMA 2020

tool for preserving economically viable enterprises.²⁷ American literature conceptualizes insolvency not as failure per se, but as a collective process for restructuring financial and operational obligations.

Early influential works by Jackson and Baird articulate the creditors' bargain theory, arguing that reorganization reflects what rational creditors would agree upon ex ante to maximize collective returns.²⁸ This theory strongly supports rescue mechanisms that suspend individual enforcement rights in favour of collective restructuring. Subsequent scholarship expanded this reasoning by emphasizing going-concern value preservation and transactional efficiency.²⁹

American scholars also highlight the institutional role of debtor-in-possession (DIP) control under Chapter 11. Literature suggests that allowing existing management to retain control encourages early filings and increases the likelihood of successful reorganization.¹ However, critics argue that excessive debtor control may enable managerial opportunism and delay inevitable liquidation.² This tension illustrates the delicate creditor–debtor balance central to corporate rescue theory.

From a law and economics perspective, US scholarship overwhelmingly supports reorganization under Chapter 11 of Bankruptcy Code where firms are economically viable.³ This preference is reflected in statutory provisions governing debtor-in-

²⁷ D G Baird, *Elements of Bankruptcy* (6thedn, Foundation Press 2014) 1–5.

²⁸ T H Jackson, *The Logic and Limits of Bankruptcy Law* (Harvard University Press 1986) 7–20.

²⁹ L Bebchuk, 'A New Approach to Corporate Reorganization' (1988) 101 *Harvard Law Review* 775

¹ E Warren and J Westbrook, *The Law of Debtors and Creditors* (7thedn, Wolters Kluwer 2014) 412.

² D Skeel, 'An Evolutionary Theory of Corporate Law and Corporate Bankruptcy' (1998) 51 *Vanderbilt Law Review* 1325.

³ T H Jackson, *The Logic and Limits of Bankruptcy Law* (Harvard University Press) 7-19

possession control and plan feasibility under sections 1107 – 1108 and 1129(a) (11),⁴ which prioritize going-concern preservation over liquidation. Empirical studies further demonstrate that Chapter 11 frequently produces higher creditor recovery than liquidation under Chapter 7, owing to the automatic stay, going-concern sales, and plan confirmation mechanisms provided under sections 362, 363 and 1129 of the Code.⁵ Nonetheless, realist critiques emphasize that Chapter 11 outcomes vary significantly in practice, as judicial discretion under section 105(a)⁶, access to debtor-in-possession financing under section 364, and creditor bargaining power materially shape restructuring results.⁷

For Nigeria, American insolvency literature offers valuable insights into the design of rescue procedures but also cautions against wholesale transplantation. Scholars warn that Chapter 11's success depends on strong judicial capacity, sophisticated credit markets, and professional insolvency practice conditions not always present in developing economies.⁸

The United States operates a corporate restructuring framework under Chapter 11 of the Bankruptcy Code. In *United Savings Association of Texas v Timbers of Inwood Forest Associates Ltd*, the Supreme Court emphasized that bankruptcy reorganization provides companies with an opportunity to rehabilitate their financial affairs.⁹

⁴ Chapter 11 Bankruptcy Code, ss 1107-1108 and 1129 (a)(11)

⁵ L Bebhuk, 'A New Approach to Corporate Reorganizations' (1988) 101 *Harvard Law Review* 775, 781 – 785.

⁷ E Warren and J Westbrook, *The Law of Debtors and Creditors* (7th Edition, Woloters Kluwer 2014) 495 – 498.

⁸ V Finch, 'Corporate Rescue: A Game of Three Halves' (2012) 32 *Legal Studies* 302.

⁹ *United Savings Association of Texas v Timbers of Inwood Forest Associates Ltd* 484 US 365 (1988).

5.2 United Kingdom

United Kingdom insolvency scholarship reflects a gradual transition from creditor-centric liquidation toward structured rescue mechanisms. Early English insolvency law, much like Nigeria's pre-reform regime, prioritized winding up and secured creditor enforcement.¹⁰ Academic criticism of this approach led to the development of administration and company voluntary arrangements (CVAs).

UK scholars such as Finch and Milman describe administration as the legal embodiment of rescue culture, designed to rescue the company as a going concern or achieve better results for creditors than liquidation.¹¹ Literature emphasizes the statutory objectives of administration as evidence of a policy shift toward rehabilitation.

The introduction of the Enterprise Act 2002 further stimulated scholarly debate by limiting administrative receivership and strengthening collective insolvency procedures.¹² Academic commentary widely applauds these reforms for rebalancing creditor power and enhancing rescue prospects. However, critics note that secured creditors, particularly banks, still exert significant influence through qualifying floating charges.¹³

More recent UK scholarship focuses on restructuring plans under the Companies Act 2006 (as amended), highlighting their flexibility and cross-class cram-down mechanisms.¹⁴ These developments are analyzed as further evidence of the UK's commitment to rehabilitation culture.

¹⁰ R Goode, (n5)

¹¹ V Finch and D Milman, (n3)

¹² (UK) Enterprise Act 2002

¹³ J Armour, 'The Law and Economics of Corporate Insolvency' (2001) 8 *European Journal of Law and Economics* 157.

¹⁴ (UK) Companies Act 2006, Part 26A.

From a jurisprudential perspective, United Kingdom insolvency scholarship reveals a pragmatic blend of positivism and realism.¹⁵ Courts generally adhere to statutory rescue objectives governing administration under B1 of the Insolvency Act 1986, particularly the prioritization of reusing the company as a going-concern, reflecting a positivist commitment to legislative intent.¹⁶ At the same time, UK courts retain structured discretion in the application of rescue mechanism through their powers of appointment, supervision, and direction of administrators, allowing commercial realities and creditor's interest to shape outcome in practice¹⁷. This jurisprudential approach has been especially influential in Nigeria due to shared common law traditions and deliberate legislative borrowing under the CAMA. The introduction of administration and its stated objectives under sections 434 and 435 CAMA, together with judicial oversight and administrator control provisions under sections 443 and 445 – 449, closely replicate the UK model by embedding statutory rescue priorities while preserving judicial flexibility in their practical implementation¹⁸.

The United Kingdom operates a sophisticated corporate rescue regime under the Insolvency Act 1986. Administration procedures enable an insolvency practitioner to take control of a distressed company with the objective of rescuing it as a going concern.¹⁹

5.3 South Africa

South African insolvency scholarship occupies a unique position, offering comparative insights from a mixed legal system within a developing economy. The introduction of business rescue under

¹⁵ V Finch and D Milman, (n3) 25 – 29.

¹⁶ (UK) Insolvency Act 1986 Schedule B1 para 3; Re Transbus Internatipnal Ltd (2004) EWHC 932 (ch) 43 -45

¹⁷ (UK) Insolvency Act 1986, Sch B1 paras 11, 13 and 65; T&D Industries Plc (2000) 1 WLR 646 (Ch) 658 – 660; V Finch and D Milman, (n3) 291 – 295.

¹⁸ Ss 434– 435, 443, 445 – 449 CAMA 2020; A O Omotola, Corporate Rescue and Administration under *the Company and Allied Matters Act 2020* (2021) 3 *Nigerian Business Law Journal* 112, 118 – 121.

¹⁹ Insolvency Act 1986 Sch B1, paras 3 - 5

Chapter 6 of the Companies Act 2008 marked a decisive departure from liquidation culture.²⁰

South African scholars extensively analyze business rescue as a socio-economic intervention aimed at preserving employment, protecting small businesses, and promoting economic transformation.²¹ Literature emphasizes that business rescue reflects constitutional values, particularly the right to fair labour practices and economic participation.

Unlike US debtor-in-possession models, South African scholarship focuses on the role of the business rescue practitioner as an independent intermediary.²² This model is praised for balancing stakeholder interests but criticized for high costs and practitioner competence challenges.²³

Judicial interpretation has attracted significant academic attention. Early South African case law adopted a rescue-friendly approach, but later decisions introduced stricter standards for commencing rescue proceedings.²⁴

For Nigerian scholars, South Africa offers a particularly relevant comparative model. Both jurisdictions share developmental challenges, institutional constraints, and socio-economic pressures.²⁵ South African literature demonstrates that corporate rescue can succeed in developing economies, provided that statutory

²⁰ Companies Act 2008 (South Africa), ch 6.

²¹ A Loubser, 'Defining the Role of Business Rescue' (2010) 22 *South African Mercantile Law Journal* 123.

²² M Pretorius, 'Business Rescue Practitioner Regulation' (2013) 25 *SA Merc LJ* 89.

²³ H Rajak, 'The Cost of Business Rescue in South Africa' (2016) 28 *SA Merc LJ* 341.

²⁴ *Oakdene Square Properties v Farm Bothasfontein* (2013) ZASCA 68.

²⁵ K Boraine, 'Corporate Rescue in Developing Economies' (2015) 27 *SA Merc LJ* 240.

design is supported by judicial commitment and professional capacity.

South Africa introduced business rescue procedures under the Companies Act 2008. These procedures aim to restructure distressed companies through court-supervised rescue plans.²⁶

5.4 Comparative Lessons for Nigeria

Comparative insolvency scholarship consistently demonstrates that corporate rescue thrives where legal frameworks, prioritizes collective value maximization, institutional competence, and judicial support. Across the US, UK, and South Africa, liquidation is increasingly treated as a last resort rather than the default response to insolvency. However, comparative literature also cautions against mechanical legal transplantation. Rescue mechanisms must be adapted to local economic realities, professional capacity, and legal culture.²⁷ For Nigeria, comparative scholarship supports a contextualized adoption of rescue principles rather than replication of foreign models.

This work builds on comparative insolvency literature to assess Nigeria's evolving rescue regime and to propose reforms that reflect both international best practices and domestic realities.

6. Corporate Rescue in Nigeria

As stated earlier, Nigeria's corporate insolvency framework has historically been dominated by winding-up proceedings, with little emphasis on business rehabilitation. Under earlier company legislation, particularly the CAMA 1990, insolvency practice was largely creditor-oriented, focusing on asset realization rather than corporate recovery²⁸.

²⁶ Ss 128 - 154 Companies Act 2008 (Business Rescue Provisions)

²⁷ O A Fagbohun, 'Transplanting Corporate Rescue into Nigeria' (2021) 9 *Nigerian Law and Practice Review* 145.

²⁸ J O Orojo (n2)

Judicial decisions during this period reinforced this winding-up oriented approach. In *Re Benthworth Finance Ltd supra*, the Court of Appeal emphasized the enforcement of the rights of creditors, underscoring the traditional priority given to debt recovery over business continuity. Similarly, in *Savannah Bank supra*, the Supreme Court also affirmed the strict enforcement of secured credit arrangements, reflecting a rigid legal environment that often precipitates corporate collapse rather than restructuring²⁹.

However, Nigerian courts have occasionally demonstrated sensitivity to broader commercial realities. In *Union Bank of Nigeria supra*, the Supreme Court acknowledge the need to balance strict legal rights with equitable considerations in commercial transactions. Although not a corporate rescue case in the strict sense, the decision illustrates a judicial willingness to consider economic implications beyond immediate creditor enforcement.

The enactment of CAMA marks a significant turning point in Nigeria's insolvency regime. For the first time, the Act introduces formal corporate rescue mechanisms, including administration, company voluntary arrangements (CVAs), and arrangements and compromises.³⁰ These provisions align Nigeria with modern insolvency systems that prioritises business rescue over premature winding-up.

6.1 Administration as a Rescue Mechanism

Administration, governed by sections 434-449 CAMA³¹, is the most significant innovation in Nigeria's corporate rescue framework. It allows an administrator to take control of a financially distressed company with the primary objective of:

- Rescuing the company as a going-concern; or
- Achieving a better result for creditors than would be obtained through winding-up.

²⁹ n 16

³⁰ Ss 434-449 CAMA 2020

³¹ *Ibid*

The statutory moratorium imposed during administration prevents creditor enforcement actions, thereby providing the company with the breathing space to restructure its affairs. This aligns with international best practices, particularly under the UK Insolvency Act 1986.

Although Nigerian case law on administration is still developing due to its recent introduction, courts are expected to interpret these provisions in a manner consistent with their rescue-oriented objectives.

6.2 Company Voluntary Arrangement (CVAs)

CAMA also introduces company Voluntary Arrangements as a flexible restructuring mechanisms between a company and its creditors. CVAs enable the company to propose a repayment or restructuring plan, which becomes binding upon approval by the requisite majority of creditors. This mechanism promotes informal and cost-effective restructuring, reducing reliance on formal winding-up proceedings.

6.3 Arrangements and Compromises

Sections 710-715 CAMA 2020³² provides for schemes of arrangement and compromise. Although these provisions predate the 2020 reforms, they have been strengthened and now serves as an important corporate rescue tools. Nigerian courts have long recognized the utility of the schemes of arrangement. In *African Continental Bank Ltd v Ekwenibe & Sons Trading Co. Ltd*, the Supreme Court upheld the binding nature of a court-sanctioned scheme of arrangement, emphasizing its role in restructuring corporate obligations.³³

Similarly, in *Nigericare Development Co. Ltd v Adamawa State's Water Board*, the court affirmed the importance of court-approved arrangements in resolving complex commercial disputes. These

³² Ss 7, 10 – 15 CAMA 2020

³³ *African Continental Bank Ltd v Ekwenibe & Sons Trading Co. Ltd* (1997)10NWLR(Pt.523)1

cases provide judicial support for restructuring mechanisms that form the foundation of modern corporate rescue³⁴.

6.4 Institutional and Practical Challenges

Despite the introduction of these rescue mechanisms, their practical utilization in Nigeria remains limited. Several factors account for this:

- Limited judicial experience in handling complex restructuring proceedings
- Inadequate number of trained insolvency practitioners
- Creditors preference for immediate enforcement
- Low awareness of rescue mechanisms among corporate stakeholders

As noted by Nigerian scholars, including Ayoade, the effectiveness of corporate rescue in Nigeria depends not merely on legislative provisions but on institutional capacity and enforcement culture.³⁵

6.5 Emerging Shift Towards Rescue Culture

Notwithstanding these challenges, there are indication of a gradual shift toward a rescue-oriented insolvency culture in Nigeria. The introduction of administration and CVAs reflects legislative intent to prioritize economic sustainability, business continuity, and stakeholder protection. This shift aligns with global trends in insolvency law, where winding-up is increasingly treated as a last resort rather than the default response to corporate distress.

Corporate rescue in Nigeria remains at a developmental stage. While the CAMA provides a robust statutory framework for business rehabilitation, its success depends on effective judicial interpretation, professional expertise, and stakeholder acceptance.

³⁴ Nigercare Development Co. Ltd v Adamawa State Water Board (2008)9NWLR (Pt.1093)498

³⁵A O Ayoade (n20)

7. Recommendations and Conclusion

Corporate rescue has emerged as a central feature of modern insolvency systems, shifting the focus from premature winding-up to the preservation of viable enterprises. Nigeria has taken a significant step in this direction through the enactment of CAMA, which introduces administration, company voluntary arrangements, and restructuring mechanisms.

However, the practical aspect of these reforms remains limited. Institutional weaknesses, low capacity, and a persistent winding-up culture continue to undermine the effective use of rescue mechanism. Without deliberate and coordinated reforms, the objectives of corporate rescue under CAMA will remain largely unrealized.

To address these challenges and ensure the effective activation of corporate rescue in Nigeria, the following measures are recommended:

7.1 Establish Specialist Insolvency Division within the Federal High Court

The National Assembly, in collaboration with the Chief Judge of the Federal High Court, should establish specialist insolvency divisions within the Federal High Court through legislative amendment and judicial practice directions.

These divisions should:

- Exercise exclusive jurisdiction over corporate insolvency and rescue matters
- Be staffed by judges with demonstrated expertise in commercial and insolvency law
- Operate fast-track procedures for time-sensitive rescue applications.

This reform will improve judicial efficiency, consistently, and confidence in insolvency proceedings.

7.2 Strengthen the Regulation and Certification of Insolvency Practitioners

The Corporate Affairs Commission (CAC), in partnership with professional bodies such as the Nigerian Bar Association, (NBA) and the Institute of Chartered Accountants of Nigeria, should develop and enforce a comprehensive regulatory framework for insolvency practitioners.

This framework should:

- Introduce mandatory certification and licensing requirements
- Establish continuous professional development programmes
- Create a code of conduct with enforcement and disciplinary mechanism

A well-regulated insolvency profession is essential for the effective implementation of corporate rescue.

7.3 Introduce a Statutory Framework for Debtor-in-Possession Financing

The National Assembly should amend the CAMA to expressly provide for debtor-in-possession (DIP) financing.

The amendment should:

- Grant priority status to post-commencement financing
- Protect lenders from avoidable actions
- Encourage financial institutions to support distressed but viable companies

This will address the crucial funding gap that currently limits the success of rescue proceedings.

7.4 Clarify and Harmonize Key Provisions of the CAMA

The National Assembly, with technical inputs from the Corporate Affairs Commission and insolvency experts, should review and amend ambiguous provisions of the CAMA, particularly sections 434-449.

The clarification should:

- Define the scope of the administrator's power more precisely
- Clarify the extent of the statutory moratorium
- Address the priority of secured creditors during administration

Clear legislative drafting will reduce uncertainty and improve judicial interpretation.

7.5 Develop Judicial Training and Practice Directions on Corporate Rescue

The National Judicial Council (NJC) and the National Judicial Institute (NJI) should design and implement specialized training programmes on corporate rescue and insolvency law.

In addition, the Chief Judge of the Federal High Court should issue Practice Direction to:

- Standardize procedures for administration and restructuring applications
- Provide timelines for hearing of rescue matters
- Promote consistency in judicial decision-making

This will enhance judicial competence and accelerate the development of rescue jurisprudence

7.6 Promote Stakeholder Awareness and Cultural Shift

The Corporate Affairs Commission, in collaboration with financial institutions and professional bodies, should implement nationwide awareness campaign on corporate rescue mechanisms'

These initiatives should:

- Educate businesses on early use of restructuring tools
- Encourage creditors to consider rescue as a viable alternative to enforcement
- Reduce the stigma associated with insolvency

A shift in commercial culture is essential for the success of corporate rescue.

7.7 Establish a National Insolvency Data and Monitoring System

The Corporate Affairs Commission, in partnership with the National Bureau of Statistics, should establish a centralized insolvency database.

The system should be tracking:

- Number and types of insolvency proceedings
- Outcomes of administration and restructuring cases
- Creditor recovery rates

Reliable data will support evidence-based policy reform and continuous improvement of the insolvency framework.

The effective activation of corporate rescue in Nigeria requires more than statutory reform; it demands coordinated institutional action, professional competence, and a fundamental shift in legal and commercial attitudes. If these recommendations are implemented, Nigeria's insolvency system will move from a predominantly winding-up regime to a functional rescue-oriented framework capable of supporting sustainable economic development.