



THE CHANGING NATURE OF BUSINESS RESCUE IN NIGERIA

MAY 2019



THE EVOLUTION OF BUSINESS RESCUE IN NIGERIA

Nevertheless in most cases (and although not explicitly geared towards dissolution), the result of receivership is a dissolution of the company.

In Nigeria, the current legal framework for corporate insolvency is embodied in the Companies and Allied Matters Act, Chapter C20, Laws of the Federation of Nigeria 2004 (CAMA).

Under CAMA, the options available to financially distressed companies are receivership,[1] liquidation,[2] and arrangement and compromise.[3] In practice however, liquidation and receivership are most common.

While receivership is geared towards the recovery of debt through secured assets, liquidation primarily seeks the dissolution of a company.

The reorganisation and/or restructuring of an insolvent company by insolvency experts based on a reorganisation plan is generally known as business rescue. The purpose of business rescue is to restore the financial well-being and viability of a company's business in a way that either increases the chances of the company continuing in existence as a solvent entity, or results in a better return for the creditors of the company than would be the case assuming the company went into liquidation.

[1] Sections 387 – 400; 410(1)(c); 419 – 421 of CAMA.

[2] Sections 422 – 432; 464 – 468; 473 – 478; 481 – 518; 524 of CAMA.

[3] Sections 537 – 540 of CAMA.



Business rescue is a noble concept, which seeks to balance out the interests of both the creditors and the debtor in line with international best practices.

It provides the opportunity needed to reorganise and restructure the affairs of a debtor; structure a payment scheme with its creditors, while also preserving jobs and allowing the business to continue trading as an economically contributing entity.

Introducing the proposed amendments in the Companies and Allied Matters (Repeal and Re-enactment) Bill

Recognising the need to promote business rescue, create enabling conditions for investment and improve the ease of doing business in Nigeria, the House of Representatives on 17th January, 2019, passed the Companies and Allied Matters (Repeal and Re-enactment) Bill (“the CAM Bill”) which is now awaiting presidential assent.

The CAM Bill seeks to bridge the gap in the existing legal framework for corporate insolvency by introducing a series of reforms.

The CAM Bill, if passed into law, will change the narrative of resolving insolvency in Nigeria as it prioritises business rescue above liquidation and receivership.

The CAM Bill has introduced insolvency procedures for financially distressed companies (or companies on the verge of financial distress) such as Company Voluntary Arrangement (“CVA”) and Administration with the aim of engendering business rescue.

The expectation is that before either liquidation or receivership is considered, options such as CVA and Administration will be explored and administered by insolvency experts.

In a CVA, the directors of a company may make proposals to its creditors for a composition in satisfaction of the company’s debts or scheme of arrangement of its affairs for rescuing the company from its financial distress.



The proposal will provide for a qualified insolvency practitioner to act either as a trustee or nominee for supervising its implementation. A liquidator or an administrator can also initiate a CVA where the company is in liquidation or administration.

Likewise, the main objectives of administration are (1) to rescue the company, the whole or any part of its undertaking as a going concern; (2) achieve 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; and (3) realise property in order to make a distribution to one or more secured or preferential creditors.

During administration, control of the company is given to an insolvency practitioner who will objectively review the profitable and non-profitable aspects of the distressed company and propose a plan in line with the objectives of administration for the business rescue of the company.

To ensure that business rescue is given a chance to succeed, the CAM Bill makes adequate provisions (amongst others) for a suspension of enforcement actions by creditors during administration.

The CAM Bill has also explicitly defined the term "insolvency practitioner," provided the educational and professional requirements for qualification as an insolvency practitioner and conferred roles on the Business Recovery and Insolvency Practitioners Association of Nigeria (BRIPAN), and the Corporate Affairs Commission in determining an insolvency practitioner.

It is our view that this innovation may further ensure the overriding objectives of business rescue are met as only qualified insolvency practitioners who are conversant with these objectives will be permitted to take on the role of Administrator, Nominee, Liquidator and the likes.

IN CONCLUSION



It is our view that the reforms in the CAM Bill balance the interests of the creditors and the debtors.

Overall, the introduction of the CVA and Administration may bring about positive developments in resolving insolvency since they significantly change the focus of insolvency in Nigeria from business liquidation to business rescue.

Besides, the business rescue reforms will in turn, create and ensure confidence in the insolvency regime in Nigeria.

We therefore anticipate that the business rescue reforms would reduce the risk of corporate insolvency, directly boost foreign investment in Nigeria and ensure that the Nigerian corporate insolvency regime is in line with international best practices.

ÆLEX



AUTHOR
ODINAKA OKOYE



AUTHOR
PERENAMI MOMODU

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Contact us at:


4th Floor, Marble House,
1 Kingsway Road, Falomo Ikoyi,
Lagos, Nigeria


Telephone: (+234-1) 4617321-3, 2793367-8, 7406533.


E-mail: lagos@aelex.com

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