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Challenges on Corporate Rescue Mechanisms for Addressing Insolvency in Nigeria

ANYANWU, Simon

Department of Business Law,
Rivers State University, Port Harcourt, Nigeria
anyanwu.simon@rsu.edu.ng

ABSTRACT

This article critically examines the challenges confronting corporate rescue mechanisms for addressing insolvency in Nigeria. It analyses the statutory and institutional frameworks under the Companies and Allied Matters Act (CAMA) 2020 and related financial regulations, focusing on mechanisms such as arrangements and compromises, voluntary arrangements, company administration, bridge banks, recapitalization, and government bailouts. Despite these provisions, corporate rescue practice in Nigeria remains largely ineffective due to corruption, weak and overstretched institutions, poor enforcement of laws, lack of continued financing, and the absence of a robust moratorium regime. The study adopts a doctrinal research methodology, relying on primary and secondary legal sources, including statutes, case law, and scholarly literature. Comparative insights are drawn from the United Kingdom and India, where professionalized insolvency practice, time-bound judicial processes, and creditor-driven restructuring have strengthened rescue outcomes. The paper concludes that comprehensive reform is required to improve enforcement efficiency, enhance investor confidence, and align Nigeria's rescue framework with global best practices.

Keywords: Corporate rescue; insolvency; CAMA 2020; legal challenges; Nigeria; United Kingdom; India; institutional reform.

INTRODUCTION

Corporate rescue has become a key feature of modern insolvency regimes, representing a global shift from liquidation toward mechanisms that preserve viable businesses, sustain employment, and protect economic value.[1] In Nigeria, this progressive shift gained legislative expression through the Companies and Allied Matters Act (CAMA) 2020, which introduced rescue mechanisms such as Company Voluntary Arrangements, Administration and netting off.[2] Finance-sector interventions such as bridge banks, recapitalization measures, and government bailouts further complement these statutory provisions, particularly within the banking industry. Together, they reflect a clear policy commitment to promote business continuity rather than dissolution.[3]

However, Nigeria's corporate rescue landscape continues to face deep-rooted systemic and institutional challenges. Corruption, regulatory inefficiencies, and weak enforcement mechanisms impede effective restructuring. Additionally, the absence of robust moratorium protection and continued financing provisions often results in premature liquidation of potentially viable companies. The lack of a standardized framework for informal restructuring further undermines predictability and commercial confidence.[4]

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[1]Vanessa Finch, Corporate Insolvency Law: Perspectives and Principles (3rd edn, Cambridge University Press 2017) 5.

[2]Company and Allied Matters Act Cap c20 LFN 2020 (CAMA 2020). ss 434-442,s 480

[3]Adeyemi A. Olowookere, 'Corporate Rescue under CAMA 2020: A New Dawn?' (2022) Nigerian Business Law Review 41.

[4]. A. Ajogwu and O. F. Ogbuozobe, Corporate Governance and Insolvency Practice in Nigeria (Nigerian Institute of Advanced Legal Studies 2019) 103.

By contrast, jurisdictions such as the United Kingdom and India demonstrate how well-structured legal and institutional systems enhance rescue efficiency. The UK's professionalized insolvency practice and creditor-centric processes ensure timely intervention and commercial discipline, while India's Insolvency and Bankruptcy Code (IBC) 2016 introduces strict procedural timelines and specialized adjudication through the National Company Law Tribunal (NCLT). These comparative experiences offer valuable guidance for Nigeria, highlighting the need for institutional strengthening, improved enforcement, and a supportive financial environment to foster a credible rescue culture.

Corporate Rescue Mechanisms in Nigeria

There are both internal and external corporate rescue mechanisms in Nigeria, some of which are discussed below

Arrangements and Compromise

Arrangements and Compromise Arrangement means any change in the rights or liabilities of members, debenture holders or creditors of a company or any class of them or in the regulation of a company other than a change effected under any other provisions of this Act or by the unanimous agreement of all parties affected thereby.[5] It is a corporate rescue mechanism by which a company may propose any scheme to its members, creditors or both, to restructure shareholding or arrive at a compromise on debts.[6]It is a legal mechanism that allows a financially distressed company to reach an agreement with its creditors or members to reorganize its affairs, settle debts, or restructure its capital without going through liquidation. It is a key corporate rescue mechanism aimed at preserving viable businesses while protecting creditors' interests.

Company Voluntary Arrangement

A company Voluntary Arrangement is a binding agreement for debt repayment between a company and its unsecured creditors. It provides an opportunity for the company to negotiate achievable repayment terms with its creditors, and avoid insolvent liquidation.[7] One of the notable provisions in the companies and Allied Matters Act, 2020 (CAMA 2020) is the Company Voluntary Arrangement (CVA). The CVA is modeled after the CVA in the United Kingdom (UK) insolvency Act.[8]

Company Administration

The introduction of Company Administration under the Companies and Allied Matters Act 2020 (CAMA 2020) marks a watershed moment in Nigeria's insolvency law and practice. Historically, Nigeria insolvency regimes were liquidation-driven, with limited mechanisms for corporate rehabilitation.[9] The incorporation of administration under Part xxviii[10] signifies a deliberate attempt to align Nigeria with global trends that emphasize business rescue as a preferable alternative to liquidation.[11]

The objectives of Administration are as captured in section 480 of CAMA 2020, as follows: first, rescuing the company as a going concern; second, ensuring better outcomes for creditors than liquidation would achieve; and finally, realizing assets for distribution to secured and preferential creditors.[12]

In conclusion, Company Voluntary Administration under CAMA 2020 represents a progressive reform aimed at embedding a rescue culture into Nigerian corporate law. While its statutory framework is robust and aligned with international practice, serious operational challenges—notably weak institutions, creditor dominance, lack of rescue financing, and cultural barriers—currently limit its effectiveness. With sustained judicial support, practitioner training, and regulatory reforms (including the introduction of post-commencement financing), Voluntary Administration has the potential to evolve into a truly effective corporate rescue mechanism in Nigeria.

[5]CAMA 2020, s 537, 567 (1).
[6] CAMA s 539 (1)
[7]https://www.thisdaylive.com/2020/10/06/an-overview-of-company-voluntary-arrangement-in-CAMA-2020 Accessed 22 August, 2025
[8] ibid.
[9]JO,Orojo, *Company Law and Practice in Nigeria (5thedn, Lexix Nexis, 2018) 522.*
[10] CAMA 2020 ss 443-549
[11] ibid, Part XXVIII, ss. 443--549
[12] ibid, s 480

Bank Capitalization

Bank capitalization refers to the process of raising capital to strengthen a bank's financial position. It involves increasing the bank's capital accounts by issuing new shares, retaining earnings, or obtaining funds from external sources. In Nigeria, recapitalization of banks has historically served as an indirect but powerful corporate rescue tool, ensuring that weak or undercapitalized institutions strengthen their balance sheets, merge with stronger partners, or are restructured rather than collapsing outright.[13]

Bank recapitalization functions as a systemic corporate rescue mechanism in several ways:

1. Strengthening Balance Sheets: By mandating higher minimum capital, the Central Bank of Nigeria (CBN) compels banks to raise fresh equity, thereby restoring solvency and capacity to absorb losses.[14]
2. Forcing Mergers and Acquisitions: In cases where standalone recapitalization is impossible, banks undergo mergers, consolidations, or acquisitions — a corporate rescue pathway that preserves banking licenses, jobs, and depositor funds.[15]
3. Preventing Systemic Collapse: Rather than allowing undercapitalized banks to fail (with contagion risks), recapitalization ensures continuity through restructuring, which is consistent with the rescue philosophy.[16]

Historical Examples of Recapitalization as Rescue Mechanism

2004 Banking Consolidation: The CBN raised capital requirements from ₦2 billion to ₦25 billion. Many weaker banks could not meet the threshold independently, leading to mergers that preserved banking operations and depositors' funds. The number of banks fell from 89 to 25, but systemic collapse was avoided.[17]

2009 Post-Crisis Recapitalization: Following the global financial crisis, several Nigerian banks faced insolvency. Instead of liquidation, the CBN intervened with capital injections, management changes, and later the creation of the Asset Management Corporation of Nigeria (AMCON) to purchase non-performing loans.[18] this was a clear rescue strategy that stabilized the sector.

In conclusion, bank recapitalization in Nigeria demonstrates how regulatory intervention can act as a corporate rescue mechanism. Rather than allowing banks to fail outright, the CBN leverages recapitalization to restore solvency, enforce mergers, and preserve systemic stability. The 2004 consolidation, post-2009 interventions, and the ongoing 2024–2026 recapitalization exercise all illustrate recapitalization as a strategy of rescue through restructuring rather than liquidation.

Bailout

Bailout is government or regulator-provided financial assistance to a distressed company or sector intended to prevent collapse or systemic failure. A bailout happens when a government or big organization gives money to a struggling company or industry to avoid failure. Bailout can save jobs, support key industries, boost investors confidence, and stablise the economy. They can take the form of loans, cash infusions, and/or stock purchases.[19]In Nigeria, bailouts have been used both as emergency corporate rescue measures (especially in the banking sector) and as de facto subsidies for companies deemed strategically important to the public interest.

During the 2008–2009 global financial shock the Central Bank of Nigeria (CBN) intervened to stabilise the banking sector, providing liquidity support and other measures aimed at preventing bank failures and restoring market confidence. The CBN's interventions and support for restructuring were pivotal in keeping several systemically important banks afloat. The scale and urgency of these measures underlined the state's willingness to use public resources to avert systemic collapse.[20]Beyond systemic rescue, bailouts in Nigeria often act as subsidies—that is, public funds that preserve firms' operations (jobs, production, services) even where those firms may be structurally uncompetitive. Examples include assistance or intervention-like supports to certain airlines, industrial

[13] BOFIA 2020, ss. 9–12.
[14] CBN Circular BSD/DIR/PUB/LAB/017/005: Review of Minimum Capital Requirements for Banks, March 28, 2024.
[15] CBN, Banking Sector Consolidation Special Report, 2004.
[16]ibid.
[17] Sanusi LS, *Banking Reform and its Impact on the Nigerian Economy, CBN, 2010.*
[18]sanusi , (n 17)
[19] Bailout Explained: key Concepts, Mechanisms, and Historical Cases, https://www.investopedia.com/Accessed 3 October, 2025.
[20] ibid,

enterprises, or state-influenced firms that the government considers strategically important or politically sensitive. In practice this can take the form of direct capital injections, favourable loans, guarantees, or special asset-purchase schemes (like AMCON).[21]

In contrast with Nigeria, the UK used temporary equity stakes and conditionality coupled with strong regulatory oversight; India packaged recapitalisation into planned fiscal instruments and supervision; Nigeria used emergency liquidity support and AMCON to remove toxic assets. This means the UK/India responses tended to be more explicitly structured as part of an exit-and-reform strategy, while Nigeria's interventions have sometimes been seen as more ad hoc.

Issues and Challenges

There are sundry issues and challenges besetting corporate rescue and insolvency practice in Nigeria. These ranges from corruption and other sharp practices, weak/ over stretched institutions, poor enforcement of laws and, absence of moratorium etc. These issues and challenges are hereunder examined in details.

1. Corruption and other Sharp Practices

The concept of corruption is not subject to comprehensive, precise or concise definition.[22] However, the word "Corruption" has been used to describe conduct that reflects abuse of public office, for private gain.[23]The Criminal Code Act defined official corruption in section 98A and 98B as any person who corruptly gives, confers or procures ay property of any kind to, on or for public official (as defined in section 98D) or to, on or for any other person; or corruptly promise or offers to give or confer or to procure or procure any property or benefit of any kind to, on orfor a public official or to, on or for any other person on account of any such act, omission, favour or disfavour on the part of the public official as is mentioned in Section 98 (1)(i) or (ii) of this code, is guilty of the felony of official corruption and his liable to imprisonment for seven years.[24]

The definition of official corruption in the criminal code is apparently a wide net that catches no fish. It may appear from the above definition of corruption that corrupt practices are prevalent only in the public sector, but this is not true as corrupt practices can occur in private sector.[25]Nigeria raked 150 out of 180 countries in the Transparency Intentional 2022 corruption perception index.[26]This ranking in the bottom 20 percent of countries surveyed shows how systemic and embedded corruption is in the country.[27]It is the most serious developmental challenge to the nation.[28]

Notwithstanding the difficulty in defining corruption, there is consensus on the effect or impact of corruption on the economic and socio-political development of any nation.[29]It is said that corruption makes business expensive, uncompetitive and results in negative return on investment;[30]Subversion of fundamental rules of economic relations, institution and structure, good governance, an equitable and joint legal order and other institution of state, particularly the Judiciary.

In consideration of the prominent role of the court in causes of corporate rescue and insolvency in Nigeria, namely, summoning meeting of the creditors, or class of creditors, of the members of the company or class of members in respect of compromise or arrangement[31]sanctions compromise or arrangement;[32]make a winding up order in respect of compulsory winding up,[33]an issue of corruption as it affects, the court must be of interest because the stability and prosperity of any society hinges on

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[21] Examples and discussion of bailouts acting as subsidies-see AMCON descriptions and case analyses of bank interventions.
[22]CC, Ani, *Corruption is Criminal Justice Administration in Nigeria, the role of the Legal Profession, Nigeria Bar Journal, Vol. 7, 2011, 110.*
[23]G,Etomi*, An Introduction to Nigerian Commercial Law Text, Cases and Materials (Lagos Mu Professional Publishers Limited, 2014) P 450*
[24]Criminal Code S 98A 1 (a)(b)
[25] NS, Okogbule*, "An Appraisal of the Legal and Institutional Framework for Combating Corruption in Nigeria, Journal of Finance Crime, Volume 1 Number 1 2006, 96"*
[26]2022 corruption perception index, https://www.trasnparency.org/en/cpi/2022 Accessed 15 July, 2025.
[27]ibid.
[28] N, Ikpeze *'Fusion of Anti-Corruption Agencies in Nigeria. A critical Appraisal' Vol. ISS.1 PP. 148 – 167. Afe Babalola University: Journal of Sustainable Development Law and Policy*.
[29]ibid,
[30] O A, Jay*, Legal Aspect of Finance in Emerging Market (Lodon: Lexis Nexis Butterwort Tolley, 2005) P. 120*.
[31] CAMA 2020, s 539 (1)
[32] ibid, S 539 (3)
[33]ibid, S 407 (1)

the rule of law and effective administration of justice, which guarantees accountability of government officials and protection of citizens from abuse.[34]

In order to combat corruption that has been referred to as a "virus", a good number of domestic and international initiatives and legislations such as corrupt practices and Related Offence Act, Economics and Financial Crime Commission Act, Advance Fee Fraud and other Related Offence Act 2006, Money Laundering (prohibition) Act Bribery Act 2010 (UK) Fraud Act 2006 (UK) have been developed and enacted to tackle corruption.[35]Notwithstanding the efforts being made to combat corruption, it still remains a cankerworm and a challenge to sustainable economic and socio-political development in Nigeria.

2. Weak/Overstretched Institutions

While the various innovations in statutory framework as regard insolvency practice in Nigeria is a welcome development, it is equally important to compliment it with a pragmatic, dynamic and capable regulatory Institution. The foremost institutions that regulate the cause of corporate rescue and insolvency in Nigeria are the Corporate Affairs Commission (CAC) and the Securities and Exchange Commission. However, by virtue of the provisions ofCAMA 2020, the CAC is vested with far-reaching functions and powers to administer the provisions of the CAMA 2020, including corporate insolvency.[36] It is posited in this dissertation that the CAC seems to lack the capacity to combine its numerous functions of regulation and supervision of the incorporation, registration and management of companies with that of regulating the cause of corporate rescue and insolvency.

Unlike the position in Nigeria, in other jurisdictions like the United Kingdom and the Republic of India, there is a distinct body that regulates the cause of corporate rescue and insolvency. In the United Kingdom, the insolvency service, an Executive Agency of Department for Business Innovational Skills (BIS), regulates insolvency matters. In India, the Insolvency and Bankruptcy Board of India was established[37]to exercise powers and functions, including the regulation of insolvency and bankruptcy matters.[38]It is therefore without doubt that the CAC and SEC do not possess the requisite capacity and expertise to carry out their routine statutory function and also regulate the cause of corporate rescue and insolvency, whence the need like in other jurisdiction to create a distinct body to deal with the issues of corporate rescue and insolvency in Nigeria.

The Court is another institution saddled with enormous responsibility as regards corporate rescue and insolvency proceedings in Nigeria. The Federal High Court is vested with exclusive jurisdiction to the exclusion of other courts in respect of civil cause and matters arising from the operation of the CAMA [39]and bankruptcy and insolvency.[40]Unfortunately, the role of the court in corporate rescue and insolvency matters has not been commendable. A situation where the determination of a winding up petition last up to eight months is unsatisfactory, regrettable and constitutes an albatross to the effectual dispensation or determination of corporate insolvency mattes. Worst still, a situation where a motion for leave to advertise petition last up to four years and suffers unnecessary adjournments is commendable. Again, the role of the court in matters of corporate rescue and insolvency is not immuned from the malaise associated with the Nigerian Court System, such as slow administration of justice, incessant adjournments, incapability, slow proceedings and rigidity.

3. Poor Enforcement of Laws

One of the most persistent challenges undermining the effectiveness of corporate rescue in Nigeria is the poor enforcement of existing laws. While the Companies and Allied Matters Act 2020 (CAMA 2020), the Banks and Other Financial Institutions Act 2020 (BOFIA), and regulations of the Securities and Exchange Commission (SEC) provide statutory frameworks for corporate restructuring and insolvency resolution, the efficacy of these provisions is greatly diminished when enforcement is weak or inconsistent.[41]

[34]https://www.ibamet.org./impact-of-corruption-on-rule-of-law-Nigeria. Accessed 15 July, 2025.
[35]ibid,
[36]CAMA 2020, s 8 (1) (a-f)
[37]Insolvency and BankruptcyCode,s 188 (1)
[38] ibid, (n 36) s 196
[39]Cap C 23 LFN 2004 s 251 (1) (e)
[40]ibid, s 251 (1) (j)
[41] CAMA 2020, ss 434-442

The essence of corporate rescue is to preserve viable businesses, protect jobs, and maintain creditor confidence through timely intervention. However, in Nigeria, laws designed to facilitate restructuring and insolvency procedures often suffer from selective enforcement, delays, and corruption within regulatory and judicial institutions.[42] This reality has made it difficult for mechanisms such as company administration, receivership, and schemes of arrangement to achieve their objectives under CAMA 2020.[43]A major contributing factor is the judicial system, which is beset with delays and technical inefficiencies. Insolvency cases are often subjected to prolonged litigation due to interlocutory appeals, thereby frustrating the swift intervention required for corporate rescue.[44] Courts also sometimes lack specialized knowledge of insolvency practice, leading to inconsistent interpretations of statutory provisions. The result is a lack of predictability in insolvency outcomes, which discourages creditors and investors from relying on corporate rescue mechanisms as opposed to liquidation.[45]

Furthermore, regulatory agencies such as the Corporate Affairs Commission (CAC), the Central Bank of Nigeria (CBN), and the Securities and Exchange Commission (SEC) have sometimes been criticized for weak oversight and enforcement lapses.[46] For example, despite the clear provisions of CAMA 2020 on insolvency practitioners and the duties of administrators, instances abound where directors and managers continue to exercise undue influence over companies under rescue processes, thereby undermining creditor protection.[47] This lack of strict enforcement creates room for abuse of insolvency procedures and reduces stakeholder confidence.

In conclusion, Nigeria's experience demonstrates that the problem is not the absence of laws, but the weakness of enforcement mechanisms. Unlike the UK, where specialist courts and regulated practitioners guarantee predictability, and unlike India, which has taken bold steps to reform enforcement through the IBC and NCLT, Nigeria's enforcement gaps continue to undermine the corporate rescue framework. Unless Nigeria invests in strengthening judicial capacity, insulating regulators from corruption, and ensuring strict compliance with CAMA 2020, the corporate rescue provisions risk remaining largely theoretical.

4. Absence of Moratorium

A moratorium is a temporary suspension of an activity or law until futureconsideration warrants lifting the suspension, such as if and when the issue that led to the moratorium has been resolved.[48] One of the main challenges that beset the cause of corporate rescue mechanisms in Nigeria is the absence of moratorium provision in the extant legislations.

As already examined in the preceding part of this study, the obvious available corporate rescue options under extant laws in Nigeria are arrangement and compromise, receivership, merger and acquisition and more recently, Companies Voluntary Arrangement (CVA). The declaration of a moratorium is one of the important requisites for a viable corporate rescue. Hence, most of the legislation providing for corporate rescue in different variants have entrenched a moratorium clause.[49]

The salient effect of a moratorium as noted above, is that it amongst others and from the initiation of a corporate rescue mechanism until the sooner determination of same, set to prohibit the institution of suits or continuation of pending suits or proceedings against the debtor company including execution of any judgment, decree or order or prohibits the taking of any action or step to foreclose, recover or enforce any security interest created by the debtor company. Notwithstanding the obvious importance for a moratorium provision so as to ensure a viable corporate rescue produce, it is unfortunate that moratorium declaration and manifestly absent in the corporate rescue options in Nigeria.

5. Continued Financing

Continuing financing is fundamental to the success of any corporate rescue plan as well as a hindrance when it is in short supply. Without an established provision which clearly outlines

[42]F,Akinbami, *"Insolvency Law and Practice in Nigeria: Current Challenges and Future Prospects" (2019) Journal of African Law, 63(2), 249–268.*
[43]Orojo(n 9),
[44]ibid,
[45]E,Nwauche, *"The Enforcement Problem in Nigerian Corporate Law" (2018) Nigerian Law Journal Vol. 21, 45–67.*
[46] E,Nwauche, (n 45)
[47] CAMA 2020 ss 443-448
[48]https://www.investopedia.com/items/m/moratorium.asp. Accessed 16 July, 2025
[49] Companies Act, s 133 (South Africa)

prospective post-petition financing, that is, funds needed by the debtor company to enable it to continue business during the rescue period and how these new creditors who often demand priority payments over pre-existing creditors will fit into the debtor's repayment plans, efforts to effectively rescue an insolvent company may amount to an exercise in futility.[50]

Continuing financing in corporate rescue proceedings has remained as seminal issue in corporate rescue and insolvency law and practice.[51]While in other jurisdictions such as the UK, the US and the Republic of India, there seems to be commendable efforts towards providing for continuing financing during corporate rescue. In Nigeria, there are no formal continuing financing schemes for corporate entities at times of corporate insolvency or rescue.

In the UK, the issue of Continuing Financing is addressed by the powers conferred on an administrator to borrow funds, grant security, and prioritize repayment of debts owing under contracts entered during administration.[52] Although the powers conferred on an administrator to borrow are helpful as regards obtaining funds and continuing the business, it nevertheless lacked the incentives required to encourage fresh lending.

It is pertinent to state that the viability of any business is often dependent on the availability of credit and more so when the company is within the vicinity of insolvency. Hence, continuing financing is fundamental in corporate insolvency and rescue proceedings. In Nigeria, however, there is abysmal absence of this fundamental prerequisite of continuing finance in corporate insolvency and rescue proceedings under extant statute.

6. Absence of Uniform Guidance for Informal Rescue Procedures

It is common for informal corporate rescue options such as bailout, debt for equity swap, purchase and cherry picking to be invoked for resolution of insolvency matters in Nigeria. Despite the advantages[53]of such in formal corporate rescue options, it has not been impactful and enduring. This is not unconnected to the absence of clear, certain and transparent guidelines and procedures for such informal rescue options. At present, the guidelines and procedures, if any, for informal corporate rescue options are disparate and sector-based. The end result of having corporate rescue proceedings in Nigeria is incongruity and complexity with the potential for added cost and complication in the resolution of insolvency.

Corporate Rescue Mechanisms in the United Kingdom and India Lesson for Nigeria:

The United Kingdom

The United Kingdom (UK) has one of the most developed corporate rescue frameworks globally, designed to balance creditor protection with the preservation of viable businesses. The central statute is the Insolvency Act 1986, as amended by the Enterprise Act 2002 and the Corporate Insolvency and Governance Act 2020 (CIGA 2020).[54] These reforms reflect a deliberate policy shift away from creditor-driven liquidations towards business rehabilitation, value preservation, and job protection.[55]

Company Voluntary Arrangements

A Company Voluntary Arrangement (CVA) is a contractual compromise between a company and its creditors under Part I of the Insolvency Act 1986.[56] It allows distressed companies to reorganize their debts, typically by reducing liabilities or extending repayment terms. Once approved by at least 75% of creditors (by value), the CVA binds all unsecured creditors.[57] CVAs have been widely used in the UK retail and hospitality sectors, particularly to renegotiate lease obligations.[58]

Administration

Administration, introduced under the Insolvency Act 1986 and restructured by the Enterprise Act 2002, is the UK's flagship rescue procedure. An administrator—a licensed insolvency practitioner—is

[50]A, Aruiriwo, *Financing, Corporate Rescues, where does the UK Stand (2014) 1 (2) IALS Student Law Review, 10*
[51]Armour& A. Walters*, Funding Liquidation. A functional view (2006) LQR 295*
[52] Insolvency Act 1986 (as amend Sch B1, para 99)
[53]Voluntariness Dynamism, Speedy, Transaction, Cheap and Inclusiveness of parties
[54] Insolvency Act 1986; Enterprise Act 2002; Corporate Insolvency and Governance Act 2020 (CIGA)
[55] V, Finch, *Corporate Insolvency Law: Perspectives and Principle (3rd end, Cup 2017) 45.*
[56] Insolvency Act 1986, Part I, ss. 1-7.
[57] Insolvency Act 1986, s. 4 (1).
[58] A, Walter & K, Smith*, "Company Voluntary Arrangements –Recents Trends" (2019) 40(3) Company Lawyer 67*

appointed to take over management, and a statutory moratorium is automatically imposed.[59] The statutory objectives under Schedule B1 of the Insolvency Act 1986 are:

1. To rescue the company as a going concern;
2. To achieve a better outcome for creditors than immediate liquidation; or
3. To realize assets for distribution to secured/preferential creditors.[60]

In practice, administration often leads to pre-pack sales, where the business is sold immediately upon entering administration, sometimes to existing management. While efficient, pre-packs have attracted criticism for lack of transparency.[61]

Schemes of Arrangement and Restructuring Plans

Schemes of arrangement, governed by Part 26 of the Companies Act 2006, allow companies to restructure obligations with creditor and shareholder approval, subject to court sanction.[62] The Part 26A Restructuring Plan, introduced by CIGA 2020, added a more flexible mechanism, enabling courts to impose a plan on dissenting creditor classes through cross-class cram-down, provided fairness and no-worse-off tests are satisfied.[63]

Insolvency Practice in the UK

The UK insolvency regime is largely creditor-oriented but remains sensitive to the broader objective of corporate rescue. Insolvency practitioners, regulated by professional bodies, are central to the functioning of administration and CVAs.[64] Judicial oversight—particularly by the High Court—ensures procedural fairness and creditor protection.[65]

Empirical evidence suggests that while administration has increased survival rates compared to liquidation, most rescues occur via business sales rather than rehabilitation of the debtor company itself.[66] This has led to debates about whether UK practice achieves "rescue of companies" or merely "rescue of businesses."[67]

In conclusion, the UK's corporate rescue and insolvency framework reflects a sophisticated balance between creditor rights and debtor rehabilitation. Its evolution from a liquidation-dominated system to one that emphasizes business continuity has had global influence. However, practical challenges—such as pre-pack criticisms, CVA failures, and high costs—suggest that further reforms may be required to strengthen fairness and accessibility. Overall, the UK model remains a leading template for jurisdictions aspiring to modernize their corporate rescue regimes.

India

India's insolvency landscape underwent a transformative reform with the enactment of the Insolvency and Bankruptcy Code 2016 (IBC). Prior to the IBC, India had a fragmented framework under multiple legislations (Companies Act 1956, Sick Industrial Companies Act 1985, Recovery of Debts Due to Banks and Financial Institutions Act 1993, etc.), which led to delays and inefficiency.[68] The IBC consolidated these laws into a single code, introducing time-bound processes, professionalized insolvency practice, and creditor-in-control mechanisms. This marked a paradigm shift from a debtor-friendly to a creditor-driven insolvency regime, with the dual objectives of promoting corporate rescue and ensuring swift liquidation where necessary.

Corporate Insolvency Resolution Process (CIRP)

The CIRP is the flagship rescue mechanism under the IBC. Once a company defaults, a financial or operational creditor may initiate proceedings before the National Company Law Tribunal (NCLT).[69]

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[59] Insolvency Act 1986, Sch. B!, para 43
[60] Insolvency Act 1986, Sch. B1, para 43
[61] P, Walton*, "Pre-packaged Administration and the Position of Unsecured Creditors" (2011) 24(1) Insolvency Intelligence 1.*
[62] Companies Act 2006, Part 26.
[63] CIGA 2020, Part 26A; Re Virgin Atlantic Airways Ltd (2020) EWHC 2191 (Ch)
[64] Insolvency Practitioners Association, Statement of Insolvency Practice (SIP 16).
[65] A, Keay, *"Balancing Interests in UK Corporate Rescue: Case Law and Practice: (2019) 40(2) Company Lawyer 65*
[66] P, Walton&C,Umfreville*, Pre-Pack Empirical Report (University of Wolverhampton, 2014).*
[67] V, Finch & D, Milman*, Corporate Insolvency Law (2nd edn, CUP 2009) 329.*
[68] Balasubramanian*, Evolution of Insolvency Law in India (NLU Delhi Press, 2017) 12*.
[69] Insolvency and Bankruptcy Code 2016 (IBC), ss. 7–9.

A moratorium is immediately imposed, halting all enforcement actions and litigation against the debtor.[70]

During CIRP, control shifts from the debtor's management to an Insolvency Resolution Professional (IRP), while strategic decision-making rests with the Committee of Creditors (CoC).[71] Resolution applicants submit plans, which require at least 66% creditor approval (by value) to be adopted.[72] If no plan is approved within the statutory time frame, the company proceeds to liquidation.

A hallmark of the IBC is its strict timelines: 180 days for completion of CIRP, extendable to a maximum of 330 days including litigation.[73] This ensures predictability and prevents value erosion due to prolonged proceedings.

Where rescue fails, liquidation is mandatory. However, the Code also provides for fast-track CIRPs for smaller companies[74] and pre-packaged insolvency resolution (PPIRP), introduced in 2021, designed to offer MSMEs a simplified restructuring path with debtor-creditor collaboration.

In conclusion, the IBC represents a significant shift to a creditor-in-control model. Unlike the UK and US (where administration or Chapter 11 may leave management in place), Indian law removes directors from control once CIRP begins, entrusting professionals and creditors with rescue decisions.Empirical studies suggest that the IBC has improved recovery rates: average recovery under IBC stood at about 43% of claims in its early years, compared to less than 20% under pre-IBCregimes. Nevertheless, delays caused by litigation and overburdened tribunals remain significant challenges.

Lessons for Nigeria

Nigeria's adoption of administration and company voluntary arrangement under CAMA 2020 demonstrates an intention to follow the global trend towards business rescue. However, lessons from the UK and India reveal key areas requiring attention:

1. Professionalization of Insolvency Practice: Like the UK, Nigeria must build a cadre of licensed insolvency practitioners with the expertise and independence to manage rescues effectively without this, administration risks becoming a paper mechanism.[75]

2. Creditor Involvement and Confidence: India's CoC model underscores the importance of involving creditors in restructuring decisions. Nigerian creditors, particularly banks, remain skeptical of rescue proceedings. Reforms must enhance creditor confidence through transparency, time-bound processes, and enforceable safeguards.[76]

3. Judicial Efficiency: Both the UK and India highlight the critical role of the judiciary in supporting rescue mechanisms. For Nigeria, judicial inefficiency remains a major obstacle. Specialized insolvency courts or dedicated commercial divisions may be necessary to ensure timely adjudication.[77]

4. Time-Bound Procedures: India's IBC demonstrates that strict timelines for rescue can prevent value erosion. Nigeria's administration procedure under CAMA lacks comparable deadlines, creating risks of delay. Statutory timeframes could enhance effectiveness.[78]

5. Rescue Culture and Governance Corporate: Ultimately, both the UK and India illustrate that rescue culture is sustained by broader systems of corporate governance, disclosure, and creditor-debtor trust. Nigeria must address structural weaknesses—such as poor financial reporting and weak enforcement—if administration is to succeed.[79]

In conclusion, while Nigeria has laid the statutory foundation for corporate rescue through CAMA 2020, practical effectiveness requires learning from the established UK system and the reformist Indian model. Professional capacity, creditor confidence, judicial efficiency, and cultural shifts

[70] IBC 2016, s. 14.
[71]R,Varottil, *"The Role of the Committee of Creditors under the Indian Insolvency and Bankruptcy Code" (2020) 15(3) Journal of Corporate Law Studies 257*
[72]IBC 2016, s. 30(4).
[73] IBC 2016, s. 12 (as amended in 2019).
[74]IBC 2016, ss. 55–58.
[75]Oditah,(n 37)
[76] Adegbite,(n 38)
[77] Okeke, (n 37)
[78] Olaniyan, (n 36)
[79]Nwogu,(n 39)

towards reorganization must all be prioritized if Nigeria's corporate rescue framework is to achieve its intended impact.

CONCLUSION

This article concludes that Nigeria's corporate rescue framework, though significantly improved by the enactment of CAMA 2020, remains insufficient to meet modern insolvency challenges. The country's current system is constrained by fragmented laws, poor institutional coordination, corruption, and judicial inefficiency. Comparative insights from the United Kingdom and India demonstrate that successful rescue regimes thrive on clear legislation, professional regulation, and specialized institutions that promote timely and transparent interventions. To achieve a truly functional rescue culture, Nigeria must enact an integrated Corporate Insolvency and Rescue Act, strengthen its institutions, and professionalize its insolvency practice. In addition, greater public awareness and corporate governance reforms are essential to encourage early intervention in financial distress. If properly implemented, these measures will transform Nigeria's insolvency landscape from a liquidation-based system into a modern, rescue-oriented regime that preserves enterprises, protects jobs, and enhances investor confidence.

Recommendations

1. Strengthen Institutional and Judicial Capacity:

Nigeria should enhance the efficiency and integrity of its insolvency institutions and courts through specialized training, stricter timelines, and the establishment of dedicated insolvency divisions to ensure speedy and transparent resolution of corporate distress cases.

2. Professionalize Insolvency Practice:

The regulation and accreditation of insolvency practitioners should be formalized, similar to the UK model, to promote accountability, technical competence, and ethical standards in administering rescue procedures.

3. Promote Creditor and Investor Confidence:

Reforms should ensure consistent enforcement of rescue provisions under CAMA 2020, introduce clearer moratorium and financing frameworks, and provide uniform guidelines for informal restructuring processes to attract investor participation and sustain viable businesses.

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