NIGERIA
GIWA-OSAGIE & COMPANY

FIRM INFORMATION

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COUNTRY INFORMATION

Nigeria became an independent nation in 1960. Following nearly 16 years of military rule, a new constitution was adopted in 1999, and a peaceful transition to a civilian government was completed. Nigeria is currently experiencing its longest period of civilian rule since independence. It is ranked 52nd in the world in terms of nominal GDP and 19 th in terms of purchasing power parity and is the largest economy in Africa. It is also on track to become one of the 20 largest economies in the world.

TYPE OF GOVERNMENT

Nigeria is a Federal Republic modelled on the system in the United States of America, with executive powers exercised by the President and with overtones of the Westminster System model in the composition and management of the upper and lower houses of the bicameral legislature.

POLITICAL SYSTEM

The President's powers are checked and balanced by the House of Senate and the House of Representatives, which are combined in a bicameral body called the National Assembly.

LEGAL SYSTEM

There are seven distinct systems of law in Nigeria, being:
- The 1999 Constitution of the Federal Republic of Nigeria [as amended] which is the grundnorm in Nigeria;
- English law (common law, doctrines of equity, statutes of general application and statutes and subsidiary legislation on specific matters) derived from Nigeria's colonial past and developments post-independence;
- Customary law derived from indigenous traditional norms and practices;
- Islamic/Sharia law, used only in the predominantly Muslim north of the country;
- Legislation/Statutory law, derived from statutes and laws made by the legislative arm of Government;
- Case law or judicial precedents (decisions made by the Courts become law); and
- International law

The country has a judicial arm of Government and the highest Court of law is the Supreme Court of Nigeria.

TESTS FOR INSOLVENCY

What are the tests for insolvency (i.e. liquidation)?

The tests for insolvency as prescribed by section 572 of the Companies and Allied Matters Act (CAMA) 2020 and the Business Facilitation (Miscellaneous Provisions) Act, 2022 in Nigeria are:

- a company's inability to pay a debt in a sum as determined by a regulation of the Corporate Affairs Commission after a demand for payment has been made;
- the execution or other process issued on a judgment, act or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part; or a court's determination that the company is unable to pay its debts after taking into account any contingent or prospective liabilities of the company.

What are the tests for financial distress (business rescue or administration?

There are no specific provisions under Nigerian law to test for when a company is financially distressed. However, CAMA 2020 provides for steps that can be taken to rescue a financially distressed company. Under CAMA, the options available to financially distressed companies are administration, receivership, liquidation, and arrangement and compromise. Whilst receivership is geared towards the recovery of debt through secured assets, liquidation primarily seeks the dissolution of a company.

INSOLVENCY AND RESTRUCTURING PROCEDURES

Formal insolvency procedures

In Nigeria, in addition to liquidation, a receiver or manager may be appointed by the Court or privately by a trustee, debenture holders of the same class or debenture holders having more than half of the total amount owing in respect of all debentures of the same class. The Court can appoint a receiver on the application of a trustee for a debenture holder. All receivers or managers appointed in that manner shall exercise their vast powers subject to any order made by the Courts. Under the new Companies and Allied Matters Act (CAMA) 2020, a proper structure has been established for insolvency procedures in Nigeria.

Under sections 704-705 of CAMA 2020, a person acts as an insolvency practitioner if such person acts as a liquidator, provisional liquidator or official receiver; administrator or administrative receiver; receiver and manager, or as nominee or supervisor of a company's voluntary arrangement.

The CAMA also provides for persons who are qualified to be insolvency practitioners in Nigeria and they include: legal practitioners, accountants or such relevant discipline, a person who holds a minimum of 5 years post qualification experience in matters relating to insolvency; a person authorised to so act by virtue of a certificate of membership issued by the Business Recovery and Insolvency Practitioners Association of Nigeria (BRIPAN), or his membership of any other professional body recognised by the Commission, being permitted to act by or under the rules of that body; and a person who holds an authorisation granted by the Commission.

Formal restructuring procedures

Section 715 of CAMA deals with Arrangements and Compromise.

Where a compromise or arrangement is proposed between a company and its creditors or any class of them, an application can be made to the court, in a summary manner, by the company or any of its creditors or members or, in the case of a company being wound up, the liquidator, to order a meeting of the creditors or class of creditors, or of the members of the company, or class of members, as the case may be, to be convened in a manner determined by the Court. A majority representing at least three quarters in value of shares of the members, or of a class of members, or of the interest of the creditors, or of a class of creditors, as the case may be, being present and voting either in person or by proxy at a meeting is required to agree to any compromise or arrangement which may be referred by the Court to the Securities and Exchange Commission. The Securities and Exchange Commission would thereafter appoint one or more inspectors to investigate the fairness of the said compromise or arrangement and to make a written report thereon to the Court within a time specified by the Court. The Court would thereafter sanction the arrangement or compromise if it is satisfied as to its fairness and it shall become binding on all the creditors, or class of creditors, or on the members or the class of members, as the case may be. A certified true copy of the Court order must be delivered by the company to the Securities and Exchange Commission for same to have any effect. A copy of the Court order will subsequently be annexed to every copy of the Memorandum of Association of the company issued after the order has been made.

CAMA also provides for a company's voluntary arrangement. The directors of a company may make a proposal to its creditors for a composition in satisfaction of its debts or a scheme of arrangement of its affairs. Such a proposal may be made where an administration order is in force in relation to the company, by the administrator; and where the company is being wound up, by the liquidator. The nominee shall, within 28 days (or such longer period as the Court may allow) after he is given notice of the proposal for a voluntary arrangement, submit a report to the Court stating if in his opinion, the meeting should be held and the Court will make an order based on that report. The meetings will then be held and a report will be given to the Court.

Furthermore, the new CAMA 2020 provides for the option of administration. An administrator may be appointed by the company, the directors of the company, holders of a floating charge or by an order of the Court. The Act spells out the objectives of administration to include:

a) rescuing the company, the whole or any part of its undertaking, as a going concern;
(b) achieving a better result for the company's creditors as a whole than would be likely if the company were wound up, without first being in administration; or
(c) realising property in order to make a distribution to one or more secured or preferential creditors.

Where a company is in administration, a resolution cannot be passed for the winding up of the company, neither can an order be made for winding up of the company, except on the grounds of public interest, or where the application for winding up is made for regulated entities in the financial industry.

The Act further provides for a moratorium on legal processes. Therefore, where a company is in administration, enforcement steps, legal proceedings, execution, distress and diligence may not be commenced or instituted against the company without the consent of the administrator, or permission of the Court as the case may be.

Informal insolvency or restructuring procedures

There are no specific provisions under CAMA for informal insolvency or restructuring procedures. However, based on an agreement between creditors and a debtor company, a business could be restructured informally, without any regulation or oversight by legislation or the Courts respectively. Such agreements may be, or may not be, filed at the Court but will usually involve negotiations between the parties. Such negotiations may result in a waiver of a creditor's interest in a claim, an extension of time for the repayment of any debt, the enhancement of the management team, the restructuring of the composition of the board and/or debt to equity conversions.

LIQUIDATION

What is the aim of liquidation?

The aim of liquidating a company is to wind-up the affairs of a company and have its assets or properties administered for the benefit of its creditors and members. By this process, the life of the company is brought to an end.

Process required to commence a liquidation

This depends upon the mode of liquidation. Where it is a winding up by the Court, liquidation is deemed to commence upon the presentation of a petition to the Federal High Court. However, if it is a voluntary winding up, liquidation commences at the passing of the resolution for voluntary winding up.

Voluntary winding-up could occur in the following instances:

- when the period fixed by the Articles of Association for the company's duration expires;
- on the occurrence of any event which the articles provide shall lead to the dissolution of the company and the company has at a general meeting, passed a resolution for the company to be wound up voluntarily; and
- if the company passes a special resolution that it be wound up voluntarily. This may occur, for instance, where a segment of the members of the company are unfairly treated or there is a deadlock in the management of the company - section 620 of CAMA 2020.

At what point does the liquidation process commence?

A members' voluntary winding up is deemed to commence at the time of the passing of the resolution for voluntary winding up. Where it is proposed to voluntarily wind up a company, the directors of the company will make a "statutory declaration of solvency", stating that, after enquiry into the affairs of the company, in their opinion the company will be able to pay its debts in full within such period, not exceeding 12 months from the start of the winding up. Under this situation, the members of the company can choose who the liquidator of the company will be.

In the case of a creditors' voluntary winding up, no declaration of solvency is made and separate meetings of the creditors and the members of the company are held. Though the members and the creditors are entitled to nominate liquidators at their separate meetings, the creditors' nominee is accepted, where the members and the creditors nominated different persons as liquidators. However, any member, director or creditor of the company may apply to the Court, within 7 days after the creditors have made their nomination, for an order for the members' nominee to be accepted instead of, or jointly with, the creditors' nominee.

Duration of the liquidation process

There is no specified duration for a liquidation process. However, in a members' voluntary winding up, the company is deemed wound up, 3 months after the approval of its final accounts by the Corporate Affairs Commission.

Extent of court involvement in the liquidation process

In Nigeria, the cases in which a company may be wound up by Court include where the company has passed a special resolution to that effect, where the Court is of the opinion that it is just and equitable that the company should be wound up, the number of members is below 2 (except in cases of private companies), the company is unable to pay its debts, the condition precedent to the operation of the company has ceased to exist; and default is made in delivering the statutory report to the Commission or in holding the statutory meeting.

Also, a receiver, manager or liquidator appointed during the liquidation process, may be appointed by the Court or privately. The Court can appoint a receiver on the application of a trustee for a debenture holder. All receivers or managers appointed under the aforesaid manner shall exercise their vast powers subject to any order made by the Courts. Upon the request of a debenture holder, the Court has the power to appoint an official receiver or an interested person. An official receiver for the purpose of a winding up by the Court can either be the Deputy Chief Registrar of the Federal High Court or an officer designated for the purpose by the Chief Judge of the Federal High Court. The Court may also additionally appoint a receiver as a manager. While liquidators can be appointed by the Court, they may also be appointed by the company, its creditors, or members, depending on the type of winding up. The Court's involvement in the liquidation process depends on the type of liquidation. In some cases, the Court is limited to determining questions or powers arising from the winding up of the company, while in others, the Court plays an integral role in the liquidation process. The Court is also involved in a creditor's voluntary winding up, and a winding up under the supervision of the Court.

Management of the company whilst in liquidation

The liquidator is responsible for winding up the company. Upon his appointment either by the company or by the Court, the powers of the directors of the company cease.

In a winding up by the Court, the liquidator is empowered to, amongst others, take into his custody, or under his control, all the property and choses in action to which the company is or appears to be entitled. He has the power, with the sanction of the Court or the committee of inspection, to: carry on the business of the company so far as may be necessary for the company's beneficial winding up; bring or defend an action on behalf of the company; pay any class of creditors in full or make any compromise or arrangement with the creditors.

The liquidator also has the power to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents; he may sell the company's assets; appoint an agent, legal practitioner or any professional to assist him in the performance of his duties; raise money against the security of the assets of the company.

The powers exercised by the liquidator in this case shall be subject to the control of the Court and any of the creditors/contributories may apply to Court in respect of any exercise or proposed exercise of power by the liquidator.

In a voluntary winding up by the company, the liquidator's role is mainly to conduct the winding up of the company, distributing the assets of the company, paying off the debts of the company, and without sanction, exercising any of the other powers of the liquidator in a winding up by the Court as provided under the CAMA 2020. The liquidator is required to hold meetings with creditors and the company and provide periodic accounts of his acts and dealings until the debts of the company are fully paid off. The liquidator is discharged after submission of the accounts to the Corporate Affairs Commission.

On the other hand, a receiver or manager may also be appointed if a company is placed in liquidation.

The receiver is responsible for taking possession of, and protecting, the property, receiving rents and profits and discharging all out-goings in respect thereof and realising the security for the benefit of those on whose behalf he is appointed, subject to prior encumbrances. Unless he is an appointed manager, he does 118 not have the power to carry on any business or undertaking. A person appointed as a manager of the whole or any part of the undertaking of a company shall manage the company with a view to the realisation of the security of those on whose behalf he is appointed.

From the date of the appointment of the receiver, the powers of the liquidators and directors, to deal with the property of the company over which the receiver is appointed, cease, until the receiver is discharged. The floating charges in relation to the company crystallize and become fixed charges and the company can no longer deal with the assets without the consent of the receiver.

Filing of claims

Claims relating to a liquidated estate are filed at the Federal High Court, commenced by way of a petition. There is no statutory time limit to file such a claim, reasonable time will be required where steps are required to be taken. The course of action may also be limited depending on the nature of the claim. For example, a claim on simple contract has a 6-year limitation period. Each creditor must prove his debt by delivering or sending through the post, an affidavit verifying the debt. The affidavit must contain or refer to a statement of account showing the particulars of the debt and whether the creditor is a secured creditor.

Factors which influence the period of the administration in a liquidation

The process of administration may be influenced by whether or not there are dissenting shareholders or if an action has been instituted in the Courts against the process.

Effect of liquidation on employees

Employee claims that may arise are not with respect to wrongful termination, but rather with respect to non-payment of employee's full benefits or non–payment in preference to all other claims. Where employee pension plans or schemes exist, claims for deficiencies in such plans will have priority in liquidation because pensions are now a statutory requirement and in practice, where unpaid, the employee may have recourse to the Court to enforce the same.

Furthermore, the Act provides that in considering whether a particular transaction or course of action is in the best interests of the company as a whole, a manager appointed out of Court may have regard to the interests of the employees, as well as the members of the company.

Effect of liquidation on contracts

Most contracts provide for termination in the event of liquidation and the termination is without prejudice to the liabilities incurred prior to termination.

Effect of liquidation on shareholders

During the winding-up process, the assets of the company are realised, sold and applied to pay off its debts and whatever is left as the surplus is distributed among the shareholders in accordance with the provisions of the Memorandum and Articles of Association.

Effect of liquidation on creditors

Generally, secured creditors rank in priority over unsecured creditors, also a registered security ranks above an unregistered security interest. The remedies available to unsecured creditors are to apply to Court for an order for the judicial sale of the assets of the company in order to recover any and all debts, to apply to Court for the appointment of a receiver in order to recover the debts of the company or to commence recovery of the principal debt and interest following an order of Court. After judgment is obtained, it may be enforced on the moveable and immovable assets of the debtor through attachment, garnishee proceedings and/or sequestration proceedings. Pre-judgment attachments may be obtained by a creditor's interlocutory application to the Court showing the reason why such moveable property should be attached, pending the determination of a matter. This application may be granted by the Court where it is shown that the moveable property may be dissipated before the determination of the suit, thereby making the judgment nugatory. An unsecured creditor of a public company may claim rescission, damages or compensation where there is a tort of deceit or false statement as contained in CAMA.

Pending claims, litigation and arbitration

Where a winding up petition has been presented and action or other proceedings against a company are instituted or pending in Court, the company or any creditor, or contributory may, before the making of the winding order, apply to the Court concerned for an order staying proceedings, and the Court concerned may, with or without imposing terms, stay or restrain proceedings, or if it thinks fit, refer the case to the Court hearing the winding-up petition. Accordingly, litigation or arbitration proceedings may be stayed following the commencement of liquidation proceedings subject to the aforesaid.

Section 580 of CAMA 2020 provides that if a winding-up order is made or a provisional liquidator is appointed, no action or proceeding shall proceed with or commence against the company except by leave of the Court given on such terms as the Court may impose.

Voidable transactions

Transactions may be invalidated in the following circumstances:

- a floating charge created within 3 months of the commencement of winding-up proceedings (avoidance period), unless it is proved that the company was solvent immediately after the charge was created;
- Transactions made by a company unable to pay its debts, in favour of any creditor or to any person in trust from that creditor to give that creditor preference over other creditors during the avoidance period are void (fraudulent preference). These transactions include:

- conveyances;
- mortgages;
- the delivery of goods;
- payments;
- executions

Where a floating charge is created over the assets of a debtor for genuine concurrent money made available to the debtor during the avoidance period, the security will not be invalid as a preference if it can be proved that:

- the company was solvent immediately after the creation of the charge; and
- new money was advanced contemporaneously with or subsequent to the creation of the charge. While there are no statutory rules relating to transactions concluded at below their value, there is precedent to suggest that a Nigerian Court may likely construe such a transaction as a fraudulent preference and declare same void, to the extent that the transaction was meant to overreach the company's other creditors. Where a company gives a guarantee for below value, that guarantee will also be affected by the avoidance period.
- any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property which would, if made or done by or against an individual, be deemed in his bankruptcy to be a fraudulent preference, shall, if made or done by or against a company, be deemed, in the event of it being wound up, to be a fraudulent preference in respect of its creditors, and accordingly be held to be invalid.

Furthermore, any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

How is the liquidation process terminated?

A final meeting is held and the company is dissolved upon the termination of a liquidation process. As soon as the affairs of the company are fully wound-up, the liquidator shall prepare an account of the winding-up, showing how the winding-up has been conducted and the liquidator shall call a general meeting of the company for the purpose of laying the account before the meeting. On approval of the accounts by the members of the company, and within 7 days of such approval, the liquidator will send a copy of the accounts to the Corporate Affairs Commission. The Corporate Affairs Commission, on receiving the account shall register the accounts, and on the expiration of 3 months from the registration thereof, the company shall be deemed to be dissolved.

Director or officer liability Section

672 of CAMA provides for personal liability of any person, including directors, responsible for all or any debts or other liabilities of a company where in the course of winding up, it appears that the business of the company had been handled in a reckless manner or with intent to defraud creditors. Section 674 of CAMA provides for the power of the court to assess damages in respect of delinquent directors.

CONSEQUENCES OF DIRECTOR OR OFFICER LIABILITY

Civil Consequences

A director or officer of a company may be liable in damages for every act of default or failure to comply with the statutory obligations imposed on the director by CAMA.

Criminal Consequences

Nigerian law makes provisions for the imposition of criminal sanctions which give rise to either the payment of fines and/or imprisonment.

BUSINESS RESCUE/ADMINISTRATION

CAMA allows for business rescue and administration procedures. Under section 434 of CAMA, the directors of a company may make a proposal for a voluntary arrangement to ultimately preserve the company. The law also provides for the appointment of an administrator by

- an order of Court ;
- holder of a floating charge ; or
- the company or its directors

The objectives of the administrator include amongst others to rescue the company, achieve a better result for creditors and realise property to distribute to secured or preferential creditors. The Act goes further to emphasize that the rescue of the company is the primary objective of the administrator in the performance of his functions, except where he is of the opinion that it is not reasonably practicable or a better result can be achieved for the company's creditors by pursuing some other course in order of priority as specified under section 444(2) of CAMA 2020.

Directors of a financially distressed company may also commence an arrangement and/or compromise pursuant to section 711 of CAMA. Section 717(1) places a moratorium on creditors' enforcement actions where the company has commenced a process of arrangement/or compromise with its creditors.

Business rescue/administration may be informal and could be based on an agreement between creditors and the debtor company. Such agreements may be, or may not be, filed with the Court but will usually involve negotiations between the parties. Business rescue/administration may take the form of an out-of-court debt restructuring involving a change to the composition and/or structure of the assets and/or liabilities of a company in financial distress, without resorting to a full judicial intervention and with the objective of restoring the growth of the company and minimising the costs associated with the company's financial problems.

INSOLVENCY PROVISIONS UNDER THE INVESTMENTS AND SECURITIES ACT (ISA) 2025

Application to Capital Market transactions

The Investments and Securities Act (ISA) 2025, which came into effect in March 2025, introduced targeted insolvency provisions for financial market infrastructures (FMIs) which include systemically important capital market participants, trade repositories, securities exchanges, central counterparties, central clearing houses, central securities depositories, and securities settlements systems. The provisions diverge from general corporate insolvency rules by modifying general bankruptcy laws to prioritize market stability during failures, ensuring trades are settled without chaos. Section 45 of the ISA 2025 explicitly modifies the application of insolvency laws to FMIs, exempting market contracts, clearing actions, and collateral transfers from general rules like priority payments.

By the provisions of Section 47 of the ISA 2025, no conflicting order can be made under any law dealing with bankruptcy in Nigeria in respect of the operations and activities of FMIs. This ensures that the rules and settlement processes of an FMI take precedence over general insolvency proceedings that might otherwise freeze or reverse financial transactions.

Furthermore, Section 49 of the Act mandates that any person in control of the assets of a defaulter (a person against whom an FMI has taken an action under its default arrangement) provide assistance including information, access to records, or other cooperation when an FMI requires same to manage risks or resolve a crisis in respect of its default proceedings.

Section 51 of the ISA 2025 prevents specific actions taken by financial market infrastructures (FMIs), like stock exchanges, clearing houses, and payment systems, from being challenged or reversed during insolvency or bankruptcy proceedings. The provision ensures that routine operations such as settling trades, processing payments, or enforcing collateral rules continue smoothly even if a participant goes bankrupt.

SECURITY

Types of securities

There are two broad categories of security available in Nigeria - personal security and real security.

Personal security, such as a guarantee, arises when a guarantor or the surety undertakes to answer for the present or future obligations of a debtor in the event of its default. Personal security is created by contract. Examples of personal security are guarantees, indemnities and a letter of comfort that is legally binding.

Real security, on the other hand, affords a creditor certain right over property which has been appropriated to meet the debt or other obligations of the debtor. Real security may be created by contract or may arise by operation of the law. In the former case, the security may take the form of a mortgage, charge, pledge and/or hypothecation, while in the latter case it takes the form of a general lien or right of set-off.

Taking of security

In Nigeria, security is taken for a number of reasons which include the following:

- the desire to make the business of money lending satisfy the needs of commerce and industry in terms of minimising the interest rate;
- from the creditor's viewpoint, the essence of real security is priority and the assurance of payment in the event of a debtor's death, bankruptcy or insolvency;
- avoidance of the challenges of initiating legal proceedings to enforce payment where the debt is unsecured or the security is only personal in nature;
- security is crucial if a lender is unwilling to rely solely on his debtor's personal credit for the discharge of the latter's obligations, but is desirous of having something more than a mere contractual remedy against a defaulting debtor; and

- the need for control in the sense that if a creditor takes security over a specific asset of the borrower, then the latter relinquishes exclusive control over the asset.

Security Trustees or Special Purpose Vehicles

It is uncommon for lenders in Nigeria to only take security over a Special Purpose Vehicle (SPV) without assets. What is achievable is a structure that involves a highly leveraged parent company setting up an SPV, usually a wholly owned subsidiary, as the borrower. The assets of the SPV are put up as security for lending. This is usually further enhanced by a guarantee from the parent company, secured by a charge on the shares of the parent company in the SPV and/or security from a sister company. Where the parent company targets an off-balance sheet financial transaction, the proceeds from projects and assets of the SPV can be used as security. There are also loan syndications by banks whereby a trustee is appointed by the lender to hold security on behalf of the lenders.

Most robust form of security

All assets, debentures, incorporating a charge on the fixed and floating assets of a company are considered robust forms of security. In addition, guarantees issued by local and international financial institutions are also commonly used to safeguard lending.

Registration of security

The registration requirements depend on the type of security. Generally, personal security is not required to be registered since it does not transfer any proprietary interest to the lender and notice to other prospective lenders is therefore unnecessary. With respect to real security, the registration requirements are based on its classification as illustrated below, namely where:

- the creditor obtains proprietary rights over the subject matter of the security but may not obtain possession of such property. An example of this is a legal mortgage or charge. A legal mortgage on land requires registration at the appropriate Land Registry where the land is located after obtaining the relevant consent from the particular authority to the mortgage transaction. Furthermore, if a company mortgages or charges its assets by way of a fixed or floating charge or a combination of them, registration is required at the Corporate Affairs Commission, which is the regulatory agency for corporate entities in Nigeria. In the case of the shares of a limited liability company, the mortgage or assignment must be filed with the particular company by way of notice, while in the case of companies quoted on the Nigerian Stock Exchange, in addition to notice to the company, the mortgage must be filed with the Central Securities Clearing System, a clearing agency in the Nigerian capital market. Finally, where a borrower intends to create a mortgage over personal chattels, a bill of sale is envisaged by statute and the document of transfer must comply with the provisions of the applicable bills of sale regarding its form and registration. A bill of sale must be registered at the Bill of Sale Registry to be valid;

- the creditor does not obtain a proprietary right over the property, but rather the right to possession. Examples of this are possessory liens, rights of set-off, charges on specific credit balances and pledges. The law does not require registration for these security devices but such security clauses can be included in a substantive document such as a loan agreement/ charge on the fixed and floating assets of a company for filing at the Corporate Affairs Commission; and

- the creditor obtains neither a conveyance of title nor possession. This is generally referred to as non-possessory real security and examples are hypothecation, trust receipt and non-possessory liens which are generally not registrable. However, they could be registered in terms of the provisions of a substantive security as pointed out above.

The Secured Transactions in Moveable Assets Act 2017 (Collateral Registry Act)

The CRA affords Micro and Small Medium Enterprises (MSMEs) the opportunity of acquiring loans from financial institutions (financiers) with movable assets. Businesses without interests in landed properties or real estate can now approach financial institutions for loan facilities. Under the CRA, movable assets are to be registered at the National Collateral Registry (Registry), a body under the Central Bank of Nigeria with the responsibility of collating and registering all movable assets/collaterals, which are to be used to obtain loan facilities from iNS financiers. This purpose is to ensure that the interest of the creditor in this case, a financial institution, is secured against a reluctant borrower who might decide to abscond with the security earlier given.

The Registry also stores information on security interests created over movable assets and provides unrestricted access to persons or corporate bodies who may seek any information on the security interest. The secured creditor may perfect the security on the asset by filing the prescribed forms and provide other relevant information, which must be the particulars of the asset at the Registry.

The CRA allows the secured creditor to take physical possession of the security upon default or liquidation. The CRA also permits a secured creditor to attach all identifiable and traceable proceeds of the assets (collateral) of the obligor/debtor and not only the secured assets.

Stamp Duty

Section 4(1) and (2) of the Stamp Duties Act empowers the Federal and State Government to impose, charge, and collect stamp duties in different circumstances. The Federal Government has the sole authority to impose, charge and collect stamp duties in respect of documents relating to matters between a company and an individual, group or body of individuals. Stamp duty is paid at the Stamp Duties Office of the Federal Internal Revenue Service. Stamp duty paid may be evidenced on a document in various forms as permitted by law which include adhesive stamps, postage stamps, impressed or embossed by means of a die stamp (i.e. plate tool or instrument). These impressions usually appear on the face of the document. Except where express provisions are made in the Stamp Duties Act (such as documents that must be stamped before execution e.g. insurance policies) any unstamped or insufficiently stamped instruments may be stamped within 40 days from its first execution. One exception to this rule is the case of instruments chargeable by ad valorem duty which has a time limit of 30 days. Some instruments attract duty at flat or fixed rate, while other instruments attract duties according to their value. It is not a different duty; it is another way of calculating the stamp duty that is owed.

Registration Costs

The registration costs are calculated in terms of the regulations issued by the Corporate Affairs Commission (CAC). The current 2025 Schedule of fees issued by the CAC provide that for public companies, private companies and companies limited by guarantee, the registration cost for charges is 25,000 or 0.35% of the amount secured by the charge whichever is higher. Furthermore, under the Schedule of fees, the cost for the registration of accredited agents/ professionals is N10,000.00, while the cost for the registration of insolvency practitioners is N50,000.00.

Requirements for Assignment or Transfer of Security

The consent of the parties to the secured transaction will ordinarily be required for security to be transferred together with the notification of the relevant parties and relevant registry's office.

Instances in Which Securities Might Be Vulnerable to Attack

If security is taken in breach of any applicable rules or regulations or if it is not perfected, it may be attacked and in turn set aside. The failure to register a deed of charge with the Corporate Affairs Commission within 90 days after its creation would render the charge void and the debt becomes payable immediately. Furthermore, the failure to obtain the governor's consent for a legal mortgage as well as compulsory acquisition of a mortgaged property by the Government may also render one's security liable to be set aside.

Methods of enforcement of security

The methods for the enforcement of security depend on the nature of the security taken —that is, whether it is personal or real security. Personal security enforcement requires Court action for the realisation of the security and the recovery of the debt that such security secures. However, if the security is real, enforcement may not require Court action where the contract creates a legal interest as against an equitable interest. In the case of real security that creates a legal interest, the assets secured can be realised by the lender by complying with the terms and conditions stipulated in the security document which will ordinarily not include obtaining a judicial order for sale.

Some of the methods of enforcement of security are:
- foreclosure in the case of a legal mortgage on land following an application to the Nigerian Courts;
- taking possession of the mortgaged property;
- appointing a receiver or manager for the company to release the security and pay the debt secured by the security;
- sale of the mortgaged or charged property with the consent of the Court or without the consent of the Court in the case of a legal mortgage;
- set-off;
- appropriation in relation to security over bank accounts; and
- a petition for the winding up of the company in the case of an equitable charge or an unsecured credit transaction.

Problems experienced when enforcing security

The technical legal problems experienced when executing judgments and Court orders are:

- frivolous injunctions filed by debtors to delay enforcement;
- delays experienced in the administration of justice through protracted legal proceedings;
- stay of execution of judgments or appeals to a higher Court by a judgment debtor;
- inadequate documentation of the secured credit transaction and ambiguities in the security instruments which may jeopardise any recovery action;
- defence of excessive and unreasonable interest charges by banks;
- failure by a bank to comply with the conditions precedent to enforcement as may be specified in the security document;
- the defence of lack of capacity on the part of the borrower and the failure to obtain corporate approvals for borrowing; and
- problems experienced in resolving competing claims arising from the multiple registration of security instruments.

Financial assistance requirements

There are no statutory requirements for financial assistance in Nigeria. The following factors are, however, considered amongst others, before a company grants financial assistance to another company, namely:

- the viability of the business;
- the availability of security for the loan or assistance;
- the ability to repay the loan or financial assistance; and

- applicable laws and regulations related to the granting of loans or security which include directives from the Central Bank of Nigeria and legislation passed by the National Assembly.

On a related point, financial assistance provided by a company for the acquisition of its own shares is prohibited. CAMA prohibits a company or any of its subsidiaries from giving any financial assistance to a person for the acquisition of shares in the company. There are however certain exceptions which include:

- lending in the ordinary course of business; and
- loans to employees, except for directors, to enable them to purchase fully paid-up shares of the company or its holding company in their own right.

RECOGNITION OF FOREIGN JUDGMENTS

Instances in which your court will recognise a foreign judgment

There are two federal laws that are relevant for the recognition and enforcement of foreign judgments - namely, the Reciprocal Enforcement of Judgments Act, 1958 and the Foreign Judgments (Reciprocal Enforcement) Act, Cap. F 35, Laws of the Federation 2004.

The Reciprocal Enforcement of Judgments Act, 1958 (the 1958 Ordinance) deals with the registration of judgments obtained in Nigeria and the United Kingdom and other parts of Her Majesty's dominions and territories. It is pertinent to note that the Foreign Judgments (Reciprocal Enforcement) Act (the 2004 Act) did not specifically repeal the 1958 Ordinance. The 1958 Ordinance and the 2004 Act have separate spheres of application. While the 1958 Ordinance applies to Commonwealth countries, the 2004 Act applies to judgments in respect of which the Minister of Justice has made an order to that effect pursuant to section 3(1) of the Foreign Judgments (Reciprocal Enforcement) Act. Such an "order", however, can only be made to cover a country which offers reciprocal treatment to the judgments of Nigerian Courts.

Requirements for recognition of a foreign judgment

According to the Foreign Judgments (Reciprocal Enforcement) Act, a judgment must meet the following conditions to be enforceable in Nigeria:
- pronounced upon by a superior Court of the country of origin;
- it must be a money judgment;
- It must be a final and conclusive judgment. The onus to prove this rests on the party who asserts the claim;
- can be in respect of arbitral awards; and
- can be in respect of judgments given in criminal proceedings for the payment of money in respect of compensation or damages.

Requirements for the recognition of a foreign trustee, business rescue practitioner or insolvency practitioner

Existing legislation on insolvency in Nigeria does not provide for recognition of a foreign trustee. Section 705 provides for the qualification of an Insolvency Practitioner. CAMA 2020 defines an insolvency practitioner to be "a legal practitioner within the meaning of the Legal Practitioners Act or a member of the Institute of Chartered Accountants of Nigeria or such other professional bodies of accountants as are established by an Act of the National Assembly."

Section 443 of CAMA 2020 provides for appointment of an administrator (business rescue practitioner). It goes further to state in section 444 that an administrator has the primary function of rescuing the company, the whole or any part of its undertaking, as a going concern except where he is of the opinion that it is not reasonably practicable or a better result can be achieved for the company's creditors by pursuing some other course in order of priority.

Under the administration procedure for business rescue, the law provides that where an administrator is appointed out of Court and it is an administration that has a cross-border element, an application ex parte shall be made to the Court for approval.