ADMINISTRATION: CAMA'S KNIGHT TO RESCUE MAROONED PRINCESSES

Introduction:

On August 7, 2020, Nigeria's President Muhammadu Buhari gave assent to the Companies and Allied Matters Act Cap 2020 (CAMA or the Act) and thereby introduced a new suite of insolvency options into Nigerian law. These options include Voluntary Arrangement, Administration, Arrangements + Compromise, and Netting. In April 2022, and while exercising the powers CAMA conferred on it in that regard, Nigeria's Corporate Affairs Commission (CAC), issued the Insolvency Regulations 2022 (the Regulations) to provide the administrative processes for such concepts as, the: Insolvency Practitioner, Voluntary Arrangement, Administration, Netting Events, et.al.

In this brief, we shall review, on a relative basis, the concept of Administration and make a case for its effectiveness as a veritable insolvency option; perhaps, we are able to establish it as that emissary or knight that should first be sent to negotiate the rescue of corporate princesses, before a decision is made to exert the more lethal insolvency options.

What is Administration?

Simply, it is a formal process where a Company is found to be insolvent and an Insolvency Practitioner, in this case known as the Administrator, is appointed to run the affairs of the Company *unhindered* and for a *short spell*, with the view of rescuing the Company from its insolvent situation.

"Unhindered" in this context means that, during Administration, no legal action can validly be maintained against the Company save with leave of Court, thus giving the Company and the Administrator the room to focus on the core mandate of the Administration: the rescue of the Company from its insolvent situation. For example, upon an Administration Order, any pending

application for the Company's liquidation is suspended. Same will apply in the case of a Receiver appointed under a Floating Charge; the Receiver will have to vacate office until after the Administration.

"Short spell" means that the Administration must be for a short term. In Nigeria, this term is limited to a period of one year, with an extendable period of six months.

In practical terms, Administration gives a Company legal moratorium to focus and resolve its insolvent situation, while still in operation. It serves as a temporary immunity from the legal actions of Creditors, who of course are at the receiving end of a Company's insolvency situation. The Administration period allows the Administrator to consider all Creditors alike and present a solution that would rescue the Company from the insolvent situation. It is noteworthy that the Administrator may not be the cliché "nice guy" as the solution may include the rationalization of an over bloated workforce, the firing of managers and/or directors of the Company, the sale of the properties or business of the Company or even the liquidation of the Company itself. This Knight will readily protect the realm by plunging the sword into the heart of the virus-ridden Princess where necessary!

Who can take a Company into Administration?

An officer of the Federal High Court of Nigeria (FHC), a Creditor, the Directors or Shareholders of the Company can lead a Company into Administration.

In the case of the FHC, the process leading to the admission of a Company into Administration can be initiated by a Creditor. Unlike the Winding-up Regime, there is no threshold for the debt owed to the applying Creditor. All that must be established is the insolvency of the Company. While academic arguments abound between temporal illiquidity and insolvency, it often suffices that an illiquid Company whose assets and equities are insufficient to offset its liabilities is insolvent. Cases of Companies with negative equities are prime examples in this regard.

A Creditor who holds a Floating Charge can also appoint an Administrator where the duly registered enforceable Floating Charge agreement so empowers him, and the Company is not in liquidation or receivership. This implies that where a Debenture Holder has the contractual right to appoint an Administrator, it can legally do so, if the Debenture has become enforceable and the Company is not in liquidation or receivership. The Debenture Holder will however have to be wary of the rights of a prior Debenture Holder, whose consent must be sought and had prior to the exercise of the power of appointment. Further and similar to every Administration, due notification must be made to the CAC of any such appointment.

The Company, either through its Directors and or Shareholders can also take itself into Administration, provided the Company is currently not in receivership or Court-ordered Administration. It is accordingly evident that Administration is not necessarily just a sword in the hands of Creditors but can also serve as a shield in the hands of the Company to give it that legal immunity or breathing room it will need to resolve its insolvent situation.

What does an Administrator do?

Upon appointment, the Administrator is to, following appropriate public notifications, immediately begin a process of inquisition into the affairs of the Company and, perhaps, the events that led to the Company's insolvency with the view of tackling the root cause of the insolvent situation. This knowledge is needful as the Administrator eventually has to make a proposal, known as the Statement of Proposal, for the resolution of the Company's insolvency situation.

Bearing in mind Creditors stance at the receiving end of a Company's insolvency situation, the Administrator, must within 42 days of appointment or such other period as duly extended for that purpose, summon all known Creditors of the Company, with the view of proposing a solution to the Company's insolvency situation. This is a formal process known as the Initial Creditors Meeting (ICM). The Administrator's Statement of Proposal must be duly availed to all known Creditors ofthe Company.

It is significant that the Administrator may, following the inquisition, conclude on any of the following, that is, that the Company:

a. can fully pay all its Creditors; or
b. cannot fully pay its unsecured Creditors; or
c. cannot be rescued from its insolvent situation; or
d. a better result will be achieved for Creditors if the Company is immediately wound-up rather than a prior Administration process.

In any of these situations, the Administrator should simply reflect any of these conclusions in theStatement of Proposal and not bother with the ICM. Indeed, Administration should not be employed to unnecessarily waste the time of Creditors!

The powers and functions of an Administrator are far and wide and statutorily preserved by CAMA. They include the powers to:

a. take custody and control of all the properties of the Company;
b. call for meetings of the Company's Creditors and Shareholders;
c. appoint and remove the Company's Director(s);

d. employ and dismiss employees;
e. exercise or authorise the Company's management powers;
f. make distribution to the Company's Creditors;
g. use the Company's seal;
h. make any payment which is necessary or incidental to the performance of his functions;
i. establish subsidiaries for the Company and transfer the whole or any part of its properties or business to the subsidiary;
j. change the situation of the Company's registered office; and
k. appoint agents to do any business which the Administrator is unable to do, or which can more conveniently be done by the agent.

Taking the Benefits of Administration: Some Practical Insights

Where appreciated for what it is, Administration, perhaps is that first aid process that should be applied to an insolvent Company to revive it from its insolvent situation. Experience shows that non-cooperation and or resistance to the Administration process only goes to disadvantage the stakeholders of the Insolvent Company. In fact, the productive outcome of the Administration process is directly linked to the cooperation of the Company and its Shareholders and or Directors, as their synergy with the Administrator would result in a quicker revitalization of the Company.

Further, their understanding of the root cause of the Company's issues should help to save the time of the Administrator. Need it be mentioned that the Administrator is no Santa Claus and will be paid for his services! On the other hand, non-cooperation would only hinder the resuscitation of the Company, while affronts to the powers of the Administrator, including sabotage, should not be treated with kids' gloves – the Administrator should not hesitate to remove such stumbling blocks; he must eliminate any barriers to the tasking Administration process. Particularly where appointed by the Court, the Administrator is indeed an officer of the Court, and should be so treated.

The Administrator is a manager of resources, who should strive to make the best of a bad situation. Creditors must be respected and duly recognized, while they [Creditors] also work assiduously to prove the Company's indebtedness to them through appropriate documentation and or records. An Administrator is not duty bound to recognize any debt just because it is in the books of the Company; Creditors will have to prove the debts owed them when the Administrator calls them to do so.

As earlier mentioned, Administration is not an open-ended event or process; it should be for a short spell. Accordingly, an Administrator must be quick and decisive with actions. For example, non-cooperation especially by Shareholders should indicate to the Administrator the inabilities or unwillingness of the Company's owners to carry on the business. This inability or unwillingness should naturally lead the Administrator to working with Creditors; that is, helping the Creditors to salvage whatever can be salvaged of the bad debt situation. The fair sale of the properties and or businesses of the Company is a good action to take in such situations.

Conclusion:

With its new Administration Regime, Nigeria joins the league of developed countries that continue to reform their insolvency laws with proven options. Although nascent, Nigeria's Administration Regime is sure to develop, perhaps faster than those before it, that is, where Nigeria deliberately learns from the evolution of Administration in other regimes and shortcuts the unavoidable academic arguments that Administration had brought in its wake. A bold judiciary, progressive legislature and transparent regulators are the recipes for the envisioned outcome. Indeed, the rescue of the marooned Princesses isn't just the responsibility of the Knightalone, the realm must come to his aid with all the resources of timely and clear judicial decisions, clear and progressive laws, as well as an effervescent, just and commerce-inclined regulatory process.

Disclaimer:

Please note that the foregoing only serves as a public commentary of the views of the authors and is not intended to serve as legal advice. For further enquiries and consultations please reach out to any of the authors at:

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