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LESSONS LEARNT FROM NIGERIA'S FIRST COURT ORDERED ADMINISTRATION: THE MOORHOUSE COMPANY LIMITED – PT 1

INTRODUCTION

On August 7, 2020, Nigeria's Companies and Allied Matters Act, 2020 (**CAMA 2020** or **the Act**) was signed into law by the erstwhile President Muhammadu Buhari. With the passage of the Act came new introductions to Nigeria's corporate legal system, among which included the concept of Administration as it relates to insolvent companies. There were however, no practical applications of the concept of Administration until July 22, 2022, when the Federal High Court (the **Court**) in the case of **Accor Afrique v The Moorhouse Company Limited**,¹ coram Honorable Justice D. E. Osiagor granted an interlocutory order appointing Mr. Bidemi Daniel Olumide as an Administrator over The Moorhouse Company Limited (**Moorhouse**), a Nigerian company engaging in hospitality services, thereby effectively commencing Nigeria's first Administration under the CAMA2020 and the Insolvency Regulations 2022 (the **Regulations**).

This publication discusses the process of Administration from a practical perspective, highlighting the lessons learned from The Moorhouse Administration, and will serve as a guidance note to insolvency practitioners, insolvent corporate entities, creditors, and the general public on the suitability of Administration proceedings as an insolvency option in Nigeria.

A. APPOINTMENT OF AN ADMINISTRATOR BY COURT ORDER:

The CAMA 2020 provides that an Administrator may be appointed by an Administration order issued by the Federal High Court.² This Administration order will typically be granted by the Court where it is satisfied that the company against which the Administration order is sought is or is unlikely to be unable to pay its debts to

¹ Suit No. FHC/L/CS/1039/2022

² Section 448 of CAMA2020

creditors.³ This process is typically used by creditors to commence administration proceedings against an insolvent company.

This insolvency procedure is commenced by a special process referred to as the Administration Application,⁴ supported by an affidavit establishing the company's insolvent condition, and a written address.⁵

Upon, the appointment of the Administrator, the Board of Directors of the company is deemed suspended;⁶ in effect, the Board or any director acting on their behalf cannot bring an application challenging the appointment of the Administrator. However, this does not apply to the Shareholders as they retain the residual right to challenge the appointment in their personal capacity.⁷

The above notwithstanding, the creditors or shareholders of a company under administration can still bring such other matters or issues flowing from the misconduct of an appointed Administrator whether as to a subsequent disqualifying factor or due to unfair actions taken during the administration before the court for determination.⁸

Once an Administration Application has been made before the Court, the applicant is required to notify the following persons, all in respect of the company against whom the order is sought:

- a. A Receiver of the company (where applicable);
- b. A Court which appointed the Receiver above (where applicable);
- c. A person who may be entitled to appoint a Receiver over the company;
- d. A person who may be entitled to appoint an Administrator over the company;
- e. Any other person to whom the Court may prescribe.

The Court may at the hearing of such Administration Application among other matters, grant or dismiss the application, or make an interim order.⁹ An interim order in this instance may include an interim or interlocutory Administration order, as was the case in *The Moorhouse Company Limited*.¹⁰

B. NEXT STEPS/ACTIONS AFTER AN ADMINISTRATION ORDER:

The tenure of an Administration begins on the day such Administration Order is granted or such day prescribed by the Court and lasts for a period of 1 (one) year, subject to extensions as provided under CAMA2020. Accordingly, it is essential that

³ Section 449 of CAMA2020

⁴ Section 450(1) of CAMA 2020.

⁵ Other documents which would accompany the application include a letter of nomination of the proposed Administrator by the creditor who is making the administration application as well as supporting documents evidencing such nominee's expertise as an insolvency practitioner. See our article, [ADMINISTRATION: CAMA'S KNIGHT TO RESCUE MAROONED PRINCESSES - AO2 LAW - Anaje, Olumide, Oke, Akinkugbe. Legal professionals with international depth](#).

⁶ Section 501 CAMA2020

⁷ See the case of *Closegate Hotel Development (Durham) Ltd v McLean* [2013] EWHC 3237 (Ch)

⁸ Section 511 CAMA2020

⁹ Section 451(1) and (3) of the CAMA2020

¹⁰ This application is made *ex parte* pending the hearing and determination of the substantive application seeking to admit the Insolvent Company into Administration. Section 451(1) & (3) and 481 of CAMA2020

a timeline document (possibly in the form of a *Gantt Chart*) be prepared by the Administrator as this would help guide the Administrator in the timely performance of statutory functions and obligations – *for instance in his request for a statement of affairs or the holding of an Initial Creditors Meeting*.

Upon grant of an Administration order by the Court, an Administrator is expected to issue notices of his appointment to the following persons:

- a. The Corporate Affairs Commission (CAC);
- b. The Shareholders and Directors of the Company;
- c. All Creditors of the Company to whom debts remain outstanding;
- d. A Receiver where same was in office over the affairs of the Company;
- e. The banks and financial institutions in which the Company has assets;

The Administrator must request a Statement of Affairs from an officer (director/secretary/auditor) of the company under administration as soon as is reasonably practicable after his appointment.¹¹ An Administrator may also request a Statement of Concurrence from another officer of the company (*though not always necessary*), basically to support whatever facts are stated in the Statement of Affairs in relation to the insolvent company's business – revenue, debts, assets, etc. These documents are essential as they provide the Administrator with a detailed view of the company's situation, thus assisting him in determining a course of action in the administration of the company. This course of action will typically be indicated in the Administrator's Statement of Proposal which will be presented at the Initial Creditors Meeting.

For ease, below are recommended actions to be taken by the Administrator upon the grant of an Administration order by the Court:

- a. Setting up a team of legal and administrative personnel to aid him in the performance of his obligations. It is advisable that the legal personnel are versed in the statutory and time-bound provisions of administration as provided in CAMA2020 as well as the Insolvency Regulations 2022;
- b. Preparation of a checklist of shareholders, directors and creditors of the company;
- c. Preparation of a detailed schedule of assets and submission of a copy to the Court within 60 days of appointment;¹²
- d. Issuance of notifications to relevant persons;
- e. Creation of a timeline guidance document (*Gantt Chart*);
- f. Request for statement of affairs + statement of concurrence from company's officers;
- g. Preparation of the Administrator's Statement of Proposal;
- h. Issuance of notices for Initial Creditors Meeting (ICM) to relevant persons – notices must be accompanied by the Administrator's Proposal;

¹¹ Section 484 CAMA2020

¹² Section 444(6) CAMA2020

- i. Convening the Initial Creditors' Meeting (ICM) and approval of the Administrator's Proposal, with or without modifications;
- j. Implementation of resolutions of creditors;
- k. Provision of updated reports to the creditors and Court on the progress of the Administration.

C. DETERMINING A COURSE OF ACTION:

Under the CAMA2020, the objectives of an administration include: (i) rescuing the company, the whole or any part of its undertaking, as a going concern;(ii) achieving a better result for the company's creditors as a whole than would be likely if the company was wound up, without first being in administration; or (iii) realising property in order to make a distribution to one or more secured or preferential creditors.¹³

In determining an appropriate course of action for a company in administration, an Administrator must weigh a variety of factors such as the company's debt position, its assets value, the nature of its business, and the possibility of repaying its debt from such business activities within the tenure of the administration.

To correctly determine the company's debt position, a thorough search should be conducted to determine if there are existing secured, unsecured or preferential creditors. As a first step, it is advised that the company's latest Audited Financial Statement is sourced as this will give the Administrator a broad insight into the company's finances vis-à-vis its assets and liabilities. Thereafter, a public notice should be made notifying the public that the company has been admitted into administration, thereby inviting persons owed by the company to submit their claims through the Administrator. This notice is also to be indicated on the website of the company. The assessment of the company's total indebtedness and the worth of its assets will assist the Administrator in determining if the purpose of the administration would be better achieved if the company is liquidated, or if it has a better chance at survival.

Furthermore, the operational state of the company's business facilities will determine if it can continue its business to generate the needed revenues to restore its profitability. Where the company's facilities are irreparably damaged and require intensive capital investment, the cooperation of the owners/shareholders of the company will be a huge determinant as to whether the operations of the company can be revived in order to maintain the company as a going concern.¹⁴

In determining all the above factors, the interest of the creditors is paramount. Typically, the creditors may be constrained to concede to a debt moratorium to enable the company to analyze properly its financial state and elect the best options for the resolution of its debt. This was especially necessary in The Moorhouse Administration

¹³ Section 444(1) of the CAMA2020

¹⁴ This cooperation can be demonstrated by providing the funds to buy needed equipment; or consenting to external funding in exchange for equity or such other options as may be proposed in the Administrator's Proposal.

as the debt moratorium was given to allow the Company's shareholders to raise funds for the part settlement of the creditors as well as to address operation concerns. However, such concessions must be strictly time-bound, considering inflation and economic realities especially where there has been a long-standing debt. Upon considering these various factors, the Administrator may then propose a debt work-out solution for the company which may include restoring the company to profitability and/or disposing the company's assets to pay its debts.

D. ADMINISTRATOR'S RELATIONSHIP WITH THE COURT:

Upon his appointment, an Administrator is deemed to be an officer of the Court. Accordingly, it is essential that he works closely with the Court in the course of overseeing the affairs of the company during his tenure. This can be done by providing periodic progress reports (*possibly on a monthly basis*) to the Court, intimating it of the actions of the Administrator over the insolvent company. As an officer of the Court in respect of the insolvent company, it will also not be out of place for an Administrator to hold periodic physical meetings with the judge to provide updates on the progress of the administration and answer such queries as the judge may have in relation to the progress of the administration.

It is essential that a Court is intimately aware of all issues affecting the business of the insolvent company especially as the Administrator is given powers to dispose of property, where same is necessary to achieve the twin purposes of the administration – which are to revive the business of the company and to settle all outstanding debts owed to creditors. In this wise, the Court would necessarily have to be informed and may need to “sanction” the sale, where the Administrator has communicated his opinion that such sale is necessary to achieve the purpose of the administration.

A court-sanctioned sale will also provide adequate security to a potential purchaser of the company's assets and forestall any unnecessary disputes from arising in the future. Thus, upon his appointment, the Court's relationship with the Administrator should be based on trust and good faith bearing in mind the purpose of his appointment.

This publication forms the first part of the lessons learned from the Moorhouse Administration. A second part addressing the Administrator's management of creditors, the Administrator's Proposal, Meetings etc. will be discussed in a subsequent publication.