ADDRESSING INSOLVENCY AND BUSINESS RECOVERY ISSUES IN THE OIL INDUSTRY: PROPOSAL FOR IMPROVEMENT IN NIGERIA'S INSOLVENCY AND BANKRUPTCY LAWS

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Abstract

Background/Aim: *Insolvency and business recovery laws in Nigeria have not evolved to incorporated reorganisation, reformation of insolvent oil firms' operations to boost commercial oil firms' steadiness and economic suitability like other moderately developed countries. In Nigeria, liquidation is understood by many as the panacea to indebtedness. The research evaluates Nigerian insolvency and business recovery legal regime to sustain indebted oil firms from economic shocks owing to the global decline in the oil price to avert imminent business failures due to insufficient cash flows. The aim is to fill the gaps in Nigeria's insolvency and business recovery laws by recommending a model for the sustenance of oil firms and to propose the reform of the gaps identified in the existing laws and the extant literature on the subject.*

Methods/Materials: *The paper opted for conceptual legal review, comparative legal and policies*

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analyses of solvency and business recovery legislations in Nigeria, Malaysia, India, South Africa, the United Kingdom and the United States. These nations were designated for this study because their insolvency and business recovery legal regime are business rescued driven, not winding up centred.The study is library research-based to address some of the flaws in Nigeria's insolvency and business recovery laws.

***Results/Findings**: The study finds thatNigerian legislation on insolvency is flawed in the area of oil firms' salvage, improvement and rearrangement. It ends that, statutory bodies in the designated case study nations are efficient than those in Nigeria due to the strong political will of their governments in supporting insolvent oil firms for successful financial recovery, to safeguard jobs, to protect creditors and to enhance the wealth of their nations through sound business recovery policies and laws.*

***Conclusions/Recommendations:** The study, advocates remodel of Nigeria's insolvency and business recovery legislations and policies in compliance with the international standards on insolvent oil firms salvaged and creditors focused policies for a robust economy. The study concludes with the recommendation for further study to consider quantitative analysis research methodology to project further scholarship on the subject.*

Keywords: Nigeria, Oil Firms, Creditor, Insolvency and Recovery laws.

1. Introduction

Globally, the call to overhaul insolvency and business recovery laws have been a concern to many nations, as many countries are now making an effort to enhance their insolvency laws to focus on business salvage and lenders focused legal regime to enhance fiscal stability, business propriety and to avert loss of means of livelihoods. The remodel was done in the designated nations to improve their insolvency and business recovery procedures which Nigeria can replicate to boost its business recovery due to the current global economic shocks occasioned by the pandemic.

Insolvency is the failure of an oil firm to fulfil its financial obligations[1], Section 572(a)(b)(c) of the Companies and Allied Matters Act, 2020 and Section 408(d) of Bankruptcy and Insolvency (Repeal and Re-enactment) Act, 2016, describes insolvency as the failure of oil firms to recompense financial obligations particularly lenders by an assignment which the firm is owed a sum above₦2,000.00.The lender must give notification of its claims to the firm at its head office demanding the sum which is outstanding for three weeks and after expiration of the ultimatum where such oil firm fails or declined to disburse the unpaid amount to the approval of the lender.[2]

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1 Rashid Shamim, MD, Bankruptcy Laws: A Comparative Study of India and USA, (2019), 10 (2), *International Journal of Management,* 247-252.

2 Adebola, B.A., (2012), Corporate Rescue and the Nigerian Insolvency System, (Unpublished PhD Thesis Submitted to the University College, London for the Degree of Doctor of Philosophy), available at <http://discovery.ucl.ac.uk/1385156/7/1385156_Thesis.pdf> (accessed September 3, 2020). 15.

This often arises where the court made a directive in the interest of a creditor of an oil firm and where the directive is not obeyed, the court of law can deliberate on the dependent obligation of the oil firm. Where insolvency occurs, the firm may, by order of the court, be declared insolvent by petition brought by the creditors, the debtors or by an act of agreement with the creditors, that its assets should be sold to settle the debt as soon as the assets can be disbursed.

Many upstream oil firms are now closing their business, while some are leaving Nigeria due to debts, unsafe market restructuring strategies, a slump in global oil markets and a lack of funds to finance strategic oil ventures. Chevron, Total, Royal Dutch Shell and Eni, among others, have disbursed several of their onshore possessions in the sector due to governing policies changes, and there is a need for the Federal Government to intervene to prevent job losses due to post COVID -19 effects.[3]

The Bankruptcy Act relates to insolvency proceedings against individual debtors and associations on its own, while the Companies and Allied Matters Act 2020, regulates the termination of oil firms as well as arrangement and compromises. The latter choice is not often utilized in practice since insolvent lawyers tend to compel the courts to shut down and terminate the life of insolvent oil firms devoid of allowing the debtor firm to restructure its operations and repay its debts over time. Though winding up is the final alternative in other countries, it is seen as the first preference in the country, leading to the untimely death of many oil

[3] Daniel, E. U., Olujobi, J. O., Ogbari, M.E., Dada, J. A., Edafe, O. D., Operations of Small and Medium Enterprises and the Legal System in Nigeria (2020), 7, 94, *Humanities and Social Sciences Communication*, 1-7.

firms that could have been recovered if they had a chance to handle and restructure their debts properly.[4]

Therefore, the focus of the proposed model insolvency law is to encourage the prospect of reforming insolvent oil firms and their enterprises in order to ensure the continuity of business that will result in long-term jobs, disbursement of levies and dividends and supplementary socio-economic advantages to Nigerians. Therefore, in line with the global trend of nipping insolvency in the bud, there is a need for an inclusive transformation of the extant insolvency law by encouraging mechanisms for business rescue and restructuring in the oil industry.

However, the goal of this analysis is to perform comparative legal and policy analyses of insolvency and business recovery laws in Nigeria, Malaysia, India, South Africa, the United Kingdom and the United States in order to update Nigeria's insolvency and business recovery laws and policies, from the winding-up of insolvent oil firms to the reorganisation, consolidation and operation of those oil firms to promote economic stability in the country.

The study is apportioned into five parts. Section one includes the overview, section two addresses the methodology, the statement of the problem, the theoretical structure, the national regulatory mechanism for insolvency and oil firm recovery in Nigeria, section three, defines the administrative, legislative environment and analyses of the existing legal framework of Nigeria, Malaysia,

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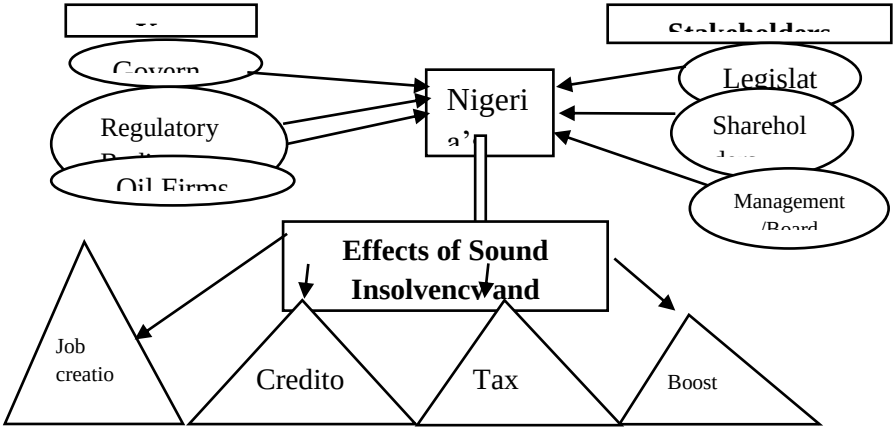
[4] Fatula, O., A., 'Comparative Critique of the Framework of Insolvency in Nigeria', (2007), 1(1& 2), *Bar Review*, A Publication of the Nigerian Bar Association, Ikeja Branch, 44-63.

India and South Africa, the United Kingdom and the United States. Section 4 discusses the signs to look out whether oil firm's business is in insolvency and section five addresses turnaround or redemption plans for insolvent oil firms and other solutions available to unsecured creditors with the various realistic practices strategies Nigeria should learn from the chosen case study nations. The paper concluded with recommendations.

Figure 1: The Proposed Model of Nigeria's Insolvency and Business Recovery Legislations and Policies



Sources: This was prepared by the author

2. Methodology

The key objective of this analysis is to explore how the nucleus of insolvency and oil firm business recovery activities in Nigeria will change from prosecution of insolvent oil firms by liquidation to reorganisation, consolidation of those oil firms to improve economic stability, financial property and industrial growth. To accomplish this aim, the author utilised bibliography-based doctrinal legal research methods, accompanied by analysis and a

guide from internet references, a systematic examination of scholarly literature, a review of case studies and an overview of the applicable legal and regulatory stipulations. The research is based on secondary sources, for instance, periodicals, textbooks and primary sources, for instance, judicial precedents and statutory provisions with comparative legal and policy analyses of insolvency and business recovery laws in Nigeria, Malaysia, India, South Africa, United Kingdom and the United States. The research proposes the uses of the lessons learnt to reform the gaps identified in Nigeria's legal regime.

3. Statement of the Problem

In Nigeria, the majority of oil firms in acute financial crises often end up being liquidated, and this is harmful to the economy due to losses of employments. However, some of these oil firms can be profitable and can be restructured for the good of their borrowers, debtors and the economy of Nigeria. Some ailing state-owned oil firms pre-insolvency may raise capital by selling their shares to the public for sale through an initial public offering or private placement or the stock market, as elaborated in Section 2 of the Public Sector (Privatisation and Commercialization) Act, 1999.

Some private oil firms can also raise capital by borrowing from financial firms or via other suitable means, rather than liquidating or winding up those oil firms businesses in Nigeria. Therefore, there is a need for a paradigm shift to recover financially distressed oil firms by recovering their properties and liabilities, as well as by conducting negotiations with their creditors to reach a definitive consensus on the repayment plan of the loan on agreed stipulated time by the parties.[5]

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[5] Asada, M., and Olong, M., 'The Corporate Investigative Powers of the Corporate Affairs Commission in the Promotion of Corporate Governance in

4. Theoretical Framework on Insolvency and Business Recovery Practices

Donaldson and Davis introduced the philosophy of stewardship in 1991. The philosophy centred on the idea that the needs of shareholders and the desires of management should be matched and directed to take actions that will be to the best advantage of the oil firm's success and its intrinsic values.[6]

The philosophy argues that there is more importance in joint activities for the performance of the firm than individual interests. In contrast, the actions of the board, the regulatory bodies, should be directed at increasing the resources of the owners (shareholders) and equally satisfying their desires. The board and the management of the oil firms are obligated to make the most of the resources of its owners by investing, selling and reforming by doing so, optimising the assets and opportunities of the insolvent oil firm.

In order to achieve this aim, the government must reform the regulatory system governing insolvency and corporate recovery procedures for business-rescue, reconstruction and consolidation strategies for job-savings, which are guided by creditors' strategies for a stable economy for the country. Management activities of oil firms are better encouraged where the corporate governance systems grant them strong authority and power to ensure that the firm stays in operation effectively to represent the needs of the shareholders, to improve the economy of the nation and to support

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Nigeria', *Bar Review*, (2007), 1, (1&2), A Publication of the Nigerian Bar Association, Ikeja Branch, 79.

6 Donaldson, I., and Davis, J.H., 'Stewardship Theory or Agency Theory, CEO Governance and Shareholders Returns', (1991), 16, *Australian Journal of Management*, 49-64.

the interests of all stakeholders in the field Davis *et al*.[7] recognised five modules of organisation principle of management as honesty, transparent collaboration, leadership, long-term outlook, market success and economic development which will boost profitability and sustainability of the oil firm.

In comparison, the second principle applicable to this analysis is the resource dependence theory. Pfeffer and Salancik founded it in 1978 with the goal of emphasising the importance of the role played by all stakeholders, such as the government regulatory bodies, the board of directors and shareholders, in improving the efficiency of the oil industry and preventing it from liquidation. Oil firms need capital for investment in crude oil exploration activities, inestimable human resources department roles, easily accessible scientific data, communiqué and skill to work correctly to attain oil firms' corporate aims.

Generally, it is argued that resource accessibility improves the service, profitability, efficiency and market longevity of oil firms. Some researchers have suggested that the hypothesis reflects on the vital role that government's policymakers and managers play in supplying the firm with critical services via their connexions to the outside world. They claim that managements add capital to the firm with data, expertise to get vendors, customers, public policymakers, social groups and credibility of their products.

The principle focuses on the means of access to capital for the activities of oil producers that are vital to their progress. According to Pfeffer and Salancik1978[8], The boards' roles include guidance,

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7 *Ibid.*

8 Pfeffer, J., and Salancik, G.R., 'the External Control of Organisations: Sources – Dependency Perspective', Haper and Row New York, (1978), NY.

advice and professional know-how, credibility and prestige, a conduit for transmitting knowledge to other agencies, and exclusive access to agreements or funding from crucial players. The boards undertake these roles through social and technical networking. Zahra and Pearce[9] Suggest that the varied history of the managements increases the consistency of their recommendations to the oil business, thus improving the viability and survival of the firm without insolvency.[10]

Another good idea is that utilitarianism's ethical philosophy, which is based on the fairness and wrongness of actions; this relies solely on the truth of optimising human well-being as a whole. It is based on the highest benefit for the largest number, and it encourages individuals to behave in some manners that can result in the most significant possible amount of well-being for the general population: David Hume[11] Argued in his philosophical essays that much of our moral thought is mostly dictated by what we consider reasonable. The emphasis of utilitarianism on well-being is deeply rooted in human nature. Jeremy Bentham claimed that, as the total amount of enjoyment is raised, ethics can be adequately upheld all over the world for good conducts.[12] This will enhance efficiency in the oil industry.

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9 Zahra and Pearce, 'Boards of Directors and Corporate Financial Performance', (1989), 15, A Review and Integrative Model, *Journal of Management*, 291.

10 *Ibid*, note 10, p.5.

11 Hume, D., (1979), Hume's Ethical Writings: Selections from David Hume.

12 Bentham, J., 'Utility and Reason', (2010), < https://www.aub.edu.lb/fas /cvsp/documents/flysheets%20fall%2010-11/203/bentham.pdf> accessed September 19, 2020 at 3.

5. National Legal Regimes on Insolvency and Business Recovery Practices

The critical legislative mechanism for personal insolvency, otherwise known as bankruptcy in the country, is the Bankruptcy ActCap.B2LFN, 2004 and the Rules of Procedure laid down in the Bankruptcy Rules B2, LFN, 2004. The Federal High Court Rules augment the law following the terms of the Bankruptcy Act. The Bankruptcy and Insolvency Act 2016 and the Bankruptcy Laws govern insolvency proceedings in Nigeria. The Companies and Allied Matters Act, 2020, Investment and Securities Act, 2007 (No. 29), Investment and Securities Rules, 2013, Banks and Other Financial Institutions Act, Cap.B3, LFN, 2004 (as amended), Sections 16 and 21 of the Nigeria Deposit Insurance Corporations Act Failed Banks (Recovery of Debts and Financial Malpractices in Banks) Act, Cap F2, LFN 2004, Secured Transactions of in Moveable Assets Act, 2017 No.3, A43, and Central Bank of Nigeria Act, Cap. C4, LFN, 2010, among others are the cardinal national legal framework regulating insolvency in Nigeria.

Insolvency and corporate restructuring practice can be practiced by any person but exclude anyone under the age of 21 years, incompetent persons, individuals who have been declared bankrupt by a court of competent jurisdiction and individuals who have been sentenced by the court. Insolvency rule affects businesses that are debtors who are unable to settle their financial obligations while bankruptcy refers to persons and partnership businesses in Nigeria.
Moreover, section 108 of the Bankruptcy Act (as amended) by Decree No. 109 of the 1992 Cap.B2LFN 2004 forbids the issuance of an injunction under the Act against any firm or corporation listed in the Companies and Allied Matters Act 2020. The process for winding up insolvent oil firms is governed primarily by the

winding-up proceedings under the Companies and Allied Matters Act, 2020. Section 7 of the Federal High Court Act, ChapterF12, LFN, 2004 and Section 251(1)(e) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) allowed the Federal High Court to deal with insolvency cases. The place of business of the claimant rather than the place of residence is considered for instituting insolvency proceedings in court against the insolvent oil firm.[13] Restitution of debts by debtors to creditors can be taken before the Federal High Court, based on the jurisdiction where the individuals have executed the arrangements and subject to the circumstances of each case.

On the other hand, winding-up processes commence by lodging a petition in the Federal High Court.[14] Where the claimant carries on business for a more significant part of the six months immediately before the filing of the petition, even though the petitioner no longer remains in that judicial division, but he is entitled to appeal in the Court of Appeal and lastly at the Supreme Court.[15]

A borrower may file a bankruptcy petition against a debtor who owes more than One Million Naira ₦1,000,000.00 or is bankrupt within (6) six months of filing the petition. Investment and Securities Act, 2007 and Securities and Exchange Commission Regulations, 2013 control mergers, acquisitions and purchases of equity of listed public oil firms in the country.

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[13] Ibiyemi, J. A., 'Introduction to Insolvency Practice in Nigeria' (1999, Spectrum Books Limited, Ibadan, Nigeria).

[14] Section 578(1) Companies Allied Matters Act 2020

[15] *Ibid*, s. 570(1).

However, another odd feature about the insolvency profession is that corporate bodies are not permitted to join the practice by statute. A private organisation cannot be a trustee under bankruptcy section 123 of the Bankruptcy Act, Cap. B2,LFN, 2004. Section 627 Companies and Allied Matters Act 2020 provide for a liquidator, but a corporate entity cannot be named a receiver or liquidator under the Act.

Besides, the Banks and Other Financial Institutions Act (BOFIA), Chapter B3, LFN, 2004 governs the consolidation, rearrangement, amalgamations and transfer of financial institution. Section 7 of the Banks and other Financial Institutions Act bans the consolidation, reorganization, acquisition and disposition of any gain or benefit in financial entity devoid of the assent of the Governor of the Central Bank of Nigeria. The Nigeria Deposit Insurance Company Act, Cap N, 102, LFN, 2004 governs the protection of savings liabilities of approved banks and other financial institutions to cover the benefit of investors in the case of inevitable fiscal problems.[16]

The following legal deficiencies are found, among others, in the Nigerian insolvency legal system, there are the absence of a well-organised process for managing debts of insolvent oil firms, lack of comprehensive and specific insolvency and firm rehabilitation regulations in Nigeria's legal regime to avoid the liquidation of potentially viable oil firms and poorly managed oil firms, owing to insolvency litigations by the congested courts and vulnerability to

[16] Olujobi, O.J., 'Analysis of the Legal Framework Governing Gas Flaring in Nigeria's Upstream Petroleum Sector and the Need for Overhauling' (2020), 9, *Social Science*, 132.

bribes, leading to considerable delays and obstruction of justice in the hearing of insolvency proceedings in courts in the country.[17]

6. Institutional Frameworks Regulating Insolvency and Business Recovery Practices in Nigeria

Section 7(1)(c) of the Banks and other Financial Institutions Act, Cap.B3LFN, 2004 stipulates that without the preceding approval of the Governor of the Central Bank of Nigeria, no financial institution shall implement any agreement or arrangement with any other person for the merger or amalgamation of such financial institution.

Nigeria's Central Bank has a function to perform by ensuring that no financial institution in Nigeria concludes any merger or amalgamation agreement with another bank without its approval and failure attracts a fine not less than ₦1,000,000 and where there is an ongoing wrongdoing an extra penalty of ₦10,000 for every day the breach persists. The Banks and Other Financial Institutions Act, Section 7(2), Cap. B LFN, 2004. The statutory roles of the Central Bank of Nigeria and the Nigeria Deposit Insurance Corporation complement each other; their roles in the handling of failed or insolvent financial institutions. The Assets Management Corporation of Nigeria (Amendment) Act, 2015 is to resolve banks' non-performing loan and assets effectively.[18]

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[17] Leonard, B., the International Insolvency Institute, Restructuring and Insolvency 2017, <https://www.freshfields.com/globalassets/services-page/restructuring-and-insolvency/publication-pdfs/getting-the-deal-through-randi-2017.pdf> (accessed September 3, 2020).

[18] Soludo, C.C., 'Consolidating the Nigerian Banking Industry to Meet the Development Challenges of the 21st Century, Being an Address Delivered to the Special Meeting of the Bankers' Committee, held on July 6, 2004, at the CBN Headquarters, Abuja.

The Securities and Exchange Commission (SEC) is authorized to regulate investment and bond-related matters in Nigeria. It evaluates and supports the amalgamations and acquirements of oil firms. Its enabling legislation, the Investments and Securities Act, 2007 should be revised to incorporate an insolvent oil firms rescue system to ensure job security and enhance Nigeria's economy.

The Corporate Affairs Commission (CAC) is instituted under section 1(1) of the Companies Allied Matters Act 2020 to manage the Nigerian company registry, to investigate the activities of any oil firm to protect the interests and benefits of investors and the society, to regulate, supervise the establishment, registration, controlling and liquidation of oil firms in Nigeria in order to prevent fraud, irregularities and mismanagement.[19]

Section 119(1) of the Investments and Securities Act, 2007 describes a merger as a combination of the activities or any part of the responsibility or the interest of two or several firms or some of the activities of one or more firms and one or more of the entities of the undertaking.

According to Section 849 of CAMA, a merger may be made in any way, comprising acquisition or lease of the stocks, profit or possessions of the entity concerns, or by merger or other mixture with the other company concerns. The Federal High Court has exclusive powers to wind-up oil firms, as set out in Section 570(1) of the Companies and Allied Matters Act 2020. However, special courts supervised by judges who are experts in insolvency and bankruptcy with staff who are experts in this field of law are

[19] Asada, M., and

needed for efficiency in oil firm business rescue and recovery strategies.[20]

Nigeria Deposit Insurance Corporation created under the Nigeria Deposit Insurance Corporation Act, Cap N, 102, LFN, 2004 controls the indemnification of payments liabilities of licensed banks and other financial institutions to protect depositors' interest in the occasion of banks' economic intricacies. Recovery and Insolvency Practitioners' Association of Nigeria, an association of insolvency experts with knowledge of business recovery and insolvency in Nigeria. It will ensure that its members retain such knowledge and perform their insolvency and business recovery work by their professional ethics.[21] The National Assembly should introduce a bill prohibiting the services of uncertified persons as insolvent practitioners to entrench sound governance and professionalism in insolvency practice in Nigeria.[22]

It must have a framework on the minimum prerequisites for practising as an insolvency expert with an up-to-date register of its members with continuing vocational training, the development of its members with the Code of Conduct and the discipline of its erring members, and there is a need for licensing of insolvent and business recovery practitioners in Nigeria.[23]

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[20] Olujobi, O. J., and Olusola-Olujobi, T., Insolvency Law and Business Recovery Practices in Nigeria's Upstream Petroleum Sector: The Need for a Paradigm Shift, (2019), 10(1), *International Journal of Mechanical Engineering and Technology* 1609-1628.

[21] Sections 704, 705(1)(2),706 CAMA 2020.

[22] *Ibid*,

[23] Khan, S., Olivia, T., and Bidin, A., 'Recent Developments of Insolvency and Restructuring in Malaysia', (2014), 8(1), *Australian Journal of Basic and Applied Sciences*, 508-512.

There is also the need for institutional reforms and cooperation with the statutory bodies that regulate insolvency practitioners in Nigeria with the supervisory bodies in the petroleum sector to reduce winding-up of oil firms on account of insolvencies. The Ministry of Petroleum and Energy Resources, supervised by the Ministry of Petroleum, is legally authorised to develop rules governing the oil sector through the Department of Petroleum Resources (DPR) to endorse rules for crude oil exploration and refining in the country. The Ministry needs to do more to prevent the continuing failure of oil firms in the country as a result of insolvency and poor corporate governance.[24]

7. Comparison of Municipal Legal Regime of Nigeria, Malaysia, India, South Africa, the United Kingdom and the United States on Insolvency and Business Recovery Laws

Several trends in business rescue and acceptable practices have emerged over the years, and many countries have revised and implemented their laws by these trends in order to have an adequate legal framework that incorporates good international practice on creditor rights and insolvency, as laid down by the World Bank and the United Nations Commission on International Trade Law (UNICITRAL).[25]

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[24] Olujobi, O. J. Legal Framework for Combating Corruption in Nigeria – the Upstream Petroleum Sector in Perspective,(2017), 3(25), Journal of Advanced Research in Law and Economics, 956–997.

[25] Olujobi, O. J., and Olujobi, O. M., Comparative Appraisal of Anti-Corruption Laws: Lessons Nigeria Can Learn from Norway, United Kingdom and United States' Anti-Corruption Strategies, (2020), 11(7), *International Journal of Management*, 338-347.

In England and Wales Insolvency Act, 1986 (as amended) governs insolvency while the Directors Disqualification Act, 1986 governs directors of insolvent companies. The insolvency law of England and Wales does not define insolvency, but Nigeria, Bankruptcy and Insolvency (Repeal and Re-enactment) Act 2016 section 408(d) of defines insolvency as an inability to pay a debt that arises where the creditor, by assignment or otherwise, is liable to a sum of more than ₦2,000 to the firm when the registered office is applying for payment of the outstanding amount if, after the expiration of three weeks, the firm refused to pay the outstanding amount to the reasonable satisfaction of the creditor. However, in other selected case study countries, the Act only defines the inability to pay as a failure to pay a claim due to a creditor exceeding the amount of £750 within three weeks after the written notice of request has been given.[26]

England and Wales have no superior insolvency court, but their High Court has the power to close any firm registered in England and Wales. However, in the United States insolvency cases are dealt with by bankruptcy courts, a division of the Federal District Courts with limited jurisdiction. In contrast, in Nigeria, no higher court has been designated as insolvency court and is being held solely by the Federal High Court, as provided for in section 251(1)(e) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

In Malaysia, Section 176 of the Companies Act, 1965 established specialised courts to handle insolvency proceedings with provisions

[26] Opara, L.C, Okere, L.I., Chinwendu O. Opara, 'the Legal Regime of Bankruptcy and Winding-Up Proceedings as a Tool for Debt Recovery in Nigeria: An Appraisal,' (2014) 10 (5), *Canadian Social Science*, 61-69.

for out-of-court workouts, allowing creditors to participate in decision-making, applying strict rules to insolvency practitioners to prevent fraud and unethical insolvency practices. Malaysia has also been practising some of these acceptable business rescue procedures, and this has proved to be an effective way to resolve insolvency cases faster and efficiently.[27]

The Dodd-Frank Wall Street Reform and Consumer Protection Act, 2010 and the Insolvent Partnerships Order, 1994 (as amended) regulate the insolvency of partnerships in the United States, the Bankruptcy Abuse Prevention and Consumer Protection Act (2005) transformed individual bankruptcy procedure in the United States. Chapter 13 bankruptcy law necessitates debtors to streamline their debts and to initiate three or five years repayment plan; it allows the debtor utilise future revenues to settle creditors wholly or partly.[28]

In India, the Insolvency and Bankruptcy Code, 2016 regulates oil firms, partnerships and individuals. It aid firms to make restructuring plans to pay up their debts and as well remain in business by protecting the interests of the parties through the modification of the orderliness of payment of the debt and government charges. Insolvency Resolution Process empowers creditors to evaluate the insolvent oil firm business viability whether to rescue it or to liquidate it via a request to the National

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[27] Douglas -Abubakar, J., 'International Comparative Legal Guides to Corporate Recovery and Insolvency in Nigeria (2018), available at <https://iclg.com/practice-areas/corporate-recovery-and-insolvency-laws-and regulations/nigeria> (accessed September 3, 2020).

[28] Kagan J., Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), <https://www.investopedia.com/terms/b/bapcpa.asp.> accessed September 18, 2020.

Company Law Tribunal. An insolvency professional may be appointed after the approval of the board. The Code makes provisions for speedy insolvency resolution procedure. The Code is very comprehensible and supportive of the insolvent oil firm and creditors. Also, the Sick Industrial Companies (Special Provisions) Act, 1985, and Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.[29]

Insolvency in Malaysia is regulated by the Companies Act, 1965 and the Company Winding-Up Rules. In India, the Parliament adopted a second amendment to restructure the 1956 Insolvency Act, leading to a new corporate-business regime that was rescued driven in December 2002. In Nigeria, even though bankruptcies and winding-ups are very similar; the provisions dealing with them are contained in separate legislation, unlike some of the selected case study countries.[30]

Similarly, the South Africa Companies Act 2008 restructured its arrangement and compromised the provisions of the law eliminate one phase of insolvency proceedings which required a court application before a meeting. Also, in 2016, the United Kingdom's

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[29] Aprita, S., Emirzon, J., and Syaifuddin, M., 'Restructural Justice-Based Legal Protection for Bankrupt Debtors in Settling Bankruptcy Disputes' (2019), 10(5), International Journal of Civil Engineering and Technology, 885-897.

[30] Idigbe, A., 'Using Existing Insolvency Framework to Drive Business Recovery in Nigeria: The Role of The Judges', (2011) Being Paper Presented at 2011 Federal High Court Judges Conference held at Sankuru Hotel Sokoto on October 11, 2011, t<http://www.punuka.com/uploads/role_of_judges_in_driving_a_business_recue_approach_in_existing_insolvency_framework.pdf > (accessed September 3, 2020),1-21.

Government reforms its insolvency laws to incorporate restructuring and rearrangement.[31]

In other relatively advanced climes where the insolvency laws have been judiciously restructured, for instance the United Kingdom and the United States, the operations of the insolvent oil firm may persist under an acknowledged protection procedure. A preference recovery options are being formulated between the parties. The protection plan may offer, duration, for the debtor firms to have their properties under the management of the court with a turnaround strategy for the undertaking or to set up a turnaround plan for the undertakings.

Professional insolvency practitioners to manage a failed oil firm positively and to prevent an preventable liquidation where there are strong potentials that the oil firm remains sustainable and indebtedness could be due to improper governance, mismanagement, God's Act, *force majeure* and sudden adverse regulatory changes, among others, but these are not yet in place in Nigeria.[32]

In Nigeria, under section 634, 635 of the Companies Allied Matters Act 2020, creditors may request the court to remove the veil of incorporation of the firm in order to make its directors personally liable if they are guilty of any crime or civil wrongdoing committed

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[31] Olujobi, O.J., & Olusola Olujobi, T., (2020), Comparative appraisals of legal and institutional framework Governing Gas Flaring in Nigeria's Upstream Petroleum Sector: How Satisfactory?, Environmental Quality Management, 1-14.

[32] Idigbe, A.I., 'Recall Insolvency & Restructuring in Nigeria, (2017), <https://www.proshareng.com/news/debtors%20&%20recovery/recall:-insolvency-&-restructuring-in-nigeria/34616> accessed September 3, 2020.

by an oil firm that they have been aware of. The firm will lose its privilege of legal persons, specifically where the directors who have signed the contract are personally liable. Sections 206, 211, 213 and 214 of the Insolvency Act of England and Wales have a provision similar to that which allows a liquidator or an administrator to sue the directors for unlawful trading knowing full well that the firm lacks the prospect of insolvency trading.

8. Global Experiences in Insolvency and Business Recovery Procedures

As the international fiscal upstream oil industry progresses, the core of contemporary indebtedness recovery practices and regulations has modified from the retribution of bankrupt oil firms via obligatory winding up to a new productive substitute, the reorganisation and rearrangement of such firms and their processes, to rehabilitate them to guarantee fiscal firmness and economic suitability. In Nigeria, though, the conventional method is maintained where the winding-up of the oil firm's venture and winding-up remains the sole mechanism for dealing with cases of oil firm insolvency.

One of the current developments is that lawyers are now receiving more insolvency assignments than accountants. Banks, upstream oil firms and Assets Management Companies of Nigeria (AMCON) are now giving the highest level of insolvency assignments to Senior Advocates of Nigeria (SANs), and the SANs would then hire the accountant as Financial Advisor to do so, with accountants now playing second place behind lawyers in insolvency and business recovery practices in the country. The Institute of Chartered Accountants of Nigeria (ICAN), being a specialized institution regulating the profession, must come to the rescue of accountants in this area.

Also, creditors, especially banks now prefer the full realisation of charged assets rather than turnaround management. Since some lawyers are not trained as a business manager or to manage a business, their approach to insolvency assignments is to take over charged assets and carry them out without any consideration for turnaround options or a business rescued strategy.[33]

The consequence of this is that jobs are lost in the event of a complete realisation of the assets charged while jobs are retained in the case of a turnaround management option. This is a far-reaching impact on the economy of the nation. This is the fundamental difference in insolvency practice in the relatively advanced economies and Nigeria.

In advanced economies, insolvency practice aims to reduce job losses while at the same time protecting creditors. Closing insolvent oil firms that can be successfully reverted has led to several job losses. A case in point is Afroil Plc's case. Some lawyers do not like turnaround management, but this is the area of competence of some Accountants.

Another current development is that the Corporate Affairs Commission (CAC) requires a copy of the Deed of Debenture to be submitted to the Receiver or Manager before his appointment is registered. This has not been the case until recently. In the past, the Corporate Affairs Commission (CAC) relied on the Deed of Debenture, which had previously been registered in the file of the insolvent oil firm.

[33] *Ibid*, p.8

Also, the Assets Management Companies of Nigeria (AMCON) Act tolerates the exercise of many arbitrary powers which are at variance with the benefits of the investors and which can be utilized strictly against insolvent oil firms with minimum scrutiny. Some eminent legal scholars have proposed that specialised revenue courts should be establish with only authority as the court of the first contact for the settlement of disputes in the upstream oil and financial sectors in order to curb the arbitrary nature of the current legal regime for dealing with insolvent oil firms in Nigeria. Conversely, contemporary insolvency regulations favoured substitution of balance due resolution procedures which would have saved insolvent firms rather than liquidated them. Generally, Nigeria's insolvency law appears to be deficient in terms of a company improvement and reformation strategies. The contemporary insolvency legal framework under the Companies Allied Matters Act (CAMA) 2020 provides for different classes of company insolvency procedures; non-collective proceedings (receipt) and collective proceedings (compensation, mergers and acquisitions).[34]

Another development in insolvency practice is the use of the summary judgment procedure laid down in Order 11 of the Lagos High Court Rules of Civil Procedure 2012; this is another recovery mechanism used in Nigeria for the speedy recovery of debt. This procedure is only applicable in Lagos State. Summary judgment is a judgment which, summarily, is in favour of the applicant without going through a full trial, in particular where the Defendant has no defence. In some instances, there may be no pleadings, but only an affidavit from the complainant and, if necessary, an affidavit from

[34] Olisa Agbakoba & Associates, 'Bankruptcy Proceedings as a Tool for Debt Recovery, CL.E.S 1 (1) 3.

the plaintiff. The Defender's counter affidavit. The proceedings shall be used where the applicant believes that the facts of the case are straight forward and uncontested by the Defendant. It saves time and costs for lengthy trials, *Mcgregor Associates v. NNBN*[35] However, a defendant who intends to defend the claim must do so within 42 days by filing within the limited time his defence Order 15 Rule 1(2), Lagos State Civil Procedure Rules, 2012. The prosecution must prove whether the Defendant denies the entire or part of the allegation and not just a general denial. In *CotiaCommercio E. Importacao SA v. Sanusi Brothers (Nig.)Ltd*[36]. the Supreme Court held that the mere general denial of a claim, a case of difficulty or inability to pay in the counter affidavit, or the filing of a frivolous defence, was not sufficient for the defence to be granted leave to the Defendant. Where a prima facie argument has been made by the Defendant, leave to appeal can be given. Command 11 Rule 5(1) Lagos State Civil Procedures. The 2012 case will then be included in the General Court File to be tried.[37]
There is also a dispute resolution option for debt recovery; this is an informal dispute resolution mechanism where the individuals congregate with an expert who assists them to settle their disagreement in a way that is consensual and cheaper, not time-consuming compare to insolvency litigations. Other forms of alternative dispute resolution mechanisms include mediation, arbitration, and negotiation, among others.

The Alternative Dispute Resolution (ADR) is usually quicker. It is centred on direct participation by the parties to the case, rather than the involvement of lawyers, judges and the judiciary. In the

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35 (1996) 2 SCNJ 72.

36 (2000) 6 SCNJ 453

37 Lagos State Civil Procedures Rules, 2012.

majority of ADR procedures, the opposing parties specify the mechanism they will follow and describe the content of the negotiations. This type of participation is considered to enhance the people's happiness with the resolutions as well as their obedience with the agreements made.[38]

9. Indications that an Oil Firm is Under Insolvency

Among other factors, the following are the symptoms to be found that an oil firm is close to insolvency, which mostly happens due to inadequate management: the lack of a formal investment strategy or a corporate development plan under which the oil firm plans to work within five years.

Absence of strategic business plan limits the oil firm's chances of success in business and where the oil firm persistently refused to remit or often withholds deducted taxes to appropriate tax authorities so as to have access to cash to meet their immediate financial obligations. Lack of capacity to raise equity or loan capital In general, an oil firm with insufficient cash to pay its debts may raise capital by refinancing, raising equity or deferring debts, and inability to do so within a reasonable time indicate that such an oil firm is on the brink of insolvency.[39]

Failure to provide timely and accurate financial information to the oil firm, where there is a persistent failure to provide financial information by the oil firm, this may give rise to an inference that

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[38] Etigwe Uwa, Streamsowers & Kohn, 'Insolvency & Restructuring Practice Area Review' (2017), available at <http://whoswholegal.com/news/analysis/article/31657/insolvency-restructuring-practice-area-review> (accessed September 3, 2020).

[39] Andrew, K., and Walton, P., Insolvency Law, (Pearson Education Limited Edinburgh Gate, Harlow, Essex CM202JE. 2003).

such oil firm is insolvent. Also, where such a firm is generating incessant debits or where there is an absence of adequate investment capital, this is a caution on the probability of insolvency and where the firm is persistently give out post-dated cheques or where its cheques are rejected by the banks. A post-dated check issued by an oil firm which is rejected in the absence of any irregularities is a clear sign that the firm is facing insolvency rather than temporary cash-flow difficulties.[40]

Where an oil firm is incapable of managing its cash flow properly, a profit and loss statement may often show that an oil firm is profitable, but the firm may be struggling to remain in business due to low cash flow. Where its suppliers, consultants, are cutting off due to non-payment by such an oil firm, this is a sign that such a firm is not properly managed. Where there is a persistent experience of low sales, this is a clear sign of a dying oil firm, since sales are the vein of every oil firm and where the creditors of the firm issue notices of demands or legal notices. Proceedings for the recovery of outstanding debts, a single claim petition is not evidence of insolvency, since the debt may be contestable, but multiple appeals by a number of claimants may give rise to a presumption of insolvency among others.

10. Insolvent Oil Firms Reformation Approaches and Other Panaceas. Accessible to Unsecured Creditors

Generally, an unsecured creditor has no rights to insolvent oil firm assets unless he has obtained a judgment of the court. Section 117

[40] Gerard, C., and Klingebiel, D., 'Bank Insolvency: Bad Luck, Bad Policy, or Bad Banking?' (1997), available at: <http://siteresources.worldbank.org/dec/resources/18701_bad_luck.pdf> (accessed September 3, 2020).

of the Investments and Securities Act[41] allows for a takeover bid strategy that provides for the purchase of appropriate stock in another oil firm (frequently denoted as the target oil firm) to grant the acquisition of an oil firm control over that other oil firm. It is distinct from a merger where the oil business has taken over the firm, but as a division of the purchasing oil firm. Thus, the goals of the oil firm remain independent and distinct but as an affiliate of the purchasing oil firm. However, a firm cannot make a takeover bid either by another entity or on its own, until it has accepted the takeover offer of its managements, Section 139(1) of the Investments and Securities Act.[42]

It must be remembered, though, that there must be no fewer than 51% of the stock of the oil firm to be bought for a merger acquisition. An offer under a takeover bid must be included in a record which must state or define the issue specified by section 136(1) of the Act. Shareholders of the offeree oil firm can approve or reject the offer presented to them regarding their shares.
Management-buy-out is another strategy; in this process, as the organisation performs a significant role. The transaction is carried out by a business party who uses the loan funding issued by a bank or other entity to purchase an insolvent oil firm.

The possessions of the oil firm so procured are covenanted as security for the credit facility, and the loan is expected to be repaid

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41 LFN 2004.

42 Dentons, 'A Legal Overview of Merger &Acquisition and Financing Transactions in Nigeria's Oil and Gas Sector, (2016), available at <https://www.dentons.com/en/insights/articles/2016/january/19/a-legal-overview-of-ma-and-financing-transactions-in-nigerias-oil-and-gas-sector> (accessed September 3, 2020).

from the cash flow of the oil firm. The management buy-out can generate a conflict of interest if the management is a member of the buy-out party and may also represent the interests of the shareholders of the target oil firm.

There is also a transaction and assumption; there is a case where an oil producer chooses to buy from another oil firm, for example, when Oando Plc buys upstream oil business from ConocoPhillips, Nigeria. It is a complete purchasing and takeover of the other oil firm. Another tactic is the hiring of an administrator; an oil firm can join in the administration of an oil firm by joining an existing scheme to save the firm from insolvency. Insolvency professionals are in charge of the oil industry with a specified scheme to save the oil firm from insolvency.

Similarly, the unsecured borrower of an oil producer may incorporate the protection of title clause in the supply arrangement in order to shield it and ensure timely payment and, before the full purchase price is paid, the title of the products supplied may not be transferred to the purchaser. Likewise, an unsecured creditor may bring a suit for liquidation against an insolvent oil firm or may ask for the appointment of an administrator after a range of written requests have been made, but the liquidation court has been used as a debt recovery mechanism in Nigeria.

11. Liquidation of Insolvent Oil Firm - As a Final Option

The winding-up of an insolvent oil firm may be carried out by the court, voluntarily by the owners (shareholders), by the creditors of the oil firm and subject to the oversight of the court in compliance with the terms of the section 714 Companies and Allied Matters Act, 2020 which should be the last resort after the collapse of all

rescue and reconstruction procedures of the oil industry. Section 564 of the Companies and Allied Matters Act, 2020 provide the grounds for the liquidation of the insolvent oil firm as follows: Where the firm has decided by special resolution that the firm should be liquidated, where the oil firm fails to submit statutory reports to the oil firm.

Corporate Affairs Commission (CAC) and where the number of shareholders of the oil firm has declined below two in the case of a firm with more than one shareholders, where the oil firm is unable to pay the number of its debts above ₦2,000 after several written submissions have been made to the oil firm and where the court is of the opinion that it is reasonable and equal for such an oil firm to be liquidated.[43] If the oil firm fails to hold the regulatory meeting and submits statutory reports, an order can be made by the court, on the request of the aggrieved individual, by the oil firm *suo motu*, to wind up by voluntary liquidation, as provided for in sections 620,622,626 of the CAMA, bypassing a special resolution to that effect in a general manner. Sections 625(1)(2)(a)(b)of the Act specifies, moreover, that directors shall file a formal statement of solvency to the extent that, after thorough study, they believed that such an oil firm would be in a position to pay its obligations in full within a duration not more than twelve months. Such a statement must be adopted within five weeks of the ratification of the resolution.

An oil firm may also decide, with the consent of its creditors, to enter into voluntary liquidation. This is known as the voluntary winding-up of the creditor as provided for in Sections 714,715and 716 of the CAMA. In a creditor's voluntary winding up, a

[43] Section 572 Companies and Allied Matters Act 2020.

discussion of the oil firm and the creditors for which sufficient notice has been submitted and reported once in at least (2) two newspapers and the federal gazette, is scheduled on the same day.[44] A full declaration of the status of the oil firm with the list of creditors and the total sum of their claims shall be made before the conference, along with a judgment on the voluntary termination of the firm. The creditors shall, at their meeting, engage a Board of Inspection comprising of not exceeding (5) five members to oversee the operation of the liquidation. An equal number will also be appointed by the oil firm to join the commission, but the creditors or the judge must accept any nomination.

The only situation in which an insolvent practitioner can expect maximum cooperation from the debtor is in the case of a voluntary termination by members, in all other cases, the insolvent practitioner should take an investigative attitude and consider any unusual friendliness of the debtor as a Greek gift until it has been proven otherwise. The monitoring of the debtor's assets may take on a significant dimension if the debtor happens to be one with an asset in other countries since the aggregation or discovery of those assets may require the application of foreign laws and may also depend on whether Nigeria has diplomatic ties with the country concerned.

Whatever action the practitioner takes to track the asset, he should bear in mind that such action must be cost-effective and must increase the dividend payable to creditors without unduly delaying the assignment. Immediately the winding-up order shall be issued by the judge, the official receiver by his office shall become the temporary liquidator if none has been named and, after the

[44] *Ibid*, ss. 634, 635.

nomination of the official receiver, the functions of the boards shall end — section 579CAMA. No legal action shall be taken or re-opened against the oil firm except with the leave of the court: Section 417, CAMA. Any sale of the assets of the oil firm, transmission of its stocks or modification of the position of its memberships after the beginning of the liquidation actions shall be null and void except ordered by the court. Any supplement, appropriation, concern, or implementation against the assets or the consequences of the oil firm are invalid at the start of the winding-up and, after the winding-up order has been released, the activities of the staff of the oil firm will be terminated.

The winding-up proceeding should be the final resort or not at all to be used by the Nigerian firm for debt recovery[45]. Alternatively, unsecured creditors may order the release of the shares of the insolvent oil firm, the formation of the initial payment or the *paripassu* fee.

The oil firm may change its share capital by recapitalisation. An oil firm can also opt for a scheme of agreement or compromise by amending the form of rights and preference shares to pay the accumulated unpaid dividends. Unsecured creditors can take up shares in an oil firm or take part in cash in order to pay the debt owed. Creditors may ask to the court for the judicial sale of the assets of the oil firm in order to meet the outstanding debts and the commencement of legal proceedings for the repossession of the principal financial obligation and the interest if any.

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[45] *Eastern Airlines Limited v. Air via Ltd (1998) 12 NWLR (Pt. 577) 271 at 280-281, Hansa International Construction Limited v. Mobil Producing Nigeria (1994) 9 NWLR (Pt. 336) 76 at 86, Nigeria Industrial Development Bank Ltd. v. Fembo Nigeria Limited (1997) 2 FHCLR 501 at 502.*

The creditors may order the court to withdraw the cloak of incorporation of the oil firm and make its directors legally liable if they are guilty of any crime or civil wrongs committed by the oil firm, in particular, if they have signed personal guarantee contracts and are aware of the firm's financial inability and trade.

Similarly, Sections 206, 211, 213 and 214 of the Insolvency Act of England and Wales have a clause similar to that which enables the liquidator or the receiver to sue the directors for unfair trading knowing full well that the firm lacks opportunities for trade.

Any deal carried out with the loan may be rescinded by the oil firm where there is an aspect of deception, misrepresentation and penalties can also be sought. The Director may be suspended for duration of fifteen years under the United Kingdom Firm Directors Disqualification Act, 1986.The payments to creditors are made in the following arrangement of significance: Creditors safeguarded by fixed charge, preferential creditors, creditors fortified by floating charge, protected but contractually subordinated creditors and lastly the unsecured creditors.[46]

12. What Lessons Can Nigeria Absorb from the Designated Case Study Nations?

There are also lessons to be learnt from the solvency and debt recovery law system of the jurisdictions under review that serves as a blueprint for Nigeria's solvency and debt recovery legal

[46] Latham and Watkins, Taking Security in Nigeria a Comparative Guide for Investors, (2017), available at: <https://www.lw.com/admin/upload/documents/taking%20security%20in%20africa/taking-security-in-africa-nigeria.2.pdf> accessed September 18, 2020.

framework reform. Recent restructuring trends in other countries, such as Malaysia, India and South Africa, among others.[47]

Firm consolidation and stabilization plans include a restatement of the insolvent oil firms' debts and obligations, as well as conducting negotiations with banks in order to make provisions for repayments of the outstanding loans. The reorganisation is an effort to lengthen the existence of an oil firm tackling insolvency via distinct restructuring in order to minimise the option of previous insolvency circumstances re-occurring. Oil companies can renegotiate their debts with their creditors to try to get better terms, and the firm can continue operating and works toward repaying its outstanding debts.

Compromise or agreement under the Companies Allied Acts, Cap C.20LFN, 2004 and the England and Wales Companies Act, 2006 creditors and owners can be used for the internal resolution of an insolvent oil firm. This is an agreement under which an oil firm with the creditors and the owners consider less than what they are eligible as the fulfilment of the firm's contractual duty to them.
Compromise occurs when the oil firm persuades its creditors to take stock or half of the stock and half of the cash in order to cover its obligations as the transaction is a method of acquisition.

Controlling shares or transferring of an oil trade or part of it to alternative an oil firm in consideration for stocks. It is important to note that another private oil firm cannot take over a private oil firm, but that another private oil firm can do the same. In the other hand,

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[47] Khan, S., Olivia, T., and Bidin, A., 'Recent Developments of Insolvency and Restructuring in Malaysia', (2014), 8(1), *Australian Journal of Basic and Applied Sciences*, 508-512.

the holders of preference shares may be compelled by the insolvent oil firm to cancel the accumulated returns on investments, to decrease the fixed amount of the dividend or to allow the transfer of their preferred stocks to common shares in order to minimise the number of assets.[48]

A compromise or arrangement under sections 710-711 of Companies Allied Matters, 2020 and the England and Wales Companies Act, 2006 creditors and shareholders may be used for the internal restructuring of an insolvent oil firm. This is an arrangement by which an oil firm with its creditors and stockholders accepts less than they are allowed as the fulfilment of the financial responsibilities of the firm to them. Also, an arrangement on sale is provided for in Section 538 of the CAMA; an oil firm may decide by special resolution that the oil firm should be terminated and a receiver may be chosen to vend all or portion of the assets of the firm to another oil firm for cash, shares or debts as a consideration which the receiver shall allocate respectively to the investors in conformity with their liquidation claims.[49]

An arrangement under Sections 434 – 442 of the Companies Allied Matters, Act 2020 and the England and Wales Companies Act, 2006 creditors and shareholders may be used for the internal restructuring of the insolvent oil firms. This is an agreement whereby an oil firm with the creditors and shareholders, recognises below what they are eligible to as the fulfilment of the contractual

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[48] Bernard, B. P., 'The Effect of Recent Changes in the Financial Sector Development in Nigeria', Being Paper Presented at the 15th General Assembly of the African Rural and Agricultural Credit Association.

[49] Wihlborg, Clas, 'Insolvency and Debt Recovery Procedures in Economic Development: An Overview of African Law, (2002), available at <econstor www.econstor.eu> accessed September 3, 2020.

duty of the firm towards them. Notice that any shareholder may demand that he or she is not a party to the agreement and that no opposing shareholder will be allowed to take an interest in the oil firm since he or she has expressed his or her opposition under the statute.

13. Discussions of Findings

Nigeria's regulatory process for reforming insolvent oil firm is insufficient. The statutory insolvency legal framework appears to be leaning towards liquidation proceedings. The idea of corporate rescue is not new in Nigeria as some of these provisions stated under sections184 (1),186,710,711 the Companies and Allied Matters Act, 2020 such as agreements, concessions, takeovers, amalgamations/acquisitions under the Investments and Securities Act, 2007.However, our existing rescue laws are not well organised as the traditional western business rescue laws, they are inconsistent with current global best practices, they ignore restructuring processes for insolvent oil firms, and they even fail to allow for a comprehensive process for licensing of insolvent and business recovery practitioners in Nigeria.

Also, the numerous difficulties facing business rescue options these difficulties point to the need for well-structured business rescue laws that will assist oil firms in Nigeria, whether by harmonised insolvency law or piecemeal changes in our existing insolvency legislations. It was also observed that heavy reliance on the court system makes the process of the rescue of the insolvent oil firm more cumbersome, which may not be cost-effective and time-effective for oil firms. South Africa restructured the agreement and settlement clauses of its Companies Act, 2008 to exclude one step of court action, which is the court-ordered meeting that Nigeria

should be replicated for successful oil firm business rescue to guarantee efficiency and good governance.

14. Recommendations

For Nigeria's upstream petroleum industry to improve insolvency and firm rehabilitation procedures, there is a need for a comprehensive and committed insolvency law or system that would cover all forms of insolvencies. Even in the United Kingdom, where the two laws remain distinct, a specific bankruptcy statute remains and what is currently applicable is the Insolvency Act of 1986, which crosses the distance between the rules and procedures regulating insolvency of individuals and energy industry insolvency.

In addition to enacting a coherent legal system, the legislation requires clarity. The provisions of any harmonised legal framework must be stated clearly, and in plain words that those who have to apply it can readily understand. Lack of clarification is disruptive to the law and impertinent to those seeking to uphold the rule of law and enabling those seeking to abolish it.[50]

Therefore, there is the need to build Nigeria's business rescue legal structure, such as the selected case study countries, which is debtor recovery-oriented generally known as a business rescue. This alternative means that insolvent oil firms are spared from liquidation, and those only oil firms with little hope of surviving are liquidated in light of the critical positions that oil industry plays in many developed countries economies, resulting in many

[50] Chiwete, C., 'Need to Develop Nigeria's Business Rescue Laws', (2013), <http://www.punchng.com/feature/the-law-you/need-to-develop-nigerias-business-rescue-laws> accessed September 3, 2020.

countries reforming their financial structures and improving their insolvency legislations through corporate rescue and reconstruction.

The world is increasingly heading towards a firm rescue system that is welcoming, open to debtor oil firms which can be extended to all businesses like the United States' model that South Africa recently introduced with some modifications. Even the United Kingdom, in recognition of the paradigm change, had already made many changes to their legal rules for business rescue by significantly reducing the effectiveness of the receivership and by changing the business rescue mechanism directed by their courts. Whereas the regulations relating to firm recovery, i.e. firm voluntary agreement and receivership may be useful in selected case study countries that have been explicitly tailored to suit their jurisdictional needs to avert lack of interaction between the legislation and the Nigerians. In deciding the best oil firm recovery and turnaround model for Nigeria, the following points are noteworthy:

First is to understand the extent of the intervention of the court, and what step of the rescue procedure would entail the court. Our courts are now overburdened with cases; thus rescue solutions that are very scalable with limited court control would be more fitting for Nigerian oil businesses.

Also, it is essential not to force new management on the oil firm in the form of a rescue practitioner who might not even know anything about the oil industry. In realistic terms, those who support the change of management will end up placing the rescue specialist in a role where they will have to employ the professional

service in order to be able to save the oil firm and from incurring potential costs. Where managers or administrators are eliminated and replaced by rescue personnel, then many problems occur.

Second, the rescue specialist is received with hostility; he gets little to no support from the administration and also considers the rescue goals quite challenging to accomplish. Because of our existing receivership practise in Nigeria, these lessons are not farfetched. To take over the insolvent oil firm while the Nigerian receiver will need the support of law enforcement officials and, in most situations, the business will face significant opposition.

The way forward for us could be to provide business rescue schemes that allow the debtor to remain in control, maybe under the rescue practitioners' oversight to ensure checks and balances.
The method of making the same rescue specialist the liquidator of the oil firm where the rescue collapsed is a big pitfall to prevent. The cause is simple; the goals of the rescue professional and the liquidator are contradictory. If we followed this approach; the rescue specialist would, of course, continue to receive payments. As a result, no reasonable effort will be made to rescue the insolvent oil firm because the rescue practitioner earns more if the oil business fails.

The value of providing a well-structured market rescue system cannot be overemphasised. The advantages to the debtors and borrowers and to society as a whole are numerous. Employment is sustained, oil firms are more likely to take commercial chances, foreign investment is welcomed to invest in the oil industry, and Nigeria's economy will be boosted.

Therefore, we need workable rescue mechanisms that can be easily enforced. At the minimum cost with fundamental issues such as critical indicators for initiating business rescue, especially for managers, versatility in terms of both formal and informal approaches, moratorium requirements, uniform qualifications for rescue practitioners, little court involvement, provision for rescue oil firms' employee contract, recognised the insurance or trust to be issued by rescue practitioners against criminal sanctions. These laws are not the only ones that are aligned with current global developments but would ensure that adequate rescue and oil-business friendly policies are enacted in Nigeria.

The problem of debt recovery through the insolvency proceedings by an oil firm in Nigeria devoid of litigation is through Alternative Dispute Resolution (ADR) mechanisms by settling out of court. It decreases the budget for litigation and prolonged delays associated with legal actions. Where the firm is wound-up, and liquidators are named, the debtors will not reclaim the entire debts owing, thus incurring further costs and losses on the firm that they hope to save for their shareholders.

Therefore, a successful insolvency law must be in a position to remove bankrupt oil firm and create trust in the economy of the country. In addition to defining the fundamental elements of insolvencies or bankruptcies, the legal system should create special court dealing on matters of bankruptcies and insolvency. The selection of judges, who are commercial law experts to sit on insolvency matters, is essential. The special courts to be established should be limited to the handling of insolvency lawsuits and unsecured creditors, allowing protected creditors to continue finding redress from the traditional courts. Since the court is the

last resort, litigation can only be taken against those oil firm debtors who, considering their willingness to do so, are unable to comply in paying their debts and against the debtors who are behaving in lousy conscience in paying their debts.

The author recommends that the Federal Government should pass a regulation forcing financial firms to help insolvent oil firms restructure their debt and allow insolvent oil firms to stay in office with insolvent and business recovery practitioners supervising their activities with the enactment of Code of practice for insolvency practitioners in the country.

There is a need to amend the Companies Regulations and the Companies Procedure Rules in conformity with the new legal regime on corporate law in Nigeria.

15. Study Limitations/Implications

The research findings could be lacking in generalizability because of the research methodology chosen. Future scholars are also urged to use quantitative analysis methodology to further evaluate the suggested propositions to further enrich the existing literature on the subject.

16. Conclusions and Policy Implications

Having analysed the theoretical structure on insolvency and business recovery practices in Nigeria with a comparative study of Nigeria, Malaysia, India and South Africa's current legal framework on insolvency the biggest weakness in the Nigerian legal system is the lack of committed, comprehensive and integrated regulatory structure for insolvency practice.

It is the author's opinion that analysis of the existing insolvency and rehabilitation laws shows some unanswered issues which have been a source of concern for insolvent practitioners. For instance, the Bankruptcy Act in Nigeria has not been amended since 1992 with other obsolete insolvency rules, Bankruptcy Statute and the Dishonoured Cheques Clause, need to be amended. The Nigerian insolvency legislation should be updated to include a more impartial mechanism for safeguarding debtors and borrowers alike and now is the best time to do so, and we must not wait for a big financial crisis to arise until we embark on legislative reforms.

Despite the shortcomings of the current insolvency system, the courts have a crucial part to perform in administration justice and managing the needs of the different parties in insolvency-based contractual conflicts. The courts will strategically create a paradigm change in our insolvency system for business rescue and professionalism of insolvency practice in Nigeria through effective adjudicatory power. The sustainability of oil firms may be improved upon by adjusting its strategies in order to manage prices, track revenues and assess the feasibility of potential market prospects in the industry.

The recommendations, if compiled, will have a positive impact on insolvent oil firms in financial difficulties to continue doing business while undergoing significant reforms. Finally, the introduction of a voluntary corporate arrangement under the insolvency legal regime as entrenched in the Companies and Allied Matters Act 2020 will allow an oil firm to settle its financial obligations installmentally via an arrangement with its creditors by continuing in business thereby opening doors for easy ways of doing business in the country. However, there is a need for

improvement in the Nigerian legal landscape in terms of doing businesses in the oil industry, both locally and globally, to attract more foreign investors to the industry.