

NIGERIA: RAPID FIRE UPDATE ON THE INSOLVENCY REFORMS UNDER COMPANY/FINANCE LAW IN NIGERIA

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INTRODUCTION

CAMA 2020 repealed CAMA 1990

BOFIA 2020 repealed BOFIA 2004

Reform has tilted towards being debtor friendly.
ISA also under review.



REFORM UNDER COMPANY LAW

Regulated Professionals: Section 705 CAMA provides for the qualifications of an Insolvency Practitioner (IP). It also recognises professional bodies such as Business Recovery and Insolvency Practitioners Association of Nigeria to issue certificates to individuals who have been trained to act as IPs.



REFORM UNDER COMPANY LAW

Chapter 17: The Act authorises the Directors of a company to propose a voluntary arrangement where an administration order is in force or the company is being wound up by the Liquidator. The proposal shall provide for the nominee who shall within 28 days after he is given notice of the proposal for voluntary arrangement, submit a report to the Court stating whether in his opinion, meetings of the creditors and company should be summoned to consider the proposal.

The meetings summoned shall determine whether to approve the arrangement with or without modifications. After the conclusion of the meeting, the Chairman of the meeting shall report the outcome of the meeting to the court.



REFORM UNDER COMPANY LAW

If the decision taken at the creditors meeting differs from the decision taken at the company meeting, a member of the company may make an application to the court and the court may order the decision of the company meeting to have effect instead of the decision of the creditors meeting or such order as it deems fit.

The pioneer CVA application in Nigeria was undertaken by Tourist Company of Nigeria in 2021 in Suit No FHC/L/CS/1250/2021 Re Seyi Akinwunmi & Okorie Kalu.



REFORM UNDER COMPANY LAW

Chapter 18: Administration of Companies was introduced for the first time in the country. The administrator may be appointed by the company, its directors, administration order of the Court or the holder of a floating charge. See section 458 CAMA. The law also recognises that an administration may have cross-border element. By virtue of section 443 (2), where the administrator is appointed out of court and it has cross-border element, an ex-parte application should be made to the Court for approval. This additional condition is also contained in the Insolvency Regulations 2022.



REFORM UNDER COMPANY LAW

The Administrator shall within 60 days of his appointment prepare a detailed schedule of assets and submit to the person by whom he was appointed. Some of the effects of administration include- dismissal of petition for winding up the company upon the making of the administration order, vacation of office of Receiver Manager, no step shall be taken to enforce security over the company's property except with consent of the administrator or permission of the Court.

The pioneer Administration application in Nigeria granted by the Court was undertaken in 2022 in Suit No FHC/L/CS/140/2022 Imperial JV (in administration).



REFORM UNDER FINANCE LAW

Part IV- Where a financial institution is unable to meet its obligations, the Governor may prohibit any further extension of credit facility, suspend any payment obligations and require any third party service providers to the bank to continue to provide the services

Body Level One- The Bank may appoint a professional to perform an independent assessment on any instrument of the failing Bank. S. 37 BOFIA
The Governor may issue a bail in certificate based on the report of the assessment



REFORM UNDER FINANCE LAW

The bail in certificate may cancel or modify some eligible instruments. Any judgment/claim shall automatically be suspended during the period covered in the bail in certificate This is regardless of whatever is contained in the contract. s. 38 and 39.



CONCLUSIONS

There have been significant changes to Nigerian Restructuring & Insolvency law which has created the platform for local courts and Insolvency professionals to cooperate with foreign courts in cross-border insolvency cases.