



Administration under CAMA 2020

Emerging Procedural Issues in Nigerian
Insolvency Practice – Part II



Part II

The hierarchical objectives of administration

The statutory objectives of administration are set out in section 444(1) of CAMA in a hierarchical order that the administrator must follow sequentially. **The primary objective** is the rescue of the company, either wholly or partly, to remain a going concern.²⁸ This objective reflects the fundamental purpose of administration as a rescue mechanism rather than a liquidation procedure. Where it is reasonably impracticable to rescue the business as a going concern, the administrator's objective descends to **the second tier: achieving a better result for all the company's creditors than would be likely if the company were wound up without first being in administration.**²⁹ This comparative analysis requires the administrator to assess whether the administration would yield superior returns for creditors collectively.³⁰

An administrator may, however, pursue only **the third objective, realising the assets of the company for distribution to the secured or preferential creditors,**³¹ where the administrator does not unnecessarily harm the interests of other creditors of the company.³² This third objective is subordinate to the first two and may only be pursued where the rescue of the company as a going concern is not reasonably practicable and a better result for creditors as a whole cannot be achieved. The statutory provision against unnecessarily harming the interests of other creditors imports an obligation of proportionality that constrains the administrator's discretion even when pursuing this tertiary objective.

²⁸ Section 444(1)(a) and (2) of CAMA

²⁹ Section 444(1)(b) of CAMA

³⁰ Section 444(4) of CAMA

³¹ Section 444(1)(c) and (2) of CAMA

³² Section 444(5) of CAMA

The commencement and effect of an administration

To ensure that the reorganisation of the company is conducted seamlessly and that the administrator is not burdened with defending multiple actions by the creditors of the company or chasing down creditors who are stripping the company of its assets by enforcing their security against the company, section 480 of CAMA imposes a statutory moratorium on the enforcement of any security by the creditors of the company. The moratorium under section 480 serves a dual function: it creates breathing space for the administrator to assess the company's position and develop a rescue strategy, while simultaneously ensuring that no single creditor can gain an advantage over others through enforcement action during the administration period. With this statutory moratorium in place, the administration process is not prejudiced by multiple proceedings and claims to the company's assets which have been placed under the control of the administrator,



thereby enabling the administrator to focus on the rescue of the company. This appears on its face to be a welcome introduction into Nigerian insolvency law; however, the practical effect of the moratorium, in light of the adopted practice, differs from the intendment of the drafters of the law and is at variance with the practice of the procedure in other jurisdictions. Administration orders are often obtained improperly by applicants in Nigeria, thereby working hardship on the company and some of its secured creditors who have no knowledge of ongoing proceedings which have the likelihood of prejudicing their interests. This may be attributed to the infancy of the administration procedure in Nigeria and a misconception of the procedure as receivership proceedings—which is limited to a secured creditor appointing a receiver to enforce security for the repayment of a debt when that debt remains unpaid, or an event of default occurs under the instrument giving the creditor the right to appoint the receiver. It is critical to emphasise that administration is fundamentally distinct from receivership: while receivership is primarily a creditor enforcement mechanism designed to realise security for the benefit of a specific secured creditor, administration is a collective statutory rescue procedure with broader objectives that benefit creditors as a whole and with more extensive procedural safeguards to protect all affected parties.

Cessation and termination of an administration

An Administrator may be removed, replaced, or substituted by the appointing authority.³³ An administrator may also resign his appointment.³⁴

Administration will cease automatically at the end of one (1) year,³⁵ except the administration is extended by an order of court or by consent for a period not exceeding six (6) months.³⁶ The consent of the persons required to extend an administration are: (i) secured creditors or (ii) secured creditors and preferential creditors whose debts are more than fifty percent (50%) of the preferential debts of the company, if distributions would be made to preferential creditors.³⁷ Such consent must, however, be in writing and signified at a creditors' meeting.³⁸

An administration may also be terminated where the objective of the administration is achieved,³⁹ by the court or where a winding-up order is made.⁴⁰



³³ Section 526 to 535 of CAMA

³⁴ Section 525. of CAMA

³⁵ Section 513 (1) of CAMA

³⁶ Section 513(2) of CAMA

³⁷ Section 515 of CAMA

³⁸ Section 516 of CAMA

³⁹ Section 518 of CAMA

⁴⁰ Section 519 and 520 of CAMA

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