CORPORATE INSOLVENCY IN NIGERIA: SHIFTING FROM DISSOLUTION TO RESTRUCTURING UNDER THE COMPANIES AND ALLIED MATTERS ACT 2020

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Abstract

Corporate insolvency is not an expression that has been defined to achieve universal acceptance but it has assumed considerable significance within the context of both Nigerian law and economy in recent times particularly since the Companies and Allied Matters Act (CAMA) 2020 came into force. This article considers the changing perception of corporate insolvency in Nigeria as a transition from liquidation- based proceedings into devices for business rescue and restructuring. By reviewing the core principles of the bankruptcy law, examining the legal and institutional mechanisms of corporate insolvency in Nigeria, it examines several problems that constitute impediments to its success. It employs a doctrinal method and depends on primary works such as the CAMA 2020 in addition to secondary sources like journals, textbooks and materials online. It is the contention of this study that there are symptoms to show that modern insolvency practice in Nigerian law is on a trajectory towards adopting international good practices by encouraging corporate rescue mechanisms such as Company voluntary arrangement (CVA) and administration opting instead for continuity rather than liquidation. This article recommends that in order to progress from legislative aspiration to practical significance, Nigeria should invest in institution-building, capacity building of professionals and collaboration by regulators.

Key words: Insolvency, institution-building, liquidation, proceedings,

1.0 Introduction

For a very long time in Nigeria, corporate insolvency meant death or morbidity that once a company was unable to pay its debts, there was a high chance of winding-up under the then extant law[2]. The Companies and Allied Matters Act ("CAMA") 1990 (as amended in 2004) did not provide many mechanisms for troubled companies to reorganise their debts or otherwise attempt to trade its way out of diffiulty[3]. Yet in August 2020, the Nigerian parliament passed the Companies and Allied Matters Act, 2020 ("CAMA 2020"), which repealed the prior CAMA statutes while significantly amending Nigeria's corporate legal regime; among other things, it strengthened insolvency and business rescue procedures[4]. Among the more novel elements include Company Voluntary Arrangements (CVAs,) and enhanced regulatory scrutiny of IPs, indicating a policy departure from

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2 O M Atoyebi, "Corporate Insolvency Procedures: Overview of Applicable Laws and Key Institutions," Omaplex Legal, 23 Apr. 2025.

3 U Azikiwe, F Onyia, M Mene-Josiah, "Innovations in Corporate Insolvency in Nigeria under the Companies and Allied Matters Act, 2020 – Insolvency Practitioners," *UUBO Journal*, part 1.

4 "Overview of CAMA 2020 and its Insolvency Provisions," Cheru Chambers, 27 Aug. 2025.

an emphasis on liquidation[5]. These developments reflect the best practices of other nations, as well as mounting economic pressures (examples of which are increasing business failure rates, concerns among investors and the necessity to protect jobs, value of creditors and going concern)[6]. However, notwithstanding these legislative advances, practical hurdles persist: adequacy of institutional capacity and professional training in the judiciary, balances of power between creditor-debtor and regulatory clarity may present challenges that prevent CAMA 2020's rescue-focused paradigm from fully materialising[7].

To understand the import of this change under CAMA 2020, it is important to look at what was obtainable with regards to insolvency in Nigeria. Insolvency was organised by strict provisions such as winding-up (court or voluntary), receivership, and limited schemes/arrangements[8]. With little statute law to support rescue or reorganisation of ailing concerns, the bias remained firmly in favour of liquidation and realisation rather than rehabilitation[9]. Creditor entitlements particularly for secured creditors often prevailed with limited statutory stay or other protection, once insolvency proceedings had started[10]. The triggers for the commencement of winding up proceedings on grounds of insolvency were not high, and the statutory impetus to engage in restructuring discussions was weak; as a result, this commonly meant that commercial failures[11] occurred too early with consequent job losses and value destruction for both companies and creditors. As academia and practice thus revealed these gaps, numerous voices erupted from the legal profession, corporate bodies and lawmakers advocating for reform which resulted in the drafting and enactment of CAMA 2020[12].

CAMA 2020 brought in some of the key restructuring tools that are found in many developed insolvency regimes. These include the Company Voluntary Arrangement (CVA) under which a

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[5] "Business Rescue Mechanisms under CAMA 2020 and BOFIA 2020: A Business Case for Distressed M&A," Financier Worldwide, May 2023.

[6] "A Critical Analysis of Insolvency Provisions Under CAMA 1990 and CAMA 2020," Lexology, recent publication.

[7] Omaplex Legal, "Corporate Insolvency Procedures: Overview…," 23 Apr. 2025.

[8] "Corporate Insolvency Regime in Nigeria," University of Lagos Law Review, Vol. 4, No. 2 (2021): 10. https://unilaglawreview.org/wp-content/uploads/2021/02/Article-4.pdf. Accessed 13 Sept. 2025.

[9] *Ibid*., 12.

[10] "Enhanced Protection for Secured Creditors in a Winding Up Under CAMA 2020," Templars Law. https://www.templars-law.com/knowledge-centre/enhanced-protection-for-secured-creditors-in-a-winding-up-under-cama-2020/. Accessed 13 Sept. 2025.

[11] Stren & Blan, "Corporate Insolvency Threshold in Nigeria: A Comparative Analysis of the Former and Extant Legal Framework." https://strenandblan.com/corporate-insolvency-threshold-in-nigeria-a-comparative-analysis-of-the-former-and-extant-legal-framework/. Accessed 13 Sept. 2025.

[12] Cheru Chambers, "Overview of CAMA 2020 and its Insolvency Provisions." https://cherutchambers.com/2025/08/27/overview-of-cama-2020-and-its-insolvency-provisions/. Accessed 13 Sept. 2025.

troubled company is able to propose an arrangement with unsecured creditors to compromise or re-schedule debts so that it can continue trading rather than being wound up[13]. An alternative in the administrative in nature: a practitioner is appointed by the court and given control of the company in order to rescue or to optimise the recovery for creditors as a going concern (or at least as a better realisation than immediate liquidation would achieve). The Act also addresses the need for better and more robust competency, oversight and regulation of insolvency practitioners to ensure that these individuals being tasked with carrying out the restructuring or winding-up are competent and accountable[14]. Moreover, the insolvency threshold (the monetary sum and time periods for demand, neglect, etc.) has been adjusted upwards to reflect modern economic realities[15]. These constructive changes signify a general reorientation of the law: away from considering insolvency as essentially an opportunity to be wound up and towards one of rescue and preservation where practicable[16].

In practice, however, there are a number of practical and institutional obstacles that could easily derail the transformation from dissolving to restructuring. Courts may be too inexperienced or without dedicated insolvency divisions, to execute the newer rescue mecanisms with enough speed and knowledge of the technical matters that they entail.[17] "These types of abilities would be rare within the insolvency practitioner community, where too few people are put through relevant training in reorganisation, forensic accounting and creditor negotiating; there is a lack of regulation as to who can call themselves an IP or how they must behave[18]. Another barrier is creditor's behaviour: secured creditors specifically may resist moratoria or the restructuring of debt, while preferential debts (e.g. wages, taxes) might make proposals difficult or limit flexibility. There are also such concerns regarding potential overregulation or conflict of law, with regards to an instance when CAMA 2020 and the sectoral laws (banking or insurance), which may provide for distinct insolvency and liquidation regimens. In the final analysis, institutional capacity in terms of the courts, Corporate Affairs Commission, regulatory agencies and professional associations and public enlightenment are woefully under-developed which may hamper or distort implementation of CAMA 2020's rescue-oriented provisions[19].

2.0 Conceptual Underpinnings

2.1 Corporate Insolvency

Corporate insolvency is the state in which a registered company cannot pay its debts when they are due and payable in accordance with their terms, or the company's liabilities (debts) are greater than its assets. Nigerian law does not provide a single statutory definition of insolvency, but in the

[13] Financier Worldwide, "Business Rescue Mechanisms under CAMA 2020…"

[14] Azikiwe, Onyia & Mene-Josiah, UUBO article

[15] Stren & Blan, "Corporate Insolvency Threshold…"

[16] University of Lagos Law Review; Financier Worldwide.

[17] University of Lagos Law Review, "Corporate Insolvency Regime in Nigeria."

[18] UUBO article on Insolvency Practitioners.

[19] Omaplex Legal; UUBO article.

context of CAMA 2020, it is generally derived from provisions relating to "unable to pay debts" as well as thresholds and triggers for winding-up or other insolvency-procedures[20]. Such as Section 572 of CAMA 2020 which provides for the test of inability to pay its debts as one of the circumstances in which winding up by the court can be sought[21]. Where a company is undeniably insolvent, the law provides not only for dissolution or liquidation but now under newer sections, for rescue, restructuring or arrangements in specified circumstances. It differs from personal insolvency (in the sense of bankruptcy) and in this respect, company insolvency is a matter of civil law related to companies and not criminal law.

2.2 Winding Up

Winding Up refers to the process of terminating a company's existence, its capacity to carry on business, realizing assets and discharging liabilities in connection with its activities. Under CAMA 2020 three methods of winding up are provided for by the court, voluntary (members' or creditors' voluntary) and subject to the supervision of the court.[22] There are laid down legislations specifying such procedural requirements; for example, during members' voluntary winding up a declaration of solvency must be made by the company, and insolvency must be declared or proved and then a meeting of creditors called during creditor's voluntary winding up[23]. The contention represents that the act of placing a company into liquidation signifies its legal end as a going concern; and when a liquidator is appointed, directors would typically lose management powers. Winding up is compared with rescue or restructuring, which seek to save rather than close the business.

2.3 Corporate Rescue

The words "corporate rescue" is used in the corporate world to mean all legal and practical measures taken with a view to prevent the company from going into liquidation by sustaining its business operations. Formal statutory rescue avenues under CAMA 2020 now include (CVAs) and administration where, the company (through its directors or an appointed practitioner) can negotiate with unsecured creditors, restructure payments or debts and continue to operate while supervising the regime[24]. Rescue represents a balancing act amongst the interests of creditors both unsecured and secured, employees and even the state subject to statutory safeguards (moratorium or regulated enforcement).[25] Prior to CAMA 2020 rescue formally was merely circumscribed receivership and liquidation were the principal mechanism, leaving little in the way of binding frameworks or state

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[20] CAMA 2020, Section 572(1)(a) (ability of a creditor to make demand and non-satisfaction), "Companies and Allied Matters Act 2020."

[21] Modes of Winding Up a Company in Nigeria, Omaplex Legal, "Section 570, Section 572, CAMA 2020.

[22] CAMA 2020, Sections 570-574, "Modes of Winding Up a Company in Nigeria," Omaplex Legal p. 1-2)

[23] "Current Procedure For Winding Up A Company In Nigeria," Mondaq, Resolution Law Firm, 3 Oct. 2023, ¶ 3-4. Accessed 13 Sept. 2025.

[24] "An Overview of Company Voluntary Arrangements under CAMA 2020," Mondaq, April 26 2023, sec. "What is a Company Voluntary Arrangement (CVA)?" (para. 1-2).

[25] "Company Voluntary Arrangement under CAMA 2020: A Review," UNIZIK Law Journal, Vol. 19, No. 2 (2023), p. 41.

directed salvage. Thus, rescue is central to the legal discourse on transformation from a mere dissolution to continuity and value preservation in Nigerian insolvency law.

2.4 Corporate Restructuring

Corporate Restructuring is a process whereby major changes are made in an organization's financial and/or operational structure when it is under significant pressure from creditors, such as the need for a reorganization or recovery plan. This might include debt rescheduling, non-core business disposals, internal restructuring or changes in management and/or workforce trimming (or even capital structure) without recourse to more formal rescue options like CVAs or administration. As conceived under CAMA 2020, it offers flexibility in responding to financial pressures[26]. Restructuring can be either pre-emptive (prior to formal insolvency) or reactive (once distress has crystallised), and is intended to prevent winding-up and maintain stakeholder value. Under CAMA 2020, the law has provided clearer legal grounds for restructuring processes especially by nominations of practitioners who will act as monitoring and in some cases imposing moratorium to prevent creditor enforcement so that negotiations can be successful[27]. Restructuring thus acts as a bridge between distress and recovery, allowing firms to make strategic changes which because they circumvent the liquidation effects of premature shutdown preserve value.

3.0 Legal Frameworks and Regulatory Institutions on Insolvent

3.1 Corporate Affairs Commission (CAC).

The CAMA 2020 is essentially the foundation of Nigeria's institutional structure for corporate rescue and restructuring, with the CAC serving as registrar, regulator and overseer of insolvency practitioners. Section 705 CAMA 2020 provides for the requirement that insolvency practitioners should have a degree in an appropriate field, not less than five years' experience post-qualification in insolvency practice and membership of a recognised professional body; while section 706 permits CAC to recognise these bodies and keep registers of such practitioners[28]. CAC also oversees schemes of arrangement or compromise under sections 715-716 by scrutiny of submissions and imposing penalties for non-compliance. With these provisions, CAC holds the "stick and carrot" of licensing as well as quasi-monitoring control over the systems for business rescue/creditor arrangements. Scholarly commentary does remark, however, that capacity constraints and bureaucratic albatrosses diminish the effectiveness of CAC in practice especially where overlapping powers with other agencies are present[29]. In reality, CAC is a bastion for the credibility and integrity of Nigeria's corporate insolvency regime.

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[26] *Ibid*.

[27] Innovations in Corporate Insolvency in Nigeria under the Companies and Allied Matters Act, 2020 – Insolvency Practitioners, UUBO Journal, (Chapters on restructuring and insolvency practitioners), p. 5-6.

[28] U Udoma & Belo-Osagie, "The Companies and Allied Matters Act, 2020 – What You Need to Know – Part 10 – Company Administration," Mondaq, 2020.

[29] Punuka Attorneys, "Chapter 26 CAMA 2020: Insolvency Professionals, A Miscellany Issue," Mondaq, 2022.

Beyond its regulation and supervisory functions under CAMA 2020, CAC has made Insolvency Regulations 2022 pursuant to Section 867; these seek to codify and set down the processes of insolvency under CAMA- (Company Voluntary Arrangement, Administration of companies, Receivership/Managership etc.) covering winding-up by the court; Creditors' Voluntary winding-up; arrangements and compromise; netting; dissolution of incorporated trustees with a view to engender more certainty thereby promoting greater transparency in insolvency outcomes. CAC has also initiated real enforcement steps: it published a list of 94,581 defaulting companies in 2023 for striking off due to their failure to file annual returns pursuant to section 692(3)-(4) of CAMA which was later reduced to 91,843 companies after some compliance[30]. CAC offers a 90-day grace period to companies that are affected in these notices before it will remove them, and many use this opportunity to file their missing returns or beneficial ownership information, and doing so takes them off the list[31]. Additionally, CAC has been in the habit of striking off smaller batches for noncompliance the authority struck off more than 1,000 dormant companies in November 2024 clarifying that striking off is an instrument of continuing regulatory sanitation[32].

3.2 Securities and Exchange Commission (SEC).

The Securities and Exchange Commission (SEC) provides protection to minority shareholders and classes of creditors in CAMA 2020 schemes while such compromises or arrangements are proposed. Pursuant to section 715(2) once the votes have been received from creditors or members to be voted on the scheme by three-quarters in value, then at that juncture whereby a direction would be given by Federal High Court for SEC to christen inspectors with an audit of both sides of the demerger process. This mechanism injects an external auditing tier into the reorganization process analogous to fairness hearings common elsewhere. Even under Section 715(3) the court has the last word in approving, but SEC can play an investigative role to prevent extortionate terms and protect disinterested constituencies. Some academics have pointed out the potential for SEC delay and expense when it is utilized, thereby questioning whether it can handle technically sophisticated cases[33]. However, the SEC's statutory perquisite under CAMA 2020 serves as an important check against the abuse of restructuring process.

In operation, the SEC by virtue of Section 715(2) of CAMA 2020 is to appoint an inspector or inspectors when Court refers a scheme of compromise or arrangement for investigation and such inspectors shall be required to investigate whether the scheme or proposal is fair towards all

[30] "Insolvency Regulations 2022 | Corporate Affairs Commission (CAC)," Corporate Affairs Commission, April 25, 2022.

[31] "CAC grants over 90,000 dormant companies 90 days to file returns or face delisting," BusinessDay NG, July 26, 2024.

[32] CAC Enforces Annual Returns Filing, Dissolves Over 1,000 Dormant Companies For Non-Compliance," *The Times Nigeria*, November 2024.

[33] "Section 715 Companies and Allied Matters Act (CAMA) 2020 – Power to compromise with creditors and members," LawGlobal Hub, 2024.

creditors or members' classes concerned (majority and minority) before the court can approve it.[34] The inspectors are required to submit a written report within a period as determined by the Court, setting out their opinion about whether the terms of the scheme are fair and reasonable, whether information provided to members and creditors was adequate and if any class has been unfairly prejudiced. If the report is favourable, then the Court may make under s 715(3) an order approving it and binding on the parties as a scheme; or if not so satisfied, the Court can either refuse sanction (s 711(b)) or impose conditions[35]. Academics note that although this procedure is designed to be precautionary against abuses, in practice delays commonly result from: difficulties of gathering the facts; complexity of disclosures, including financial statements; and a necessity in obtaining experts qualified to assess actuarial, valuation or accounting considerations.[36] In addition, the cost of preparing reports or audits by inspectors under SEC oversight may be significant in some cases (e.g., for a very large or publicly-listed company, where there are cross-border elements), and this can deter some stakeholders (particularly those that are smaller creditors or members) from participating fully. Notwithstanding these onerous requirements, a number of commentators suggest that the role of the SEC is nonetheless critical to preserving confidence in the restructuring process and preventing scheme/proposal terms from being a mere tool to benefit those who are strongest.

Findings of recent case law, academic commentary as well as the SEC's investigative role indicate that its function has occasionally been required more for reasons of process than substance: in a number of filings, inspectors' reports have been very brief and without any independent verification and concerns have been raises about whether Court scrutiny would end up simply importing their weight while those submissions are not being sufficiently challenged by the SEC. Some authors call for legal reform to impose restrictions on what inspectors look at (for example, mandatory use of accredited valuers, all material interests in creditors and directors being disclosed, expert evidence on complex financial issues)[37]. There is also question of standardizing the timelines for inspectors' reports to cut down on the current uncertainty and delay. Some recommend building capacity at SEC: hiring or contracting individuals with expertise in finance, forensic accounting, or valuation; and by providing greater access to data (public filings, financial statements, market comps) so that investigations can be more robust. In all, these further reforms should improve SEC's ability to be a genuine external check on corporate rescue as opposed to a paper tiger under Section 715.

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[34] S C Ebuku & Ebubedike, "Corporate Rescue and Restructuring in Nigeria: A Critical Analysis of the Provisions and Procedures under Companies and Allied Matters Act 2020," *African Journal of Law & Human Rights* 11, no. 8 (2025): 45.

[35] O S Adedoyin *et al*., "Corporate survival strategies for companies in financial trauma under the Companies and Allied Matters Act (CAMA) 2020 in Nigeria: An appraisal," *International Journal of Law* 10, no. 5 (2024): 7.

[36] *Ibid*.

[37] S C Ebuku & Ebubedike, 2025, p. 47

3.3 Federal Competition and Consumer Protection Commission (FCCPC).

A complimentary supervisory authority in cases where insolvency or restructuring has a competition element, or might have a consumer welfare ramification, is the Federal Competition and Consumer Protection Commission (FCCPC) which agency was created pursuant to the FCCPA 2018. Although CAMA 2020 does not grant FCCPC direct powers in business rescues, its responsibility under Section 17-18 FCCPA enables it to scrutinise mergers, acquisitions or restructuring transactions for anti-competitive effects or consumer abuse. This power becomes more important in big corporate rescues or sector-specific restructurings that could impact market dominance or public interest. Recent judicial pronouncements on the jurisdiction of FCCPC have made it clear that its jurisdiction is over the entire economy and does not diminish in insolvency situations. But analysts argue that there is ambiguity in ensuring the synchronisation of FCCPC's activities with those of SEC and CAC, leading to procedural conflict[38]. The Commission thus functions as an indirect but now major chronic in Nigeria's corporate rescue framework.

More recently, Nigerian courts have supported FCCPC's competition-law supervisory powers even in industries that were previously perceived to fall largely under sector specific regulators. In the case of *Emeka Nnubia v. Honourable Minister of Industry, Trade and Investment & 2 Others*[39], for example, the Federal High Court in Lagos held that FCCPC has authority over competition and consumer protection in all sectors including telecommunications under Sections 17, 18, 104 and 105 of the FCCPA 2018; and provision contained in the Nigerian Communications Act (2003) which purports to vest exclusive competition power in NCC is subordinate provided it conflicts with latter statute as enshrined in the Act. This decision is significant as it shows judicial willingness to recognise FCCPC's authority does not wane in disputes relating to regulatory overlap which may serve to support stakeholders with an increased degree of certainty on restructuring or rescue scenarios that could breach antitrust risks. Such clarity may influence how restructuring courts view FCCPC's involvement, especially where a distressed firm in a dominant position seeks creditor or court approvals for schemes of arrangement or takeover bids, since competition law (via FCCPC) could impose constraints or conditions in those settings.

That being said, there still remain certain grey areas particularly in the financial services sector pursuant with Banks and Other Financial Institutions Act (BOFIA). BOFIA's Section 65(1) seeks to exclude FCCPC's regulation of "any function, act, financial product or financial services … by a bank and other financial institution licensed by the Bank," even as Section 104 of FCCPA makes it clear that in matters concerning competition and consumer protection law: FCCPA shall prevail over any inconsistent law.[40] There have been several decisions of the Courts as is exemplified in

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38 "In Landmark Ruling, Court Affirms FCCPC's Regulatory Authority in All Sectors of Economy," *ThisDay Live*, 10 Feb. 2025.

39 Suit No. FHC/L/CS/1009/2024, Federal High Court, Lagos Division, judgment delivered February 7, 2025; see analysis in Udo Udoma & Belo-Osagie, "Federal High Court Affirms FCCPC's Oversight in Competition Matters," Mondaq, March 28, 2025.

40 Banks and Other Financial Institutions Act 2020, s. 65(1); Federal Competition and Consumer Protection Act 2018, ss. 104 and 105. See also Chimezie Onuzulike & Ayomide Abiodun, "The BOFIA, The FCCPA And The Battle for Supremacy," Mondaq, March 19, 2025.

Wema Bank v FCCPC[41] affirming FCCPC's jurisdiction under FCCPA on consumer protection cases, including in banking sector; and stressing that BOFIA exclusion might not be absolute. However, BOFIA's ambiguous position may complicate the timing and/or scope of FCCPC review with respect to restructuring transactions involving financial institutions, especially where creditors or depositors claims/disputes (including more complex disputes between consumer creditors) are or could be at play in a transaction that might raise systemic risk concerns. Consequently, even where FCCPC is regarded by courts as being very far-reaching in its scope, the practical approach to FCCPC in an insolvency or rescue context between FCCPC, SEC and CAC and other sector regulators (e.g NCC or CBN) is still somewhat unclear, thereby requiring some kind of formal memorandum of understanding between two institutions, or regulatory forbearance or express statutory amendment in order to avoid potential conflict or double-imposition of regulatory conditions attached to restructuring plans.

3.4 Federal High Court

The Federal High Court is the main court with adjudicatory and supervisory jurisdiction over corporate insolvency and restructuring cases in Nigeria. It also has sole authority to convene meetings of creditors or members under Section 715, ordain compromises and arrangements, and guarantee moratoria under Section 717, protecting companies from creditor actions during restructuring[42]. The Court also supervises company administration (Sections 443–549 of CAMA 2020) including the appointment of administrators, sanctioning their proposed scheme of arrangement and monitoring its implementation for successful rescue operations. Its supervisory function not only encompasses ensuring adequate notice, class representation and a statutory filing before approving a scheme. In reality, however, the absence of dedicated insolvency judges and procedural bottlenecks may delay rescues. Regardless, the Federal High Court still stands as a legal linchpin around which Nigeria's corporate rescue law turns.

Put differently, the role of the Federal High Court under CAMA 2020 in restructuring the involvement of the Courts under CAMA 2020 in the reorganisation process is both constitutional and statutory particularly by virtue of its powers under Sections 715 and 717 to provide companies with formal procedures for arrangement, compromise or moratorium of actions by creditors[43]. As long as the scheme proposer[2] complies with section 715, a company (or any of its creditors or members) may propose an arrangement or compromise with its creditors, including class meetings ordered by the Court, where there must be a three-quarters majority in value of those voting in

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[41] *Wema Bank v. FCCPC,* FHC/L/CS/450/2021; and the Lamfat Gas case, as discussed in Onuzulike & Abiodun, examining whether BOFIA excludes FCCPC jurisdiction entirely.

[42] "Section 717 Companies and Allied Matters Act (CAMA) 2020 – Effect of Moratorium," LawGlobal Hub, 2024.

[43] Companies and Allied Matters Act 2020 (Nigeria), s. 715; s. 717; see also "Scheme of Arrangement (A Rescue Device for Ailing Companies under the Companies and Allied Matters Act, 2020)" 4 (Advocaat-Law) 2023.

favour of the scheme[44]. Once such a majority of the class affected by the scheme is attained, the Court has jurisdiction to approve it, and then it will be binding on all members or creditors within that class, notwithstanding their opposition[45]. Section 717 further provides that if a company has taken the steps to enter into an arrangement or compromise under Section 715, there is a statutory stay: no winding-up petition may be brought and no enforcement action commenced by any creditor (secured or unsecured) for six months following lodging with the Court certain affidavits and statements[46]. Section 717 also includes relief in its interrogation. The exemptions do exist however: for example, a secured creditor may apply to the Court to have declaration that state's sheriff is valid, simple and understandable terms of imposing moratorium if the asset in respect of which it would fall outside the pool relevant to the compromise or if it be perishable, or has been in notice[47]. While theoretically broad enough to deliver some real breathing space for troubled organizations, in reality there is delay caused by such matters as the time it takes for creditors meetings to be convened, dates fixed by the court, and amount of time given for proper representation of all classes of creditors or members. However, despite these procedural hurdles, the Federal High Court is still the legal fulcrum within Nigeria's corporate rescue framework and remains the only court that has power to approve schemes of arrangement, grant moratoria and oversee administrators under CAMA 2020.

4.0 Challenges in Nigeria's Corporate Rescue and Insolvency Framework

i. Lack of Specialised Insolvency Judges. One of the most serious weaknesses of the Nigerian corporate rescue framework is the lack of judges exclusively hearing insolvency and restructuring cases. This defect leads to disparate readings of the Companies and Allied Matters Act on schemes of arrangement, administration, and moratoria. Insolvency is a highly technical field, and courts unversed in it routinely take time to understand the peculiar commercial considerations at play. The problem is compounded by the lack of dedicated insolvency benches; according to F. Ayoola, "[this is] the most fundamental reason why Nigerian insolvency law still lags behind its South African counterpart"[48]. A framework devoid of established precedent-setting bodies means a slow emergence of common law on Insolvency. It amounts to a lack of development of substantive law, threatening the predictability needed by investors to participate in any rescue system. As a result, many distressed companies end up in informal workouts or liquidation, even where statutory saviours would have worked.

ii. Procedural Bottlenecks and Delays. The procedures for convening creditor or member meetings sequel to Section 715 CAMA, securing court approval for schemes of arrangement, and affecting same are replete with bureaucracy. Creditors wait many months before such meetings and possibly

[44] Companies and Allied Matters Act 2020, s. 715(2); Scheme of Arrangement… 3-4.

[45] CAMA 2020, s. 715(3)-(4).

[46] CAMA 2020, s. 717(1).

[47] CAMA 2020, s. 717(2).

[48] F Ayoola, "Challenges of Insolvency Law in Nigeria" (Paper presented at the Nigerian Bar Association Annual Conference, Lagos, 2023).

even longer before court sanctioning of the said scheme. When such delays occur, they undermine the "rescue culture" the Act had intended to promote. Such delays can also cause the destruction of assets or the whittling away of operations both undermine the very possibility of any rescue For example, in *Osunde v. Ecobank Nigeria Plc*[49], the Court of Appeal remarked that when courts face such considerable delays, the creditors of the companies face real risks to their ability to recover value. In practice, companies go under before any rescue effort is acceptable to creditors, and the delay is more costly than otherwise.

iii. Poor Coordination Among Regulatory Agencies. The Nigerian Corporate Affairs Commission, the Securities and Exchange Commission, and the Federal Competition and Consumer Protection Commission often clash in the way they handle the approval and conditions for the same transaction. The firms have to endure different agencies giving them different countermands or approvals; this is onerous to businesses. Generally, these multiple levels of approval lead to regulatory uncertainty, especially when large firms are involved. In reality, the lack of harmonized guidelines forces companies to undergo multiple audits to achieve the same result. Politically, there is a lack of a statutory framework to ensure that the three institutions harmonize their measures. The court appointments do not encompass the operations of the mentioned bodies; the result is an immature, costly rescue system.

iv. Limited Access to Specialist Insolvency Professionals

A further important weakness is the lack of qualified and experienced insolvency practitioners to handle complicated restructurings. While CAMA 2020 established a framework for insolvency practitioners, there is unevenness in the training and accreditation requirements. Relatively few lawyers and accountants in Nigeria practice solely in the field of insolvency, this lack of concentration may undermine the proficiency of those who do it. It is this independence or specialization that is lost those impacts on the quality (if we can call it) of rescue plans prepared for court sanction. Without very capable specialists, there is a greater risk that corporate rescues will break down, eroding the credibility of the system. In the long run, this dearth may also hinder Nigeria from having a robust insolvency profession as is found in developed jurisdictions.

v. Unsatisfactory Means of Financing Rescue Proceedings

Corporate rehabilitation needs not only legal instruments, but also money to keep operations running while restructuring. Debtor-in-possession (DIP) financing and rescue funds are not prevalent in Nigeria, as creditors do not have statutory seniority where there is insolvency and the courts have not created formidable precedence for their protection. If left without such funding, struggling companies could lack the cash to keep going while trying to restructure in court. This can render a well-designed structure pursuant to section 715 CAMA unmanageable. So liquidation remains the fallback option for countless troubled companies. This long-term underfunding undermines the entire corporate rescue system.

[49] (CA/L/70/2011

vi. The cultural and institutional preference for liquidation

While CAMA 2020 has introduced changes, winding-up continues to be preferred by courts over re-structuring. Liquidation tends to be viewed by creditors as being faster and more reliable, and in respect of the latter points the courts (and to that extent practitioners) are certainly more familiar with winding up rules. This discriminatory tendency is at odds with the "rescue culture" which CAMA sought to inculcate. As long as attitudes do not change and success stories multiply, the potential of corporate rescue will go unrealised. Training and public-private collaboration can begin to shift views of rescue as an option. Without a cultural shift, the legal overhaul would remain as mere suggestions.

5.0 Conclusion and Recommendations

This article has demonstrated that the law on corporate insolvency in Nigeria is progressively moving from a liquidation- based regime, to a business rescue and re-organization oriented regulatory regime, within the context of Companies and Allied Matters Act 2020. It emphasized that the Act had brought in mechanisms such as CVA and administration, etc., which were based on best international practices of corporate rescue. In examining the legal and institutional framework, the paper also identified weaknesses in judicial capacity, conflicting regulations and lack of professional knowledge as factors hindering effective enforcement. These challenges highlight the fact that whilst there has been legal reform, the success of corporate rescue in Nigeria hinges on pragmatic institutional growth. Essentially, the argument advanced by this paper is that Nigeria might be evolving a rescue culture in response to corporate insolvency, however, the legal operations of the different enforcement mechanisms, institutional and legal frameworks must be consciously tailored to efficiency by negotiating and harmonizing with one another. On the strength of this submission, the paper recommends as follows:

First, a dedicated Insolvency and Corporate Rescue Agency should be instituted in Nigeria to harmonise stakeholders, promote best practices and deliver technical oversight for court-supervised restructurings (doing away with the current fragmentation as represented by agencies such as the FCCPC, SEC or CAC). Secondly, the Federal High Court should consider creating specific insolvency jurisdictions with trained judges in order to forestall both delay and inconsistent application of rescue provision thus improving market confidence and enhancing creditor participation. Thirdly, there should be collaboration with the Business Recovery and Insolvency Practitioners Association of Nigeria (BRIPAN) and international bodies to create a strong licensing and training system for insolvency practitioners in Nigeria that will contribute to professional integrity. Fourthly, regulators should also provide clear guidance on how parties are to coordinate in cross-agency cases, particularly between the FCCPC and SEC, to avoid a conflict of jurisdiction when a transaction is reviewed by more than one regulator as well as when such reviews are upset by mergers, acquisitions or restructurings. Fifthly, investment in the development of capacity and awareness of corporate rescue tools should be undertaken by governments and industry to ensure businesses, directors, creditors and workers know about and have confidence in these processes. Lastly, Nigeria needs to develop an ongoing review process of the insolvency provisions of CAMA 2020 borrowing from comparative jurisdictions like South Africa and UK, so as to position the law to be responsive to the changes in contemporary economic realities.