Chapter 08

Bankruptcy & liquidation: A contemporary approach
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Contemporary Issues and Reforms in Bankruptcy and Liquidation

Samuel Ejiro Uwhejevwe-Togbolo[1], Felix Enaibre Ighosewe[1], Joy Ochuko Edheku[1], Ajueyitse Martins Otuedon[2], Festus Elugom Ubogu[1]

[1]Department of Accounting, Dennis Osadebay University. Asaba, Delta State, Nigeria.

[2]Department of Business Education, College of Education. Warri, Delta State, Nigeria.

Learning Objectives

Upon reading this chapter, the reader is expected to be capable of the following:

1. Know moral requirements of insolvency practitioners.
2. Determine conflict of interest and fiduciary duties.
3. Look at professional standards and codes of conduct in the world.
4. Appraise policy matters which impact the insolvency practice in Nigeria.
5. Examine social effects of insolvency on the employment, creditors, and communities.
6. Know the psychology of businesses failure and debtor behaviour.
7. Talk about reforms to enhance insolvency environment in Nigeria.
8. Evaluate the effects of corruption, regulatory failure and judicial procrastination.

INTRODUCTION

Without knowing the new trends, the best practices from other countries, and the reforms which are developing and constitute the new trends of the insolvency administration, the research of the problem of bankruptcy and liquidation is not complete. Furthermore, insolvency is being perceived as a vengeance method in the modern economies but an opportunity to rescue the company, reorganize financially, and revitalize the economy. The 2020 reforms in Nigeria and the Companies and Allied Matters Act (CAMA) 2020 and Companies Regulations 2021 changed the focus of the processes and liquidation to business recovery and protection of creditors in a more sustainable manner.(1)

This chapter examines the major modern trends that impact bankruptcy and liquidation in Nigeria and other periodicals, such as cross-border insolvencies, corporate rescue, technological, ethical, and social and governance (ESG) approaches, and policy change needs of a sound insolvency regime.

DEVELOPMENT

International Trends in Liquidation and Insolvency

Drift Towards Corporate Rescue

In the world, insolvency laws have developed away evolutionary liquidation-focused laws into reorganization and business continuity-based laws. Chapter 11 Bankruptcy Code of the United States enables financially troubled firms to restructure under the auspices of the court, whereas the United Kingdom Corporation Insolvency and Governance Act (CIGA) 2020 12 offers financially troubled firms with a moratorium period during which they can restructure without being forced to pay creditors.

These reforms are in line with the principle that by rescuing viable enterprises, more economic value is generated, more jobs are saved, and the financial system is stabilized.(2)

International Insolvency and UNCITRAL Model Law

Business operations are globalized, thus in most cases of insolvency, the situation is multi-jurisdictional. United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency is a harmonized model of collaboration between the courts and insolvency practitioners between nations.

Although Nigeria has not entirely domesticated this model law, its principles are getting more and more reflected in judicial interpretations and policy debates in regional trade blocs like ECOWAS and the African Continental Free Trade Area (AfCFTA).

Technology and the Insolvency Practice

The administration of insolvency across the globe has been changed due to digitalization. The industry is transforming with online court records, automated notification of creditors, blockchain-based asset verification and prediction of insolvency using data analytics. In developed jurisdictions, AI-based forensic technologies detect fraudulent transfers and trace hidden assets, making the processing of transfers more transparent and efficient in terms of recovery.

The Corporate Affairs Commission (CAC) of Nigeria has made a great step towards becoming digital with company registration and liquidation filings and minimized delays and accountability. (3,4)

Nigeria; Developments of our time

CAMA 2020 and the Birth of Business Rescue

Part XXVIII (Sections 718-742) of CAMA 2020, (3) the so-called Company Voluntary Arrangement (CVA), was the first formal rescue of the company introduced in Nigeria.

The CVA enables any insolvent yet viable companies to negotiate with creditors under the supervision of the court to restructure the debt and evade liquidation.

This represents one of the biggest changes in policy since it no longer involves punitive liquidation but proactive restructuring according to the international standards.

The Insolvency Practitioners Regulation

Companies Regulations 2021 states that only qualified professionals registered by the Business Recovery and Insolvency Practitioners Association of Nigeria (BRIPAN) and identified professional associations (ICAN, ANAN) can be liquidators or receivers. This guarantees a level of competence, professionalism and ethical responsibility in the industry.

Forensic Accounting Integration

With rising corporate failures being a result of managerial misconduct and fraud, the forensic accounting is of major importance in the processes of tracking of hidden assets, fraudulent transfers and fair asset realization. Use of forensic accounting tools in the insolvency practice has made the liquidation report credible and minimization of financial leakages.

Financial Technology and Online Reporting

Company interested in the future of online reporting and financial technology, which mostly relies on the intent to use it in the future.

Now the Company Registration Portal (CRP) of the CAC can be used to submit reports about liquidation in real time making it easy to control the process by regulators and creditors. The use of new platforms like e-governance systems of insolvency proceedings will enhance data transparency even more.

Bankruptcy Environment, Social, and Governance (ESG) Perspectives

Corporate and Environmental Sustainability

The consideration of the ESG in decision-making is widely spread in modern insolvency practice. The collapse of firms that have low environmental and governance practices highlights the relationship between sustainability and financial stability.

As an example, unsustainable environmental practices tend to result in regulatory penalties and reputational losses, and cause insolvency.[(5)]

ESG-Linked Restructuring

Money centers are now operating financial ESG criteria in credit evaluations, which have an influence on restructuring and refinancing troubled companies. The liquidators and receivers also receive an incentive to consider the ESG impacts in countering the disposal of assets, particularly in oil, gas and manufacturing industries that have a major impact in communities.

CSR and Post-Liquidation responsibility

There is an increasing debate on whether businesses which go into liquidation still have some unspent social assets particularly in terms of environmental cleanup or employee entitlement benefits. Such requirements are also being more frequently acknowledged internationally within frameworks of sustainability disclosure, e.g., the Global Reporting Initiative (GRI) and the Sustainability Accounting Standards Board (SASB).

Cross-border and Regional insolvency issues

Multinational Operations

With the growth of the Nigerian companies in Africa, the problem of insolvency often becomes cross-jurisdictional. The lack of harmonized insolvency laws in West Africa makes it difficult in liquidation of subsidiaries of the multinationals and recovering assets.

The law recognizes foreign proceedings issued by a foreign state as part of its internal law and therefore it behaves in a manner akin to its own domestic law.

Under CAMA 2020, the recognition of a foreign insolvency judgment in the Nigerian courts can be done with reference to reciprocity and consideration of the public policy. However, there is weak implementation because there are weak judicial cooperation mechanisms.

Lessons from Global Cases

The failure of the Lehman Brothers (2008) and Wirecard AG (2020) shows the systemic effects of large scale insolvencies. The cases outline the significance of mechanisms of early warnings, effective corporate governance, and multi-national collaboration.

Ethical and Professional Problems

The following are the ethical and professional problems

1. Conflict of Interest: Liquidators are subject to pressure by creditors or directors of the company.

2. Asset Misappropriation: The absence of control permits the diversion of the assets in the realization process.
3. Weak Enforcement: There is weak enforcement of sanctions on unethical practitioners.
4. Transparency and Reporting: It is not complete disclosure which reduces confidence of the people on the insolvency system.

Education, monitoring, and discipline of ethics in the profession of insolvency should be enhanced to protect the image of the profession.

The Policy and Legal Reforms in Nigeria

Re-enforcement of Insolvency Infrastructure

a. Institution of special insolvency courts in the Federal High Court to hasten the process.
b. Train the judges and court registrars in matters of insolvency.
c. Increase the coordination among CAC, SEC, and NDIC about the insolvency of the financial sector.

Fukuoka Model Law of UNCITRAL

The application of the Model Law will enhance the cross-border collaboration in relation to insolvency in Nigeria to attract foreign investments and to recover assets in transnational practices.

Rewarding Business Rescue

a. Offer tax exemptions to repackaged entities.
b. Promote debtor-in-possession financing to help viable companies in the process of reorganization.
c. Encourage early warning by credit bureaus and financial reporting standards.

The collaboration of multiple institutions in ensuring optimal health care delivery is crucial.

Institutional Collaboration

This is the cooperation of various institutions in the provision of the best health care. Create an inter-regulatory approach that connects CAC, BRIPAN, and financial managers to simplify the licensing, monitoring, and sharing of data on practitioners.

Bankruptcy and Liquidation in Nigeria: The Future

The key to the future of the insolvency regime in Nigeria is preventative restructuring, digitization and integration of the region. When domestic legislations are harmonized with international standards, Nigeria will be able to curb the number of corporate failures, boost investor confidence and foster sustainable enterprise growth.

The new trends in the insolvency evaluation of ESG, AI-based financial diagnostics, and cross-border insolvency collaboration will transform the idea of how bankruptcy is seen, as it is not a death of a company anymore but its resurrection and endurance.

SUMMARY

As it was pointed out in this chapter, the modern practice of bankruptcy and liquidation goes beyond the process of asset dissolution; it is now a multidimensional process that involves business rescue, ethical behavior, sustainability, and global integration. The CAMA 2020 and other reforms in Nigeria are a major step towards an efficient insolvency framework, but still too many gaps can be identified in the implementation and in the professional regulation of insolvency, as well as in cross-border recognition. Increasing the institutional strength, institutionalizing technology, and advancing responsible corporate conduct will play a critical role in the future success.

REVIEW QUESTIONS

1. Talk about three significant changes that CAMA 2020 implemented in the insolvency system of Nigeria.
2. Demonstrate the impact of ESG issues in the modern liquidation and restructuring processes.
3. Emphasise the importance of the UNCITRAL Model Law in cross-border insolvency.
4. Which are the most significant technological innovations that characterize insolvency administration nowadays?
5. Propose policy suggestions on how to improve the insolvency infrastructure in Nigeria.

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