

LEGAL APPRAISAL OF PROCEDURES FOR RESOLVING INSOLVENCY IN CORPORATE ENTITIES IN NIGERIA

By

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Abstract

Companies remained one of the vehicles for carrying out business activities globally. A company comes into existence when it is incorporated pursuant to the extant legislation on incorporation of companies in order to carry out its activities, a company needs debt capital as the assets and equity capital are not usually sufficient. Unfortunately, it is not always the case that the borrowed capital is settled as and when due. The Companies and Allied Matters Act 2020, as amended (CAMA 2020) provided for the powers of a company to borrow and the procedures to resolve insolvency matters. This paper adopted the doctrinal approach and relied on both primary and secondary sources of law to analyse the procedures for resolving insolvency. The procedures analysed in this paper included restorative procedures such as company voluntary arrangements and administration, and terminal procedures such as receivership and winding up by the Court are ultimately prejudicial to the continued existence of the insolvent company. In light of this, the recommendations of this paper included that the National Assembly should amend the provisions of the CAMA 2020 by deleting

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receivership and winding up by the court as available procedures for resolving insolvency. However, where this recommendation is not feasible, appointment of receiver and winding up by the court should be default procedures to be invoked where the restorative procedures fail or are impossible.

Keywords: *Corporate Entities, Company, Insolvency, Winding Up, Corporate Rescue.*

1. Introduction

Corporate entities are established as vehicles for economic growth, wealth creation, and employment generation. However, business failures occasioned by insolvency, mismanagement, absence of corporate governance, economic downturn, or even pandemics are inevitable. When companies become financially distressed, legal procedures are required either to rescue viable businesses or liquidate non-viable ones. In Nigeria, corporate recovery and insolvency procedures are primarily governed by the CAMA 2020 which introduced innovative rescue procedures such as company voluntary arrangements, and administration,² marking a shift from liquidation-focused insolvency law to a business rescue-oriented regime.

It is pertinent to state that the traditional procedures for resolving insolvency are still in vogue. These traditional procedures are that of appointment of a receiver by the court or out of court, and commencement of winding up by the court proceedings. While these procedures are open to creditors, debenture holders, and other eligible persons, they are usually faced with challenges. Amongst the challenges is that the adoption of these procedures, often, do not lead to the realization of collateral security or recovery of the debt.

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** CAMA 2020, chap 17.

² *ibid*, chap 18

Worse still, since the procedure, particularly, winding up, is a collective one, an individual creditor, by reason of preferential payment, adopted in liquidation process, may not get anything when compared to the cost expended in the process.

Furthermore, the commencement of actions at the various courts is another procedure resorted to in resolving insolvency. But this procedure is also fraught with challenges and obstacles. The foremost challenge is the delay in the administration of justice, as a result of overloaded dockets and adjournments.

This paper, therefore, will appraise the procedures for resolving insolvency as follows.

2. Conceptual Clarification

In this paper, insolvency, corporate rescue, and winding up are the concepts to be defined under this subheading.

2.1.1. Insolvency

The terms "insolvency" and "bankruptcy" are frequently used interchangeably.⁴ Insolvency, on the other hand, relates to an entity's failure to pay its debts when they are due, while bankruptcy refers to a person's situation and is defined by their ability to pay their debts as they fall due,⁵ or mature,⁶ a circumstance where there is not enough money to pay off debts or creditors.⁷ It refers to a debtor's

⁴ I F Fletcher, *The Law of Insolvency*. (2nd edn, London: Sweet & Maxwell 1996) 4.

⁵ D French, *Mayson, French & Ryan on Company Law* (36th edn, Oxford: OUP 2019 – 2020) 683.

⁶ G S Joslin, 'Insolvency in Bankruptcy: A Synthesis' *Indiana Law Journal* (1962), 38 (1): 23.

⁷ C E Halliday, 'Harmonisation of the Laws on Bankruptcy and Corporate Insolvency in Nigeria: A Desideratum'. *Port Harcourt Journal of Business Law* (2018) 4 (1): 154.

inability to repay a loan legally.⁸ Insolvency is simply the state of an entity being illiquid.⁹ Insolvency, derived from Latin words, “not” and *solvere*, “to loosen or pay”, is readily identified as the state of illiquidity that it cannot settle its obligations.¹⁰ Ordinary, common law, equity, or commercial insolvency are different terms for this idea, which refers to the inability to pay debt when it becomes due.¹¹

The definitions of insolvency provided above are very general and do not adequately describe the range of insolvency. To this purpose, it is crucial to distinguish between cash-flow insolvency and balance-sheet bankruptcy when defining insolvency. Cash flow insolvency, also referred to as “inability”, “short term”, or “practical”¹² insolvency, refers to when an entity is illiquid and indebted,¹³ and this usually inferred when an entity fails to pay, on demand, a debt which is due.¹⁴ On the other hand, balance sheet insolvency, otherwise known as “absolute”,¹⁵ insolvency, is an accounting concept and signifies a situation where outflows are

⁸ K Gratzter, ‘Default and Imprisonment for Debt in Sweden: From the Lost Chances of a Ruined Life to the Lost Capital of a Bankrupt Company’ in K. Gratzter & D. Stiefel (eds), *History of Insolvency and Bankruptcy from an International Perspective* (Sodertorns Hogskola: Sodertorn Academic Studies 2008) 38. 15.

⁹ O J Olujobi & T Olusola-Olujobi, ‘Insolvency Law and Business Recovery Practices in Nigeria’s Upstream Petroleum Sector: The Need for a Paradigm Shift’. *IJMET* (2019) 10 (1): 1610.

¹⁰ J Honsberger, ‘The Nature of Bankruptcy and Insolvency in a Constitutional Perspective. *Osgoode Hall Law Journal* (1972) 10 (1): 200.

¹¹ *London & Counties Assets Ltd v Brighton Ground Concert Hall & Picture Palace Ltd* [1915] 2 KB 493 at 501, 503; J Honsberger, ‘The nature of Bankruptcy and Insolvency in a Constitutional Perspective. *Osgoode Hall Law Journal* (1972) 10 (1): 201.

¹² I F Fletcher, *The law of insolvency*. (2nd edn, London: Sweet & Maxwell 1996) 5.

¹³ *ibid*, *The Law of Insolvency* (4th edn London: Sweet & Maxwell 2009) 485.

¹⁴ J Armour, 2001. ‘The Law and Economics of Corporate Insolvency: a Review’. ESRC Centre for Business Research, University of Cambridge Working Paper No. 197. (2001) 3; Fletcher (n12) 485.

¹⁵ Fletcher (n11) 5.

more than inflows.¹⁶ This represents where the entity is illiquid although, it has valuables, it cannot settle its obligations at maturity. It is also a situation where the entity cannot discharge its present and future obligations.¹⁷ In other words, balance sheet insolvency refers to an internal state that can only be determined legally after a thorough analysis of the debtor's whole financial situation. A firm is said to be insolvent if its liabilities, including contingent and future liabilities as well as present liabilities, exceed its assets on its balance sheet.¹⁸

There are new categories of insolvency, such as regulatory insolvency and ultimate insolvency, in addition to cash-flow insolvency and balance-sheet insolvency. While regulatory insolvency is a type of insolvency where a corporate entity may have assets that could exceed its liabilities but will not reach the regulatory thresholds established by the applicable law, ultimate insolvency is a type of insolvency where upon the entity's liquidation, assets remaining cannot satisfy creditors' claims.¹⁹

It is trite to state that there is a major difference between corporate insolvency and bank insolvency. While the primary concern of the law in corporate insolvency is the protection of creditors, bank insolvency usually has broader ramifications for the protection of all stakeholders of the affected bank, as well as the banking sector and the economy at large.²⁰ This distinction between corporate and bank insolvency explains why the two standards of cash-flow and balance-sheet insolvency are not sufficient to define bank insolvency.

¹⁶ Armour (n13) 3.

¹⁷ J Honsberger, 'The nature of Bankruptcy and Insolvency in a Constitutional Perspective' *Osgoode Hall Law Journal* (1972) 10 (1). 201.

¹⁸ Fletcher (n11) 5.

¹⁹ Halliday (n6) 154.

²⁰ K Ekwueme, 'Failure Resolution. *Banking: Theory, Regulation, Law and Practice* in O Olanipekun, Ed. Lagos: Au Courant. 493.

2.1.2. Corporate Rescue

Rescue means saving from dangerous or distressing situation.²¹ C.R generally refers to a method used by companies that are struggling to prevent themselves from going insolvent. It encompasses both formal statutory procedures and informal non-statutory procedures.²² In order to prevent a corporation from eventually failing, a significant intervention is required.²³ C.R is an option to liquidation of the entity by providing it with a period of respite or rehabilitation.²⁴ In other words, corporate rescue may be regarded as an alternative to immediate winding up in order to prevent premature death of the entity.²⁵ C.R is an alternative to liquidation, and a less drastic solution that allows the creditors to recover their debts while the debtor company remains in existence.²⁶ Corporate rescue is about putting in place institutional and substantial interventions to avert corporate collapse by formal and informal or unregulated method.²⁷ It is sufficient to say that C.R is a collective strategic rescue procedure carried out within a legal framework that aims to either help preserve the troubled corporation itself or help save its core business by selling.²⁸

²¹ S Segarajasingham, 'Viable Revival Mechanism for Companies in Distress: A Critical Analysis' *International Journal of Business, Economics and Law* (2012) 1: 130.

²² A Godwin, 'Corporate Rescue in Asia – Trends and Challenges' *SydLawRw* (2012) 34 (1) 163.

²³ A Belcher, *Corporate Rescue: A Conceptual Approach to Insolvency Law* (London: Sweet and Maxwell 1997) 12.

²⁴ B Xie, *Comparative Insolvency Law: The Pre-Pack Approach in Corporate Rescue* (Cheltenham, UK: Edward Elgar Publishing Limited 2016) 4.

²⁵ Xie (n23).

²⁶ H Y Bhadmus, *Corporate insolvency law and practice in Nigeria* (Enugu: Chenglo Limited 2009) 4.

²⁷ E T Yebisi & T J Omidoyin, 'Corporate Rescue Law to the Rescue of Businesses in Trauma in Nigeria. *ABUAD Private and Business Law Journal* (2017)1 (1): 10.

²⁸ Xie (n23) 5.

Corporate rescue generally falls into two categories: informal and formal. An informal rescue, also known as a "private restructuring" or "workout," is a non-judicial procedure when a failing business and its significant creditors strive arrive at an agreement to restructure and modify the entity's financial obligations without the involvement of courts.²⁹ It is a reorganisation strategy that operates outside of the legal system with the aim of restoring a financially troubled company's health.³⁰ Formal rescue on the other hand, involves the use of legal procedures designed under insolvency legislation or a formal legal structure.³¹ The formal rescue also includes all possibilities for reorganisation laid down by the law, or which takes place by using legal methods.³²

Company rescue and business rescue are two classifications that further describe C.R. The term "business rescue" refers to the legal processes in the South African Companies Act that enable a free-standing business rescue practitioner to temporarily supervise the troubled firm and its management in order to aid in the rehabilitation of a financially distressed company;³³ a temporary suspension of claimants' rights, as well as the creation and execution of a plan to save the company by reorganising its assets, business, debt, other liabilities, and equity in a way that increases the likelihood of the company remaining solvent.³⁴ In insolvency law, business rescue,

²⁹ *ibid* 21.

³⁰ J A A Adriaanse, 'Restructuring in the Shadow of the Law: Informal Reorganization in the Netherlands' The Hague: Kluwer International. (2005) 4.

³¹ Xie (n23) 21.

³² Adriaanse (n29) 14.

³³ M Maphiri, 'The Suitability of South Africa's Rescue Procedure in the Reorganization of Small to Medium Sized Enterprises: Lessons from Chapter 11 of the United States Bankruptcy Code' *Michigan Business & Entrepreneurial Law Review* (2018) 8 (101): 112; S Conradie & C Lamprecht 'Business Rescue: How can its Success be Evaluated at Company Level. *South African Business Review* (2015) 19 (3): 5.

³⁴ E A Esu 'Company Liquidation and Corporate Rescue in Nigeria: The Need for Reform' *Readings in Law and Policy: Current Issues and Trends*, O V C Okene, Ed, Owerri: Zubic Infinity Concept (2017) 270; Segarajasingham (n20) 130 – 131.

otherwise expressed as 'corporate recycling',³⁵ suggests that the previous corporation will be shut down, but the real business and its operations will continue to operate as a cohesive, successful entity under new ownership.³⁶

Company rescue, also referred to as "pure rescue," is the process of preserving a corporate organization or a portion of it after a problem has been fixed.³⁷ Company rescue entails the corporate entity surviving the rehabilitation process intact in order to carry on with essentially the same operations, employees and owners.³⁸ When a company is in trouble, company rescue attempts to restore it, preserving the company's legal status so that it can continue operating following reorganisation.³⁹ According to Wood,⁴⁰ in interpretation of the purpose of administration, stated that its objectives are (a) that is concerned with rescuing the company, while objectives (b) and (c) focus more on rescuing the business.

2.1.3. Winding up

Liquidation and winding up are frequently used interchangeably,⁴¹ however, they are not one and same thing. While winding up is the term used in Nigeria, liquidation is preferred in other jurisdictions such as the UK. The procedure for ending a legal entity's existence is called liquidation.⁴² It is intended to make sure that, before the business is dissolved, all of its existing debts are paid, to the extent

³⁵ S Frisby, 'In Search of a Rescue Regime: The Enterprise Act 2002' *Modern Law Review* (2004) 67 (2) 248.

³⁶ Xie (n23) 4.

³⁷ B Adebola, 'The Nigerian Business Rescue Model: An Introduction' *NIALS* (2013) 1: 43.

³⁸ Frisby (n34) 249.

³⁹ Xie (n23) 4.

⁴⁰ J M Wood, 'The Objectives of Administration' 36 *Co Law* (2015) 1. 6.

⁴¹ French (n4) 702.

⁴² P L Davies and S Worthington, *Gowers' Principles of Modern Company Law* (10th edn, London: Sweet & Maxwell 2016) 1151.

possible, and that any surplus assets, if any, are allocated to members in accordance with their agreed-upon right.⁴³

When describing the latter weeks or months of a corporation, the phrase "winding up" is frequently used. It is the procedure through which the company's assets are gathered and realized, its debts are paid off, and any leftover net surplus, if any, is given to those who qualify to receive it. The procedure by which a business's existence is ended and its assets are managed by a representative known as the liquidator for the benefit of the creditors and members of the firm is referred to as winding up.⁴⁴ It is also known as the process by which the assets of a company are gathered and realised, and the resulting proceeds are used to settle all of the company's debts and liabilities to the degree that the proceeds permit upon remitting the charges and expenses of dissolving the company.⁴⁵ It involves "killing" a corporate person and selecting an undertaker to arrange for their funeral.⁴⁶ A corporation is liquidated and dissolved through this process, and any remaining assets are allocated according to particular priority standards for the benefit of the corporation's creditors, members, and workers,⁴⁷ the extinguishment of the life of a registered company;⁴⁸ and the removal of the company from all

⁴³ French (n4) 702.

⁴⁴ J E O Abugu, 'The Rhetoric of Corporate Governance and Accountability for Executive Expenditure' *Gravitas Review of Business and Property Law* (2019) 10 (3): 747.

⁴⁵ R Keay, A Boraime, & D Burdette, 'Preferential Debts in Corporate Insolvency: a Comparative Study' *Int. Insolv. Rev.* (2001) 10 (3): 169 – 170.

⁴⁶ *Oyo State Paper Mills Limited v Nibel Co. (Nig) Ltd.* [2017] 3 NWLR (Pt. 1552) 207, at 243, para. C.

⁴⁷ C E Halliday, 'Applications and Orders in Winding up Proceeding in Nigeria: Resolved and Unresolved Issues' *Nnamdi Azikiwe University, Awka Journal of Commercial and Property Law* (2019) (6): 46.

⁴⁸ Esu (n33) 258.

its legal relationships.⁴⁹ It is crucial to note that a corporation only vanishes from existence when the court orders its dissolution.⁵⁰

Insolvency or solvency may be the basis for a company's dissolution. When a corporation is liquidated due to illiquidity, this is described as "insolvent winding up",⁵¹ while solvent winding up is a voluntary winding up under CAMA 2020 specified conditions.⁵² Furthermore, winding up is usually classified in two categories: by the court or compulsory winding up, voluntarily, and subject to supervision of the court. Compulsory winding up refers to liquidation initiated through the invocation of any of the circumstances mentioned in *section* 408 of CAMA.⁵³ While voluntarily winding up must be in accordance with *section* 457 of CAMA, which can be either be members' or creditors' or voluntary. Winding up subject to supervision of court is one that is voluntary but under the supervision of the court.⁵⁴

3. Legal Procedures for Resolving Insolvency in Corporate Entities in Nigeria

There is a plethora of procedures available for resolution of insolvency matters. While some of the procedures are terminal, others are rehabilitative and restorative of the insolvent company. Although the concentration under this subheading will be on the restorative procedures, the terminal procedures would be briefly analysed.

⁴⁹ French (n4) 702.

⁵⁰ *Oboh v NFL Ltd* (2022) 5 NWLR (Pt 1823) 283 at 327 – 328, paras. C – F, G – A; 333 paras. D – E.

⁵¹ CAMA 2020, ss. 571 (d), 572 and 868 (1); IA 1986, ss. 122 (1) (f), 123; IBC 2016, ss. 6, 7.

⁵² *ibid* s 620.

⁵³ Halliday (46) 48; Abugu (n43) 751-752; Esu (n33) 260.

⁵⁴ *Corporate Affairs Commission v Davis* [2008] 1 N.W.L.R (Pt. 1067) 60 at 78 -79, paras. H–F.

3.1 Restorative Procedures

Administration and Company Voluntary Arrangements are the restorative procedures provided in the CAMA 2020. This is in line with the practice in the United Kingdom (UK). The practice and procedural steps for the above stated restorative procedures will briefly be discussed as follows:

3.1.1 Administration

Administration of companies is a radical rescue mechanism introduced in the UK following the *Report of the Review Committee on Insolvency Law and Practice* (Cork Committee Report)⁵⁵ Administration is a pro-rescue mechanism procedure,⁵⁶ transplanted wholesale from the various UK legislation into the CAMA 2020.⁵⁷ A firm can be saved through administration of companies by entrusting an administrator with the supervision of its affairs, business, and property.⁵⁸

The UK law bans initiating winding up or other legal action against a business while administration is still in place and precludes applying any charge, hire-purchase, or retention-of-title clause against a corporation without the court's approval,⁵⁹ is not the case in Nigeria. In Nigeria, where a petition for the company's winding up has been filed but not yet resolved, an administrator cannot be appointed; or a request for administration has been made but not yet resolved; or a receiver is in office.⁶⁰ To clarify, an administration order is a court order designating someone as the administrator of a

⁵⁵ IA 1986, pt. II, ss. 8 – 27, sch. B1; EA 2002, s. 248, sch. 17; Insolvency Rules 2016 (IR 2016), pts. 3, 14 – 15, 18; A Dignam and J Lowry, *Company Law* (11th edn, Oxford, UK: OUP 2020) 445 – 447.

⁵⁶ L Roach, *Company Law* (Oxford, UK: OUP 2019) 602.

⁵⁷ CAMA 2020, chap. 18, ss. 443 – 549; IR 2022, chap. 5.

⁵⁸ *ibid.*, s. 444 (1), (2); IR 2022, chap. 2.

⁵⁹ IA 1986, s. 10; N Bourne *Principles of Company Law* (3rd edn, London: Cavendish Publishing Limited 1998) 253.

⁶⁰ CAMA 2020, s. 462.

firm,⁶¹ can only be issued when the FHC is certain the company won't be able to pay its debt and an administration order will likely help the management achieve its objective.⁶²

3.1.2 Purpose of Administration

An administrator must carry out their duties with the intent of saving the business, in whole or in part, as a going concern.; or obtaining a more favourable outcome for all of the firm's creditors than would be probable if the company were to be liquidated without first going through administration; or selling assets to pay one or more secured or preference creditors a distribution. Nevertheless, the administrator's main goal in carrying out his duties is to save the business and keep it operating, Unless the administrator thinks that it would better serve the interests of creditors to wind up the company or that it is not reasonably practicable.

When only the administrator believes it is not reasonably practical to accomplish either the goal of saving the company as a going concern or achieving a better outcome for the creditors if the company is wound up, is the objective of realizing property in order to make a distribution to one or more secured or preferential creditors pursued.⁶³ In *Re: Harris Simons Construction Ltd*,⁶⁴ The word "would be likely to achieve" was interpreted by the court to entail a "real prospect." The question must always be: "If there is a real prospect that one or more of the stated purposes would be achieved, is that prospect effectively likely, in light of all the other circumstances of the case, to justify the making of the order?" Vinelott, J. said in deciding whether to grant an order in regard to a company doing business in Nigeria.⁶⁵ In *Re: AA Mutual*

⁶¹ *ibid*, s 448.

⁶² *ibid*, s 449 (a) (b).

⁶³ *ibid*, s 444 (1) - (5).

⁶⁴ (1989) 1WLR 368.

⁶⁵ *Re: Primlaks UK Ltd* (1989) BCLC 734.

International Insurance Co. Ltd.,⁶⁶ the court interpreted, ‘is or is likely to become...’ to mean ‘more probably than not’ while ‘is reasonably likely...’ means ‘real prospect’.

The fact that an administrator is a court officer is relevant. He or she must be eligible to serve as an IP,⁶⁷ and willingly carry out his or her duties as fast and effectively as is reasonably possible.⁶⁸

An administrator is an officer of the court whether or not he is appointed by the court, and must be a qualified and accredited IP.⁶⁹ According to the Tenth Schedule of the CAMA 2020, an administrator has a wide range of authorities,⁷⁰ to take whatever action that is required or practical for managing the company's affairs, operations, and property.⁷¹ The eleventh schedule to the CAMA 2020 grants greater authority to the administrator of a firm,⁷² which entails taking possession of the property, selling and otherwise disposing of it, raising or borrowing money, hiring a lawyer or accountant, filing lawsuits or defending them, obtaining and keeping insurances, hiring agents, running the company's operations, creating subsidiaries, granting or accepting surrender of a lease or tenancy, and calling any meeting of the company's shareholders or creditors,⁷³ and to sell items subject to a floating charge without the FHC's permission, and for property subject to any other charge with the leave of court. However, the proceeds from such disposition of the property must be deployed according to the statutory priorities.⁷⁴

⁶⁶ (2004) EWHC 2430.

⁶⁷ CAMA 2020, s 447.

⁶⁸ *ibid*, s 445; L Sealy and S Worthington, *Cases and Materials in Company Law* (10th edn, Oxford: Oxford University Press 2013) 771; J M Wood, ‘The Objectives of Administration’ 36 *Co. Law* (2015) 1.

⁶⁹ *ibid* ss 446, 447 (1), 704 (b); IR 2022, chap.3.

⁷⁰ CAMA 2020, ss 475 (2) (d), 511 (5), 520 (4).

⁷¹ *ibid*, s. 496 (1).

⁷² *ibid*, ss. 474 (3) (d), 497, 503.

⁷³ *ibid*, s 499.

⁷⁴ *ibid*, ss 507, 508.

An administrator owes general duties when using the extensive authorities,⁷⁵ and represents the business as an agent.⁷⁶ An administrator's responsibilities include overseeing the company's business, finances, and property;⁷⁷ make a statement outlining your ideas for attaining the administration's goal,⁷⁸ to demand a statement of the company's affairs by sending notice to the appropriate people as defined. The statement must be verified on oath in the prescribed form,⁷⁹ and contains the particulars of the company's property, debt and liabilities, names and addresses of the company's creditors, the security held by each creditor, and the date on which each security was granted. It includes the duty to call or summon creditors' meetings;⁸⁰ take custody or control of all the property to which he/she thinks the company is entitled;⁸¹ if it is in the process of selling its assets, take reasonable measures to get the best possible price,⁸² and distribute a company's assets in accordance with the circumstances.⁸³

3.1.3 Company Voluntary Arrangements (CVA)

The UK's insolvency law includes a rescue option called company voluntary arrangements (CVAs),⁸⁴ resulting from the Cork Committee Report, a review committee report on insolvency law and practice.⁸⁵ CVAs is a legal transplant into the CAMA 2020.⁸⁶

⁷⁵ *ibid*, ss 496 (1), 505 (1).

⁷⁶ *ibid*, s 506.

⁷⁷ *ibid*, ss 444 (1), 505 (1),

⁷⁸ *ibid*, s 486.

⁷⁹ CAMA 2020, s 484 (1), (2) (a) (b).

⁸⁰ *ibid*, ss 486 (2) (a) – (f), 487 (1), 499.

⁸¹ *ibid*, s 504.

⁸² *Re: Charnley Davies Ltd (No. 2)* (1990) BCLC 760.

⁸³ CAMA 2020, s 502 (1).

⁸⁴ IA 1986, pt. I, ss 1 – 7; EA 2002.

⁸⁵ Dignam and Lowry (n54) 449 – 450.

⁸⁶ CAMA 2020, chap. 17, ss 434 – 442; Insolvency Regulations 2022 (IR 2022), chap. 4.

CVAs is a proposal made on behalf of a company to its creditors for a composition in satisfaction of its debt or a scheme of arrangement of its affairs.⁸⁷ A company's board of directors could make the suggestion; or by the administrator if a company-related administrative order is in effect; or in cases when the company is being wound up by the liquidator.

Directors of a corporate entity present the nominee with a CVA proposal, and the nominee oversees the CVA's execution either as trustee or in another capacity. the person being considered must be a qualified individual who can represent the company as an IP,⁸⁸ a proposal is made when the company is subject to an administration order, the administrator serves as the nominee, and when the firm is being wound up, the liquidator serves as the candidate. The nominee shall within 28 days of receipt of the proposal from the directors of the company for a voluntary arrangement, submit a report to the FHC stating:⁸⁹

- i. whether, in his opinion, meetings of the company and of its creditors should be summoned to consider the proposal; and
- ii. if, in his opinion, such meetings should be summoned, the date on which, and time and place at which he proposes the meeting to be held.

3.2 Terminal Procedures

Receivership and winding up by the court are procedures for resolving insolvency matters that are provided for in the CAMA 2020, Asset Management Corporation of Nigeria Act 2010, as amended (AMCONA), The Nigeria Deposit Insurance Corporation Act 2023 (NDIC Act), and the Investments and Securities Act 2025 (ISA 2025).

⁸⁷ CAMA 2020, chap. 17, s 434; IR 2022, chap. 4.

⁸⁸ CAMA 2020, ss 434 (1) (2) (3), 704 (c), 705; IR 2022, chap. 4.

⁸⁹ CAMA 2020, s 435 (2) (a) (b); IR 2022, chap. 4.

While these procedures are commonly used for the realization of possessory security and recovery of debts, the adverse effects of the use of the procedures leaves much to be desired. The application of these procedures in most cases, fail to resolve the insolvency. Rather, they lead to the extinction of the insolvent company and the ultimate consequence usually fail to satisfy neither the interest of the creditor(s) nor the insolvent corporate entity.

4. Conclusion and Suggestions

The need to restore insolvent corporate entities cannot be over emphasized. While the restorative procedures of CVAs and Administration provided in the CAMA 2020 have gone a long way in resolving insolvency matters. However, the implementation and application of this restorative procedures have not been seamless. In particular, insolvency practitioners (IPs) and institutions that are to drive these restorative procedures are not still inured with the requisite skills and capacity.

Against the above, this paper suggests and recommends amongst others, that the National Assembly should amend the provisions of the CAMA 2020 by abolishment of receivership and winding up by the court as active legal procedures for resolving insolvency. On the other hand, resort to restorative procedures should be the first step in resolving insolvency matters. It should only be in a situation that the invocation of the restorative procedures fails or is impossible, that terminal procedures such as winding up can be availed of. This is the position in India as contained in the Insolvency and Bankruptcy Code 2016 (as amended).

Furthermore, the growing and training of Ips should be intentional with less exorbitant cost. In this regard, the Nigerian Bar Association, in its quest for continuing legal education, should put more effort in the training and retraining of legal practitioners in the area of corporate insolvency and corporate rescue. In the unlikely event that this suggestion is not taken serious, legal practitioners in

Nigeria who ordinarily are not equipped with the skills to act as IPs, would be left out and attorneys from outside jurisdiction will continue to play prominent roles in situations of resolution of insolvency matters. In same vein, judicial officers and regulators involved in corporate insolvency matters, should undergo requisite special training in this specialized area of the law.