

ADMINISTRATION AS AN ALTERNATIVE TO WINDING UP OF COMPANIES IN NIGERIA

Over the years, some companies have been faced with situations where their lines of credit as well as investment sums having been obtained from partners, creditors, and financial institutions in the course of undertaking its business ventures are not payable where such a company has become insolvent. At this slightest signal of a company's inability to repay its debts, creditors will eagerly rush to Court to initiate a winding-up proceeding or alternatively, to appoint a liquidator of the company's assets without more or at best, receivers are appointed to ensure that Company liabilities are paid off.

Whereof the above is a good solution, it is no gainsaying that this practice hampers any chance of the company's future growth. Thus, it has become imperative that any method which aims to salvage the insolvent company is a better option, and amongst them are mergers, acquisitions, takeovers, and the newly added, administration as provided under the Company and Allied Matters Act (CAMA) 2020. We examine the role of Administration as an alternative to the winding up of companies in Nigeria.

Administration

Administration is a process that involves the appointment of an administrator to manage the company's assets and to rescue the whole or part of the company's undertaking as a going concern. The role of administration as a company restructuring tool is to rescue the whole or part of the company's undertaking and to ensure that such a company remains a going concern as well as maintaining its 'alter ego' and 'autonomy' whilst facing financial setbacks.

Administrator

The administrator is seen as one with a rescue mandate to help the company survive by running the business and taking incidental and expedient decisions for the management of the affairs, business, and property of the company under section 496 of the CAMA.

The administrator must be a qualified insolvency practitioner, whose remuneration and expenses are payable out of property, which is in the administrator's custody, in priority to the claims of holders of a floating charge. Two or more administrators may be appointed jointly or concurrently.

It is imperative to state that the administrator is not an agent of the person that appoints him and upon appointment, an administrator becomes an officer of the court and an agent of the company. An administrator is required to perform his/her functions as quickly and efficiently as possible.

The court plays a key role in the function of the administrator and regulates every major action taken by the administrator.

Administration Process

The administration process is covered under section 483 of CAMA as performed by the administrator wherein he is required to prepare a detailed schedule of assets and submit a copy to the person who appointed him within 60 days of appointment. He is then required to send a notice of his appointment to the company, obtain a list of the company's creditors, and send a notice of his appointment to each creditor whose claim and address the administrator is aware of. He is also requested to publish a notice of appointment at the CAC, not later than 14 days of his appointment.

Furthermore, the administrator may issue a notice to an officer (or former officer), any founder, or any employee (or former employee) of the company, requiring such person(s) to provide a statement of the affairs of the company. Having considered the state of the company's affairs, the administrator would circulate a proposal to the creditors to achieve the purpose of the administration. Where the proposal is not approved by the creditors, the administrator will apply to the Court for further direction.

Effects of Administration

It is noteworthy that upon the appointment of an administrator, a protective shield is activated in favor of the company as outlined below;

1. Any winding up petition, legal proceedings, execution, or distress, brought against the company, while in administration will be dismissed by the Court, subject to certain conditions as contained in section 477 of the Act.
2. Where the company is in receivership by virtue of an appointment by the holder of a floating charge or the Court, such receiver shall vacate office.
3. No action can be brought to enforce security over the property of the company except with the consent of the administrator or the Court's permission which aids in the preservation of the company's assets during and after the administration process.
4. The company's officers can still exercise managerial powers, albeit with the prior consent of the administrator.
5. a receiver appointed by the holder of a floating charge will vacate the office.

It is worthy of note that as an advantage to other rescue options, CAMA mandates the administrator to consider the suitability of other restructuring options and be sure that other options would not aid the survival of the Company as the administration would before the administrator proceeds with such administration.

Ending the Administration

1. The appointment of an administrator expires at the end of a period of one year from the date on which the appointment took effect, except where it is extended by the court for a specified period (before expiration) or extended for a period not exceeding six months with the consent of each secured creditor of the company (and qualified preferential creditor(s) where applicable).
2. Before the expiration of the administrator's term (or any extension thereof), the court may, upon an application by the administrator or a creditor, order the cessation of the appointment of the administrator.
3. Administration will also come to an end before the statutory period, where the administrator files a notice at the Court and the CAC, stating that the objective of the administration has been sufficiently achieved.
4. Depending on the circumstance, an administration may also end through a public interest winding-up or upon the application of a creditor. Depending on the circumstance, an administration may lead to creditors' voluntary liquidation or the dissolution of the company.

Conclusion

The Concept of administration as one of the alternatives to winding up within the trajectory of corporate restructuring is a positive step towards ensuring sustainability as it affords companies who suffer the risk of insolvency, options other than receivership and winding up proceedings. That said, it is expected that with the right expertise and continued development of the insolvency space particularly by stakeholders in the corporate sector in collaboration with relevant regulators, the Nigerian insolvency space will witness increased adoption of survival and less 'death'.

