Chapter 07

Bankruptcy & liquidation: A contemporary approach
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Corporate Liquidation and Receivership in Nigeria

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Learning Objectives

Having read this chapter, a reader is expected to be able to:

1. Learn the use of financial analysis in insolvency assessment.
2. Use important financial ratios indicating distress.
3. Apply Altman Z-score, cash-flow analysis and sensitivity analysis.
4. Assess techniques of valuing a non-performing business (asset-based, DCF, market method).
5. Separate liquidation value and going-concern value.
6. Determine the application of forensic accounting in insolvency and fraud detection.
7. Know the valuation and asset tracing under the Nigerian law.
8. Implement financial modelling principles to insolvencies.

INTRODUCTION

Understanding of insolvency law and practice entails corporate liquidation and receivership. They are the means of winding up businesses which can no longer survive as going concerns or those which have reached their goals. The Companies and Allied Matters Act (CAMA 2020) [(1)] is the main statute that regulates the liquidation procedures in Nigeria along with such statutes as the Bankruptcy Act (CAP B2 LFN 2004)[(2)], the Insolvency Regulations (2021) [(3)] and the decision of the Federal High Court.

Liquidation is the legal procedure through which the operations of a business end, its resources are sold off and the debts are paid off and left over are distributed to shareholders. Instead, receivership is a type of corporate rescue or control whereby a receiver or receiver-manager is called upon to administer or dispose company assets to relieve the debts ova secured creditors.

These procedures are vital to accountants, auditors, lawyers and business managers since they give an idea on the last phases of the financial life cycle of an organization and how the interest of the stakeholders can be safeguarded.

DEVELOPMENT

Infusion and Purposes of Corporate Liquidation

The process of disbanding a company is known as liquidation, or winding-up, and as such, it brings an end to the existence of a company. When this is done, it leaves the company out of the register of companies that is kept by Corporate Affairs Commission (CAC).

Section 656 of CAMA [(1)] defines that liquidation can be: the manner in which the affairs of a company are being wound up, its property are being realized, its liabilities are being discharged,

and any balance is distributed among the members of the company.

Objectives of Liquidation

The following are the objectives of liquidation:

1. To achieve and allocate the assets fairly among the creditors.
2. To make sure that the liabilities of the company are completely or fairly paid.
3. To audit the company affairs on any misconduct or fraudulent activities.
4. To put an end to the existence of the company according to the statutory provisions.
5. To provide transparency and accountability in the realization and distribution of assets.

Types of Liquidation

According to the Nigerian company law, liquidation could be implemented in any of the following ways:

a) Voluntary Liquidation of members.

The Voluntary Liquidation of members is done voluntarily and therefore it is not mandatory.

This happens when a solvent company makes a decision to liquidate itself on a voluntary basis by enacting a resolution by the members of the company. In the CAMA (2020) section 620 it is stated that:

A company can be voluntarily wound when it enacts a resolution that the company should be wound up either due to the expiry of its period or occasioned by an event as stated in the articles of the company.

In this instance, the directors will have to declare their statutory declaration of solvency, which will be a statement that the company will fully pay its debts in twelve months of starting the activity.

b) Creditors Voluntary Liquidation

This is done when a company which is in insolvency opts to wipe off on its own, but includes the shareholders and creditors into the equation. Creditors need to hold a meeting to debate on the statement of affairs of the company and appoint a liquidator.

c) Winding up by the Court (Compulsory Liquidation)

In accordance with Section 571 of CAMA (2020), the court can wind up a company on the basis of the following:

1. The company cannot afford its debts.
2. The company has put on hold its business in a period of one year.
3. The company has been doing something that is against national interest or the policy of the whole country.
4. Its membership is less than the minimum stipulated by law.
5. To liquidate the company is fair and reasonable.

Companies are allowed to file petitions of compulsory liquidation, creditors, contributories, the Corporate Affairs Commission or the Attorney-General of the Federation.

Procedure for Liquidation

Liquidation goes through a number of major steps:

1. Petition or Resolution to be filed: Liquidation starts with a voluntary resolution or a court petition depending on the type of case.
2. Appointment of Liquidator: The management of the winding-up process is subjected to a licensed insolvency practitioner or accountant.
3. Statement of Affairs: The directors of the company make a Statement of Affairs to demonstrate assets, liabilities and estimated realizations.
4. Realization of Assets: The liquidator sells the assets of the company such as land, buildings, inventories, and receivables in order to produce cash.
5. Settlement of Liabilities: The creditors are paid by the liquidator in the order of priority set out by CAMA 2020.
6. Dissolution/ Final Accounts. When this is done, the liquidator then files a final account with the Corporate Affairs Commission and applies to the Commission to be dissolved.

Liquidator Duties and Powers

The most important person as far as the affairs of a company in liquidation are concerned is the liquidator who is the main officer in charge [(4)].

Section 631 CAMA (2020) [(1)] states that the liquidator has:

a. Seizing all the properties of the company, books and records.
b. Sale of assets and the provision of proceeds to creditors.
c. Making legal defenses or bringing legal actions on behalf of the company.
d. Researching insolvency and potential malpractice.
e. The preparation of periodic and closing statements of account.
f. Making reports to the Corporate Affairs Commission and the Federal High Court.

Section 632 of CAMA 2020 sets out the powers of the Liquidator:

a. Prosecute the company in regard to beneficial winding up as far as possible.
b. Sell company property either by public or by private contract.
c. Assign agents, accountants or valuers to aid in liquidation.
d. Make concessions and resolve conflicts.
e. Sign papers and actions of the company.

Under this title is found the Order of Payment and Distribution of Assets, to be found in Chapter 7 of the CAMA 2020.

The liquidation priority of order of distribution of assets is as follows (CAMA 2020, Section 657):

1. Liquidation expenses (remuneration, legal costs of liquidator).
2. Preferential debts consisting of:
   a. Taxes due to government.
   b. Wages of employees (four months).
3. Guaranteed lenders (mortgagees, debt holders in debenture holders).
4. Unsecured creditors.
5. Preference shareholders.
6. Ordinary shareholders.

In cases where assets are not enough, the creditors divide them proportionately according to their claims. In case there is a surplus it is allocated to shareholders in proportion to the amount of paid-up capital.

Accounting for Liquidation

The accounting of liquidation is specific and must be in line with IFRS 5: Non-current Assets Held for Sale and Discontinued Operations and applicable Nigerian GAAP.

Liquidator is to Prepare Key Accounts:

1. Statement of Affairs: Reports expected deficiency and estimated value of assets that can be realized.
2. Final Statement of Account of Liquidator: Prepares a summary of the total receipts of the assets realized and of payments made to creditors and shareholders.
3. Surplus Account or Deficiency Account: Describes the distinction between amounts realized and book value of assets.
4. Account on Receipts and Payments: A cash account of the cash received and cash given out in the liquidation process.

Receivership: Idea and Law

Receivership takes place when a receiver or receiver-manager is nominated (typically by a debenture holder) to assume the management of the assets of the company in order to achieve a recovery of debts owed.

Under Section 553 of CAMA (2020): a secured creditor or the court may make a receiver or manager who secures possession of the charged property and realizes it to the benefit of the creditor.

Receivership usually takes place in a case where the company has secured it by a floating charge or debenture over the assets.

Objectives of Receivership

a. To protect and actualize secured property to repay loans.
b. To avoid the further degradation of company assets.
c. To provide a smooth management awaiting liquidation.
d. To safeguard the interests of the secured creditors.

Receivership and Duties of a Receiver.

Appointment:

A receiver may be appointed, either:
By the court, on application by creditors; or
Privately under a debenture, by a holder of the terms of the charge instrument.

Duties of a Receiver:

Take and apply control over charged assets.

a. Carry on doing business where needed.
b. Recognize the assets and use proceeds to pay the secured debts.
c. File a report on his performance as a steward to the authority who appointed him.
d. To be in good faith and reasonably care about all parties.

Rights of Receiver and holder of Debentures

The receivers and those who hold debentures have certain privileges, such as:

a. Right of possession of property under charge.
b. Freedom to dispose of assets without having to go to court (unless the instrument prohibits it).
c. Right to employ agents or managers.
d. Proper expenses incurred are indemnified against.

The recipient is however forbidden to be oppressive or to have conflict of interests because such behavior can lead to personal liability (Re: International Bank of West Africa Ltd v. Imano Nigeria Ltd [1988] 3 NWLR 633).

Comparative Analysis: Corporate Liquidation and Receivership

Table 7.1. Comparative Analysis: Corporate Liquidation and Receivership

Feature	Corporate Liquidation	Receivership
Purpose	Dissolution of company and settlement of all debts	Recovery of specific secured debts
Initiated by	Members, creditors, or court	Secured creditor or court
Effect on company	Ends legal existence	Company may continue operations
Control of assets	Liquidator	Receiver/Manager
Beneficiaries	All creditors and shareholders	Appointing creditor primarily
Duration	Until dissolution	Until debt recovery is complete

Nigerian Case Examples

1. Intercontinental Bank Plc (2011): Central Bank of Nigeria (CBN) took measures in the appointment of the managers to save the money of depositors after the sign of insolvency.
2. NICON Insurance (2014): Put under receivership to reorganize the assets and pay off old debts.
3. Oceanic Bank International (2011): Experiencing receivership before it was acquired by Ecobank Nigeria because of liquidity difficulties.

Such instances underscore the practical applicability of the receivership and liquidation as the means of corporate restructuring and solving in the Nigeria financial system.

Ethical and Professional Responsibilities.

The professional and ethical standards are applied to liquidators and receivers according to the rules of ICAN, CIPFA, and IESBA Code of Ethics (2022). They must demonstrate:

a. Assets realization integrity and transparency.
b. Independence of unwarranted influence.
c. Financial reporting and compliance competence.
d. Secrecy in managing company information.
e. Responsibility in comprehensive periodic reports.

There are professional penalties and criminal charges that can be imposed because of misconduct (e.g., asset misappropriation or collusion) in accordance with CAMA 2020 (Section 671).

SUMMARY

Corporate liquidation and receivership are very important processes of handling companies that are in distress financially. Liquidation leads to dissolution whereas receivership is commonly a rescue measure to recover debts. The Nigerian legal system in CAMA 2020 offers both voluntary and compulsory processes, which will be fair to the creditors, shareholders, and employees. The accountants and insolvency practitioners should be well skilled in writing the related statements and maintaining ethical standards.

REVIEW QUESTIONS

1. Define the concept of liquidation and determine what is the aim.
2. Distinguish voluntary liquidation of members and voluntary liquidation of creditors.
3. Define the responsibilities and authorities of a liquidator in CAMA 2020.
4. Demonstrate the priority of distribution of assets in the course of liquidation.
5. Explain the meaning of receivership, and how it applies to insolvency of corporations.
6. Separate liquidation and receivership.
7. Give an example of how receivership can be applied as a corporate rescue mechanism by using a Nigerian example.

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