



Administration under CAMA 2020

Emerging Procedural Issues in Nigerian
Insolvency Practice – Part I

Part I

Introduction

The corporate insolvency regime in Nigeria is generally governed by the Companies and Allied Matters Act ("**CAMA**") 2020 and the Business Facilitation (Miscellaneous Provisions) Act 2023. Other applicable industry-specific statutes include the Banks and Other Financial Institutions Act 2020, the Nigerian Deposit Insurance Corporation Act 2023, the Asset Management Corporation of Nigeria Act, the National Insurance Commission Act 1997, the Insurance Act 2003, and the Pension Reform Act 2014.

CAMA 2020 introduced restructuring and reorganisation procedures aimed at refocusing insolvency practice from pro-liquidation strategies towards business rescue mechanisms. These procedures include administration, company voluntary arrangement ("**CVA**"), and schemes of arrangement. The introduction of these procedures was designed to offer companies and their creditors the opportunity to seek a revival of a company in distress.

The focus of this article, which is subdivided into several parts, is the administration procedure under Nigerian law. In this part, we provide a general overview of the administration procedure and address some emerging issues around the appointment of an administrator. In the other parts of the article, we examine recent developments in insolvency practice in Nigeria.

Overview of the Administration Procedure

The provisions of CAMA 2020 on the administration procedure¹ are significantly modelled after Part II, Schedule B1 of the English Insolvency Act 1986 ("**English Insolvency Act**"). This legislative heritage is significant because it provides Nigerian courts with a substantial body of English jurisprudence to draw upon when interpreting the administration provisions, subject to any necessary modifications to account for differences in the Nigerian legal and commercial context.

Appointment of an Administrator

Under CAMA, an administrator may be appointed by an Administration Order issued by a Judge of the Federal High Court;² by the holder of a floating charge,³ where the instrument creating the floating charge empowers the holder to appoint an administrator or a receiver;⁴ or by the company or its directors.⁵

¹ Sections 443 to 543 of CAMA 2020.

² Section 443(1)(a).

³ Section 443(1)(b).

⁴ Section 452(1) and (2).

⁵ Section 443(1)(c); The provisions of CAMA on how an administrator may be appointed mirrors Schedule B of the English Insolvency Act, which provides that an administrator may be appointed by the grant of an administration order by the Court (Paragraph 10); by the holder of a qualifying floating charge (paragraph 14) and by the Company (Paragraph 22).

Where an administrator is appointed, other than by the court, a court order will still be required where the administration has a cross-border element,⁶ or the administrator is appointed by the holder of a floating charge.⁷ In the former scenario, the approval of the court must be sought and obtained, while in the latter scenario, the court must be notified⁸ to validate the appointment.

An administrator must be a qualified insolvency practitioner.⁹ Several administrators may also be appointed to jointly or concurrently manage the affairs of a company.¹⁰ An administrator, however, can only be appointed to act jointly or concurrently with the subsisting administrator(s) upon an order of court.¹¹ A joint or concurrent administrator may be appointed by the company, its directors, one or more creditors, a receiver appointed by the court, the holder of a floating charge, the subsisting

administrator(s), or a combination of the persons aforementioned.¹² One significant difference between joint and concurrent administrators is that joint administrators are liable for any offence or wrong committed by one of the administrators.¹³

It is pertinent to note that a defect in the appointment or qualification of an administrator does not invalidate the acts carried out by the administrator.¹⁴

Presenting an Administration Application

Under CAMA, an administration application may be presented by the company, the directors of the company, a creditor of the company, or a designated officer of the Federal High Court appointed to act as a receiver.¹⁵ Many of the administration applications presented before Nigerian courts thus far have been presented by creditors of the company. It is important to note that CAMA does not differentiate between secured and unsecured creditors; both classes of creditors may present an administration application upon fulfilling the conditions stated under section 449 of CAMA. These conditions are: (a) that the company is or is likely to become unable to pay its debts; and (b) that the administration order is reasonably likely to achieve the purpose of administration. In other words, a creditor who intends to present an administration application must demonstrate the reasons he is



⁶ Section 443(2).

⁷ Section 443(3).

⁸ Section 443(3).

⁹ Section 447(1).

¹⁰ Section 447(2), 538 to 541.

¹¹ Section 541.

¹² Section 541.

¹³ Section 539 (4).

¹⁴ Section 542 of CAMA.

¹⁵ section 450(1) of CAMA.

entitled to present that application with respect to the company and establish why the grant of that order is the appropriate order to be made with respect to that company.

(a) The first condition, which is relatively straightforward, encompasses cash flow insolvency and balance sheet insolvency.

CAMA 2020 (as amended by the Business Facilitation Act) prescribes a technical threshold for determining a company's inability to pay its debts – a company is unable to pay its debts when a demand is made of the company, and the company neglects to liquidate its indebtedness within three (3) weeks of the demand.¹⁶ This is **the cash flow test of insolvency**.

The balance sheet test of insolvency is when a company is deemed unable to pay its debts if it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.¹⁷



The dual tests under section 572 ensure that an administration order can be sought not only where a company has failed to meet a specific demand but also where, on a more comprehensive assessment, the company's overall financial position is such that it cannot meet its obligations.

(b) The second condition, however, requires the creditor to show to the court that the objectives of administration may be achieved by the grant of the administration order. Establishing this condition requires the creditor to do more than merely state that the objectives of administration will be fulfilled; the creditor must demonstrate **how** he intends to achieve the objectives of administration when the order of administration is made.

The procedure for presenting the Administration Application is governed by CAMA 2020 and the Insolvency Regulations 2022 (the "**Regulations**"),¹⁸ which repealed Clause 24 of the Companies Regulations 2021. The Regulations exclusively govern an enumerated list of matters which include Company Voluntary Arrangements and Administration.¹⁹

It has, however, been observed that practitioners commencing administration proceedings before Nigerian courts often neglect the Regulations, thereby adopting the wrong procedure in commencing administration proceedings. Some of the irregularities and lapses which have been observed in the presentation of administration applications include the use of improper originating processes, obtaining administration orders without notice to the necessary parties, and failure to meet the threshold for the grant of the order.

¹⁶ section 572(1) of CAMA.

¹⁷ Section 572(2) of CAMA.

¹⁸ The Regulations were made pursuant to the Corporate Affairs Commission's powers under section 867 of CAMA.

¹⁹ R. 1.01 of the Insolvency Regulations 2022.

CAMA and the Regulations are silent on the specific application to be deployed in applying for an administration order. However, CAMA and the Regulations stipulate that the administration application shall be headed “Administration Application”.²⁰

CAMA and the Regulations, however, stipulate that an administration application must be on notice to all persons entitled to appoint an administrator or a receiver.²¹

The status of an administrator

Under CAMA, an administrator is to cater for the interests of the creditors of the company; he is, however, regarded as an officer of the court, irrespective of the mode of his appointment.²² Under the English Insolvency Act, however, an administrator is “*deemed to act as the agent of the company*” in the exercise of his powers.²³

An administrator takes over the management of the affairs, business and property of a company,²⁴ to cater for the interests of the creditors of the company,²⁵ in a quick and efficient manner.²⁶ Under the English Insolvency Act, an administrator may remove or appoint directors and call for meetings of creditors and/or members.²⁷ Considering that CAMA also deploys the expansive clause “*do all such things as may be necessary for the management*”, an administrator appointed under Nigerian law may appoint, remove or suspend a director of a company in administration, provided such appointment, removal or suspension is ‘necessary’ for the management of the affairs of the company in administration.



²⁰ This is also similar to the position under the English Insolvency Rules 2016 which employs similar language in Rule 3.2, this position replaced section 9(2) of the English Insolvency Act which required administration applications to be brought by way of Petition.

²¹ Section 450 CAMA, and Regulation 3.08.

²² Section 446.

²³ Section 14(5).

²⁴ Section 444(1).

²⁵ Section 444(3).

²⁶ Section 445.

²⁷ Section 14.

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