

Company Administration Under CAMA 2020: A Statutory Framework for Business Rescue in Nigeria

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INTRODUCTION

Business failure is seldom sudden and is often preceded by financial distress, such as an inability to pay debts as they fall due or where a company's liabilities exceed its assets despite remaining operational. Under the Companies and Allied Matters Act, Chapter C20, Laws of the Federation of Nigeria 2004 ("CAMA 2004"), the principal options available to distressed companies were arrangement and compromise, receivership and liquidation. Arrangement and compromise facilitated restructuring with creditors or members, receivership primarily enabled secured creditors to enforce their security and lacked a statutory rescue objective, while liquidation brought the company's business to an end.

Against this backdrop, the Companies and Allied Matters Act 2020 ("CAMA 2020") introduced a more rescue-oriented framework through Company Voluntary Arrangements ("CVAs") and, notably, administration. Administration provides financially distressed companies with a statutory opportunity to restructure their affairs, preserve viable businesses and, where possible, avoid liquidation. This newsletter examines the administration process under CAMA 2020, including the protective moratorium it triggers, the powers of an administrator, and the key legal and practical challenges affecting its implementation.

WHAT IS ADMINISTRATION OF COMPANIES?

Administration is a formal corporate rescue process under which a licensed insolvency practitioner is appointed to take control of an insolvent company's business, property and affairs with a view to rescuing the company or achieving a better outcome for its creditors than immediate winding up.¹ The administrator may realise assets for secured or preferential creditors only where these objectives are not reasonably practicable and doing so would not unnecessarily prejudice creditors as a whole. This rescue-focused hierarchy marks a departure from CAMA 2004, under which receivers were not subject to a statutory duty to prioritise corporate rescue.²

¹ Section 444(1) CAMA 2020.

² Section 444(2) CAMA 2020

APPOINTMENT OF AN ADMINISTRATOR

An administrator may be appointed by the Federal High Court, a qualifying floating charge holder, or the company or its directors, subject to the applicable statutory requirements and restrictions. Once appointed, administrators act as an officer of the court, whether or not the court appointed them.³ The Federal High Court may appoint an administrator on the application of the company, its directors, creditors or a designated court officer acting as receiver.⁴ The court must be satisfied that the company is, or is likely to become, unable to pay its debts and that an administration order is reasonably likely to achieve the statutory objectives of administration.⁵ CAMA also permits a floating charge holder who has not exercised its appointment power and a liquidator to apply for an administration order.⁶ Where an application is made by a person other than a floating charge holder, a floating charge holder may apply for its preferred administrator to be appointed.⁷ The company or its directors may also appoint an administrator by filing the prescribed notice and supporting documents with the Federal High Court,⁸ although this route is unavailable where there is a pending winding-up petition, an undisposed administration application or an existing receiver.⁹

Within 14 days of appointment, the administrator must notify the company, CAC and known creditors, publish notice of the appointment and obtain a statement of the company's affairs from its officers.¹⁰ The administrator must then prepare a statement setting out his proposals for achieving the purpose of administration and circulate them to the Corporate Affairs Commission ('CAC'), creditors and members of the company within 30 days of the company entering administration.¹¹ The administrator must convene a creditors' meeting to consider the proposals which may be approved with or without modifications to which the administrator consents.¹² Creditors may also establish a creditors' committee to assist with the administration. A report of the decision taken at the meeting must be sent to the court, the CAC and other prescribed persons.¹³

MORATORIUM ON ENFORCEMENT AND WINDING-UP

A key feature of administration is the automatic moratorium that takes effect upon the administrator's appointment. During this period, creditors generally cannot enforce security, repossess goods under hire-purchase arrangements, exercise rights of forfeiture, or commence or continue proceedings against the company without the administrator's consent or the court's permission.¹⁴ This protection gives the administrator time to pursue restructuring or other rescue options without individual enforcement actions undermining the process.

The moratorium is subject to statutory exceptions and may be lifted with the administrator's consent or the court's permission, which may be granted subject to conditions. While a company is in administration, no resolution or order for its winding-up can be made,¹⁵ except in cases where the

³S. 446(1) *ibid.*

⁴ S. 450, *ibid.*

⁵ S. 448 – 449 *ibid.*

⁶ Section 474 *ibid.*

⁷ S. 473 *ibid.*

⁸ S. 466 *ibid.*

⁹ S. 462 *ibid.*

¹⁰ s. 483 *ibid.*

¹¹ s. 486 *ibid.*

¹² s. 487 *ibid.*

¹³s. 490 *ibid.*

¹⁴ s. 480 *ibid.*

¹⁵ s. 479 *ibid.*

winding-up petition was filed on public-interest grounds or under any financial-services-related legislation¹⁶.

FUNCTIONS AND POWERS OF THE ADMINISTRATOR

An administrator has broad powers to manage the affairs, business and property of a company in administration and may take any action necessary or expedient for that purpose.¹⁷ The administrator may appoint or remove directors, convene meetings of members or creditors, and apply to the court for directions in relation to the exercise of his functions.¹⁸ During the administration, the company and its officers may not exercise management powers without the administrator's consent.¹⁹ A person who deals with the administrator in good faith and for value is also not required to verify whether the administrator is acting within his powers.²⁰

VACATION OF OFFICE

An administrator may resign by giving written notice of his resignation to his appointor, who may be the court, the holder of a floating charge, the company, or the directors.²¹ The court may also remove an administrator from office.²² An administrator vacates office if he ceases to be qualified to act as an insolvency practitioner in relation to the company. Where he vacates office by reason of that disqualification, he must give written notice to his appointor. Failure to do so without reasonable excuse is an offence.²³ Upon death, resignation, removal or otherwise vacating office, the administrator is discharged from liability for acts undertaken in that capacity.²⁴

Where an administrator vacates office or is removed, a replacement may be appointed depending on the manner of the original appointment. Where the administrator was appointed by the court, the creditors' committee may apply to the court for a replacement. If there is no creditors' committee, the company, its directors, one or more creditors, or an administrator appointed to act jointly or concurrently may apply. The court may entertain the application where it is satisfied that the creditors' committee or remaining administrator is not taking reasonable steps to appoint a replacement, or that it is otherwise appropriate to do so.²⁵

An administrator appointed by the holder of a floating charge may only be replaced by the holder of a floating charge.²⁶ An administrator appointed by the directors or the company will accordingly be replaced by the relevant appointing authority with the consent of the holder of a floating charge over the company's property, or with the permission of the court where that consent is withheld.²⁷

¹⁶ s. 479 (3) *ibid*.

¹⁷ Eleventh Schedule, *ibid*

¹⁸ S. 496, CAMA

¹⁹ s. 501 *ibid*.

²⁰ S. 496(3), *ibid*

²¹ s. 525 *ibid*.

²² s. 526 *ibid*.

²³ s. 527 *ibid*.

²⁴ s. 536 *ibid*.

²⁵ s. 529 *ibid*.

²⁶ S. 530 *ibid*

²⁷ S. 531-532 *ibid*

An administrator may be substituted by the holder of a competing, prior floating charge.²⁸ who may apply to the court for the administrator to be substituted by his nominee.²⁹ Where the company or its directors appointed the administrator and no floating charge exists over the company's property, the creditors may replace the administrator at a creditors' meeting, provided the proposed administrator's written consent to act is presented before the substitution is made.³⁰

DURATION AND CESSATION OF ADMINISTRATION

An administrator's appointment ceases to have effect one year after the date of appointment, unless extended by the court for a specified period or, with the consent of the creditors, for a period not exceeding six months.³¹ In addition to the expiry of the initial period, an administration may also terminate in any of the following circumstances:

- a. An administrator may apply to the court for a cessation of administration where an administrator believes the purpose of administration cannot be achieved, the company should not have been placed in administration, or on the directive of the creditors' meeting. Upon the application, the court may adjourn the hearing, dismiss the application, make an interim order, or make any other order it considers appropriate³². Where the purpose of administration has been achieved, the administrator must notify the court and the CAC and his appointment ceases upon filing the notice. He must also send a copy of the notice to creditors whose claims and addresses are known to him within the prescribed period.³³
- b. On the application of a creditor alleging that the administrator has an improper motive towards him or his appointor, the court may order that the administrator's appointment cease³⁴.
- c. Where a provisional liquidator is appointed for a company in administration pursuant to a winding-up order, the court shall order that the administrator's appointment ceases, or continues, to have effect. Where it continues, the court will specify which of the administrator's powers remain exercisable. The winding-up order must have been made pursuant to a petition presented on public-interest grounds, or any financial-services-related enactment³⁵.
- d. Where administration converts to a creditors' voluntary winding-up, the administrator's appointment ceases. If the administrator believes that the total amount due to secured creditors has been paid or set aside for them, and a distribution has been made to unsecured creditors (if any), he may notify the CAC that the administration should be converted to a creditors' voluntary winding-up, file a copy of the notice with the court and send it to known creditors. Once the CAC registers the notice, the administrator's appointment ceases, and the

²⁸ A floating charge is "prior" where it was first registered with the Corporate Affairs Commission, when it was first created or is given priority by agreement.

²⁹s. 534 *ibid*.

³⁰s. 535 *ibid*.

³¹s. 513 *ibid*.

³²s. 517 *ibid*.

³³s. 518 *ibid*.

³⁴s. 519 *ibid*.

³⁵s. 520 *ibid*. Examples are the Banks and Other Financial Institutions Act, the Nigeria Deposit Insurance Corporation Act, etc.

company will be wound up³⁶. Also, where the administration process moves to dissolution of the company, the administrator's appointment ceases. If the administrator believes the company has no property permitting a distribution to creditors, he must still notify the CAC, file a copy with the court and send it to known creditors. Upon registration of the notice, the appointment ceases, and the company is deemed dissolved three months after the date of registration.³⁷

IMPLEMENTATION CHALLENGES

Since CAMA 2020's commencement, administration appears to have been utilised only sparingly, with the case of *Accor Afrique SA v The Moorhouse Company Limited*³⁸ being widely reported as Nigeria's first and most significant administration proceeding to date. Administration remains underused relative to its potential. Its wider adoption is constrained by limited awareness of administration as a viable corporate rescue mechanism, the continued preference for liquidation as the default response to corporate distress, and the limited pool of insolvency practitioners with specific experience in administration.

CONCLUSION

Administration under CAMA 2020 offers companies a statutory business rescue option unavailable under CAMA 2004. Its effectiveness, however, depends on early recognition of financial distress by directors, constructive creditor engagement rather than a rush to enforce rights, and the continued development of insolvency practitioners equipped to fulfil administration's objectives. For distressed companies and their creditors alike, knowing when and how to invoke administration is now a crucial part of risk management.

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³⁶s. 521 *ibid*.

³⁷s. 522 *ibid*.

³⁸*Accor Afrique SA v The Moorhouse Company Ltd*, Suit No. FHC/L/CS/1039/22.

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