Chapter 02

Bankruptcy & liquidation: A contemporary approach
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Legal Framework Governing Bankruptcy and Liquidation in Nigeria

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Learning Objectives

Upon reading this chapter, it should be possible to:

1. Track the history of bankruptcy and liquidation since ancient times.
2. Compare insolvency practices in Europe, U.S., and Africa in the past.
3. Compare the history of insolvency regulation in pre-CAMA 2020 Nigeria and Nigeria since to now.
4. Learn about the philosophical basis of creditor-debent relations.
5. Differentiate form of bankruptcy, insolvency, liquidation, receivership and administration.
6. Examine such important notions as solvency tests, going concern, and wrongful trading.
7. Assess the role of the changes in global economies in the development of contemporary insolvency systems.
8. Evaluation of how the past models relate to contemporary practice in Nigeria.

INTRODUCTION

The bankruptcy and liquidation system of Nigeria is a complicated legal system that involves a combination of laws, judicial rulings, and administrative orders to regulate the lives of bankrupt individuals and businesses. This scheme is meant to level the playing field in setting debts, safeguard the rights of creditors and encourage financial system stability.

Sound insolvency regime will be an indication of the economic maturity and legal sophistication of a nation. Adegbite(1) explains that an effective insolvency regime boosts the confidence of investors, improves corporate governance, and promotes stability of financial markets. As well to Finch, is said to have dual purposes, protective and disciplinary, in insolvency laws. The protective aspect protects the interests of creditors and the employees and the disciplinary aspect discourages reckless corporate conduct.

The Nigerian insolvency laws have been reformed to ensure that they are in tandem with the international best practices. The statutory pillars that inform the bankruptcy and liquidation processes are the Companies and Allied Matters Act(2), the Bankruptcy Act (Cap B2 LFN, 2004), and the Insolvency Regulations.

The chapter will focus on the major statutes, institutions, and procedures that constitute the Nigerian bankruptcy and liquidation regime. It also draws parallels between the framework in Nigeria and the chosen international models and sheds light on the new reforms that have been implemented lately that promote business recovery and transparency.

DEVELOPMENT

Bankruptcy and Liquidation Law Sources in Nigeria

There are four main sources of law on which the Nigerian insolvency regime is anchored:

1. The Statutory Provisions (CAMA 2020 and Bankruptcy Act 2004): these acts have substantive and procedural rules of winding up and insolvent proceedings.
2. Judicial Decisions (Case Law): the expansion of insolvency jurisprudence has been by interpretation of statutes by Nigerian courts.
3. Regulations and Subsidiary Legislation: administrative guidance is availed by the Companies Regulations (2021) and Insolvency Regulations (2021).
4. International Conventions and Comparative Influence: the reforms in Nigeria are based on the UNCITRAL Model Law on Cross-Border Insolvency (1997) and the UK experience of Insolvency Act (1986).

Companies and Allied Matters Act (CAMA, 2020)

The master piece of legislation in Nigeria that governs the liquidation of companies is the CAMA 2020. It harmonized and updated the old insolvency laws to show a rescue-based attitude.

CAMA 2020 Key Provisions Liquidation

(a) Part XVIII -Winding-Up of Companies (a) Part XVIII. It was recommended by CAMA that there are three types of winding-up:

1. Winding-up (by court order) Compulsory.
2. Voluntary winding-up (member or creditor caused).
3. Winding-up under court supervision.

(b) General Grounds at Winding-Up 571579. The court may wind up a company where: Not only can it not repay its debts (Sec. 572).

1. It has not been able to begin the business in the first one year of incorporation.
2. It has shut down operations to one entire year.
3. The court feels that it is fair and fair to wind off the company.

(c) Sec 580 -590: Commencement and Effects: the winding-up proceedings are initiated by the presentation of a petition and when this procedure has begun, all the legal proceedings against the company are not allowed until the court allows it.

(d) Section 608–619: considers the Role of the Liquidator. The liquidator acquires control over assets in the company, realizes them, and makes proceeds available to the creditors and members. Liquidator will be required to report to the Corporate Affairs Commission (CAC).

(e) Section 667: considers the Priority of Payments. CAMA gives a priority of order:

1. Costs of liquidation
2. Secured creditors
3. Preferential debts (taxes, wages of employees, etc.)
4. Unsecured creditors
5. Shareholders (in case of any residual balance)

Voluntary Winding-Up

Voluntary winding-up may under Section 625635:

1. Winding-up by members voluntarily: in a solvent company.
2. Voluntary winding-up of the creditors: in case the company is insolvent.

The directors also need to declare that they are solvent with audited accounts that are not more than 12 months old.

Duties and Powers of the Liquidator

The tasks of the liquidator are:

1. Theft of company property.
2. Realization and distribution of assets.
3. Keeping proper accounts.
4. Answering to creditors and shareholders.
5. Submission of final accounts with CAC at the time of completion (Sec. 631634).

Adegbite [1] also notes that the independence, integrity, and observance of due process by the liquidator are essential to the effective liquidation.

The Bankruptcy Act (Cap B2, LFN 2004)

Individual insolvency is regulated by the Bankruptcy Act. It defines what constitutes acts of bankruptcy, adjudication processes and distribution of assets to creditors.

Key Sections of the Act

Section 1: A debtor has acted in bankruptcy when he:

1. Makes a fraud of a transfer of property to a creditor.
2. Flees Nigeria with aim of frustrating creditors or to get them off.
3. Gives a creditor power to acquire a judgment execution without fulfillment.

Section 3-7: A debtor can be adjudged as bankrupt by the Federal High Court on the petition. An official receiver or a trustee administers the estate of the debtor.

Section 14-19: Allows voluntary settlements between creditors and debtor, and compromise or composition.

Section 37-40: outlines the responsibilities and authority of the trustee, such as asset investigation, realization and distribution to creditors.

Section 58-62: gives authority over the release of the bankrupt after a given duration or when a percentage of the debts has been paid up.

The Office of the Official Receiver

The bankruptcy process has the Official Receiver (nominated by the Federal Government) as a temporary receiver or trustee before creditors choose a private trustee. They are in charge of asset collection, investigating affairs and overseeing trustees.

Insolvency Regulations (2021)

Insolvency Regulations (2021) put into practice the provisions of CAMA 2020 and of the Bankruptcy Act.

They outline:

1. Electronic filing of insolvency petitions.
2. Insolvency practitioners: licensing, regulation.
3. Cross-border insolvency and foreign proceedings recognition guidelines.

The World Bank Doing Business Reform (202022) affected these regulations to enhance the insolvency resolution index of Nigeria.

Case Law Illustrations

In Nigeria, judicial interpretation is very important in the insolvency practice.

1. A.G. Federation v. Abubakar (2007) 10 NWLR (Pt. 1041): the Supreme Court also affirmed that the Federal High Court had the sole jurisdiction to do insolvency.
2. Intercontractors Nigeria Ltd v. U.A.C. of Nigeria (1988) 2 NWLR (Pt.). 76) 303: the court ruled that failure to pay the debts should be established by concrete evidence rather than that of mere allegation.
3. Re: BCCI (Nigeria) Ltd (2002) 10 NWLR (Pt. 775) 38: the proven use of the cross-border insolvency principles, which enable the coordination with the foreign liquidators.
4. Union Bank v. Tropic Foods Ltd (2012) 9 NWLR (Pt. 1305) 42: affirmed a claim of receivership and that the order of precedence over unsecured creditors.

Institutional Framework

The Corporate Affairs Commission (CAC)

Grant company registration and dissolution. It oversees the filing of liquidation accounts, appoints inspectors and a register of dissolved companies.

The Federal High Court

Exclusive powers on all bankruptcy and company winding-up cases (Constitution, Section 251(e)).

The Official Receiver

Presents as government agent in the bankruptcy or liquidation process.

Professional Bodies

BRIPAN is the professional body of Insolvency Practitioners and it establishes the professional and ethical standards of the practitioners in Nigeria.

Nigerian Deposit Insurance Corporation (NDIC)

Deals with liquidation of failed banks under NDIC Act (2006) which is like CAMA processes of corporate entities.

Comparative Review of International Insolvency Frameworks

Table 2.1. Comparative Review of International Insolvency Frameworks

Country	Principal Legislation	Key Features	Lessons for Nigeria
United Kingdom	Insolvency Act 1986	Focus on rescue and administration	Emphasize early intervention
United States	Bankruptcy Code 1978	Chapter 7 (liquidation) & Chapter 11 (reorganization)	Introduce debtor-in-possession concept
South Africa	Companies Act 2008	Business rescue model	Balance creditor and employee interests
India	Insolvency and Bankruptcy Code 2016	Single unified insolvency framework	Streamline Nigeria's dual regime (CAMA + Bankruptcy Act)

Problems of the Nigerian Legal Framework

Although reforms have been done recently, there are still a number of challenges:

i. Judicial Delays -The process of insolvency is extended because the courts are overcrowded.

ii. Absence of Specialism in the Law – There are not many judges and practitioners knowledgeable in the field of insolvency [3].

iii. Corruption and Asset Dissipation The liquidator sometimes misappropriates assets.

iv. Weak Enforcement- Creditors have a problem in recovering assets.

v. Dual Regime Confusion- Bankruptcy Act (between individuals) and CAMA (between companies) overlap.

World Bank Group [4] notes that these problems lower the resolving insolvency rating of Nigeria in comparison to other emerging economies such as Kenya or South Africa.

Reform Directions

Reforms should aim to:

1. Standardize business and personal bankruptcy.
2. Go paperless on insolvency filing.
3. Enhance insolvency judges and practitioners training.
4. Adopt a pre-prepared insolvency and business rescue patterns.
5. Join the UNCITRAL Cross-Border Insolvency Framework to cooperate with the multinationals.

SUMARY

This chapter examined the Nigerian bankruptcy and liquidation law with particular focus on CAMA 2020, the Bankruptcy Act, and the Insolvency Regulations 2021. It also looked into judicial interpretation, institutional role, and institutional lessons in other jurisdiction. High quality insolvency system not only guarantees equitable recovery of debts but also contributes towards investor confidence and economic stability.

REVIEW QUESTIONS

1. Trace and discuss the principal insolvency law in Nigeria.
2. Explain the main elements of the CAMA 2020 that apply to the liquidation of the company.
3. describe the functions of the Official Receiver and liquidator.
4. Name three significant problems of the insolvency system of Nigeria.
5. Compare the insolvency regime of Nigeria and the United Kingdom.

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