

# INSOLVENCY PRACTICE: TIPS AND INSIGHTS

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# INTRODUCTION TO INSOLVENCY PRACTICE

Winding up, Liquidation, Administration Order, Receivership, Compromise and Reconstruction are terms commonly used in connection with the Management of a company's liquidity (working capital). It may also include factoring in core financing terminology.

Our discussion will single out Winding up to be looked at in three phases: preliminaries; Registration and the Liquidation process.

# Nigerian Legislations on Insolvency

Nigeria is currently in need of a robust Insolvency law. Unlike what obtains in other jurisdictions like UK, there is no separate codification in this area. No wonder it was all comers' affairs until the CAMA 2020 *attempted* to regulate the terrain. Chapters 19 – 21 of the Companies and Allied Matters Act, 2020 and more specifically, sections 570 – 690 on winding up. It will be desirable to have such laws and Insolvency Act, 1993 of the UK.

# Insolvency practice imperatives

1. Insolvency practice is not just about corporate. It is also personal and the relevant regulations and laws in this area should recognize this fact. Just as companies can be declared bankrupt, so can individuals.
2. Working capital management, factoring, restructuring, are all tools useful to insolvency management.

## Contd.

3. There should be separate codification in this area of practice. It is not an area of law, for the avoidance of doubt.
4. Useful collaboration between bodies under the supervision of a regulator is desirable.
5. Special training and certification should be encouraged. **You can not dabble into it!!**

# For intending practitioners, you need

1. To understand the meaning of working capital from the corporate perspectives.
2. To understand Assets and liabilities;
3. To be able to use notes and schedules that explain the accounts.
4. To understand that you may need other Consultants.
5. Business recovery is a major part of insolvency practice.

## In more practical terms.....

Review Chapters 19 – 21 of the Companies and Allied Matters Act, 2020 and more specifically, sections 570 - 690.

-Set the timeline and prepare registration documents.

- Conduct a Search/inspection of the current Directors and shareholders as well as charges before commencement.

## Preliminaries continued

- Prepare the Statutory Declaration of Solvency as required by the Law in the case of member's voluntary winding up: Section 625.
- Obtain signatures of all or a majority of the Directors.
- Obtain a Statement of Affairs of the company as near as possible to the latest audited accounts.
- File all these together at the Corporate Affairs Commission upon payment of fees.

# Preliminary Contd.

- Obtain acknowledgment from the Corporate Affairs Commission to signify that the SDS has been filed.
- Observe a waiting period of 5 weeks from the date of filing. Note, not necessarily waiting for 5 weeks, but within 5 weeks.

# Appointment, Resolutions & Registration

- Pass a special resolution appointing the Liquidator.
- Pass a special resolution to wind up the company.
- Publish both resolutions above in two National Newspapers and in the Federal Government Gazette.

# Registration of the Liquidation process

- Deliver the resolutions and the publications within 14 days for registration at the Corporate Affairs Commission upon payment of prescribed fee.
- An acknowledgement will be issued indicating that the special resolutions for the appointment of a Liquidator and the winding up of the company have been REGISTERED.
- NOW, the Liquidator may COMMENCE his/her work.

# Now that you have registered the process;

- The acknowledgement letter you received from the Corporate Affairs Commission will ask you to continue with the work as a Liquidator.
- You have only just now completed the initial registration. The work of Liquidation now commences.

# THE LIQUIDATOR

- He acts in fiduciary. His appointment renders the Directors redundant.
- He takes charge of the Management of the business as the Liquidator.
- Signs correspondences on behalf of the company.
- Amend signatories to Bank Accounts to include him/herself.
- He exercises all the powers of the company – can sue in the name of the company, etc.
- If he/she is an Official Receiver, he report from time to time to the Court which appointed him.
- His/her general powers are contained in sections 588 and 644.
- **His cost and fees are payable in priority out of asset: S. 647.**

# LIQUIDATION PROCESS

- Review the Statement of Affairs and relates it to the latest Audited Financial Statements to ascertain the present position of Assets and Liabilities.
- Confirm any difference and trace the causes.
- Take control of the 'books' immediately and work with the CFO/CEO to handle 'circularization.'

# DEALING WITH THE OPERATIONS/MANAGEMENT

- In a very large winding up/liquidation assignment, consideration must be given to operations and management. In manufacturing companies, WIPs must be allowed to proceed to finished goods.
- This will then inform the decision as to what number of employees and what cadre would be needed to carry on the business towards an effective **'tracing and realization.'**

# Tracing:

- Work with the CFO/CEO to ***obtain the fixed asset register*** and relating it to the Statement of Affairs provided earlier, you will be able to ascertain what viable assets are available and trace them to their specific locations to take ***inventory***.
- Inventory (physical) must be taken of ALL assets once traced – land, building, furniture, machinery, vehicles, stationery.....so long as they are of value in commerce.

# Tracing Contd.

- Once traced and counted, call in a **valuer** to ascertain the current market value of all assets as much as possible. Intangible asset such Ips should also be valued.
- For current assets, issue circulars to the Debtors, Bankers, customers and service providers to let them know of your authority while the company goes through the process.
- Stocks should be valued in line with the relevant accounting standard.
- Withholding tax credits must also be brought into the asset fold. VAT yet to be remitted should be recognized as a debt.
- Remember that in all these, correspondences will be issued. In doing so, a new set of stationery bearing the name of the Liquidator and describing him as such must be printed. The Directors' names ceases to appear.

## Tracing contd.

- All amounts confirmed by the Banks, Debtors, etc., are part of the company's assets that will have to be accounted for and if the company is to continue to run for up to or longer than one year, this will form the ***opening balances*** for the ***Liquidator's(Receipt and Payment) Accounts.***

# Dealing with Liabilities

- Differentiate between short-term, long-term debts and those to be settled in priorities.'
- Whereas you have **traced** assets, you will need to **verify** all claims that makes up the company's liability. Verification is another cumbersome process that may sometime requires litigation and/or expert opinions.
- Verify trade creditors' balances, loan account balances; outstanding salaries; taxes due and assessed, including PAYE and VAT remittances.

# Realization of assets

- Realization here will include sale of holding stocks and WIP as well as fixed assets.
- To do this, engage a **valuer** and other professionals needed to perfect the transactions. Proceeds should go into Liquidators' account as a *receipt*.
- ***Remember, a Liquidator is in a position of trust.***
- ***Realization is a key aspect of this job and may require engaging the services of technical persons in the specific field.***
- ***The whole idea is to generate as much liquidity from which claims and liabilities can be settled if the company is in debts.***
- ***A separate liquidation Bank account is advisable for receiving proceeds of realization of assets.***

# Settlement of claims and liabilities

Once verified and ascertained, the Liquidator should:

- Rank and prioritize debts and claims as much as practicable.
- Reach compromises with Creditors (if the need arises).
- Settle debts as much as the available resources can accommodate and record amounts in the Liquidator's account as 'Payments.'
- Obtain a discharge certificate and/or a deed of release.

# Liquidation continuing over one year

- If for any reason the process of liquidation lasts longer than one year, an audited Liquidation account prepared by the Liquidator shall be file with the Corporate Affairs Commission. This must continue for each year during which the liquidation continues.

# At the end of the liquidation:

- **Question:** When is the liquidation ended?
- **Answer:** When the company's liabilities have been settled as much as possible from the available assets.
- At this point, the contributories/shareholders are given the opportunity to take a final decision on the fate of the company: either to dissolve or to continue with the assets salvaged.
- This decision will be taken at a **Final Meeting** of the members in the case of a members' voluntary winding up.

# Closing the process

- Issue a twenty-one days notice of Final Meeting and publish in the Gazette and a National newspaper. Evidence of this to be given to CAC.
- Prepare a final audited Liquidator's account
- Prepare minutes of the final meeting.
- Deliver the above together with the original Certificate of Incorporation.
- If resolution is passed at the Final Meeting for a dissolution, the Registrar will issue a letter confirming that the company will be deemed dissolved after 90 days: Section 641(4).

**END**

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**● Q & A**

**● THANK YOU FOR YOUR ATTENTION.**

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