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Delimiting the duties and powers of company administrator under the companies and allied matters act 2020

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Abstract
A significant development in the new Companies Act of Nigeria is the introduction of the provisions on company administration with the underlying objective of corporate rescue. The statutory provisions are direct adoptions from the UK and Australia statutes. However, one unique aspect of the Nigerian Companies Act is its omission to include the provisions relating to limitations on the duties and powers of an administrator as contained in the UK and Australia statutes. This paper finds the omission reasonable and valid though it leaves a gap of not providing expressly for when and how the duties and powers of an administrator may be clearly defined or determined. This paper fills the gap and offers legal and corporate practitioners, including judicial officers a useful guide to understanding the duties and powers of an administrator under the Nigerian Companies Act 2020.

Keywords: Company administration, corporate rescue, insolvency procedure, administrator's duties and powers, Nigerian companies act 2020

Introduction

A significant development in the new Companies Act of Nigeria is the introduction of the provisions on company administration [1]. It is significant in the sense that it reflects the 21st century standard in corporate law and practice which favours the rescue and resuscitation of insolvent company more than its summary liquidation or winding up. Aside creditors, modern understanding of a corporate failure recognizes the hurtful impact it could have on other stakeholders such as employees, dependent small businesses, and the community of its operational base.

Household poverty is exacerbated when such company's employees lose their jobs and small businesses depending on its operations are forced to close shops. The host community also suffers from the loss of positive externalities and other benefits that accrue from the company's corporate social responsibilities. There is therefore much at stake when a company is insolvent or in financial distress, unable to pay its debts as they fall due, and it becomes necessary to decide its continued existence. Prior to the new provisions on company administrator, financially distressed companies were constrained to embrace only terminal schemes of arrangement such as receivership [2].

Otherwise, such companies were subjected to the procedures for outright liquidation and summary winding up. In contrast, a company in administration by reason of financial distress would have its business, property, and affairs administered in a way that maximises the chances of the company, or as much as possible of its business, continuing in existence. If it is not possible for the company or its business to continue in existence, administration results in a better return for the company's creditors and members than would result from an immediate winding up of the company [3].

Therefore, the underlying objective of administration is towards corporate rescue and a better deal for all stakeholders of a failing company that is unable to break even. This paper examines the provisions on company administration as contained in the new Companies Act (CAMA 2020) of Nigeria. In the provisions, the procedure for administration revolves around the administrator who is vested with the powers and duties required to drive the process. Consequently, the effectiveness of the administration procedure and the successful achievement of its underlying objectives would depend largely on the statutory role of the administrator.

As novel provisions in the corporate legal regime of Nigeria, it is of practical usefulness to clearly understand the full import of the duties and powers of the company administrator in the Nigerian statutory context. More so, the statutory provisions were introduced decades after provisions on company administration were formulated and applied in leading common law jurisdictions like United Kingdom and Australia [4]. Now, are the Nigerian statutory provisions on company administration different from the statutory positions in the UK and Australia? In what respects are the Nigerian provisions unique in national context, or reflective of existing provisions in other common law jurisdictions?

The answers to these questions are offered in this paper. The paper is structured into two sections. The first section provides a background to statutory provisions on corporate rescue and company administrator in the UK and Australia. The background is necessary for the purpose of a contextual analysis of the Nigerian provisions in the CAMA 2020, which constitutes the focus of the second section. Ultimately, this paper offers legal and corporate practitioners, including judicial officers a useful guide to understanding the duties and powers of company administrator under the Nigerian CAMA 2020.

1. Background to statutory corporate rescue

Although company administration was introduced under the CAMA 2020 for the first time in Nigeria, the enactment or reform of statutes to ensure the rescue of insolvent

companies has a relatively long history in advanced common law jurisdictions such as the UK and Australia. In these jurisdictions modern corporate rescue and company administration emanated from insolvency procedures for taking control of companies by receivers acting on behalf of secured creditors, and the negotiation of debts between debtor companies and their secured creditors.

For example, by the first half the 20th century the insolvency of a company in the UK would lead to the major secured creditors appointing a firm of accountants with the task of recovering the debts through receivership, a procedure created sometime in the 18th century, and which was based on an old equitable remedy in real property law [5]. Receivership was therefore a procedure through which creditors with a floating charge over the assets of the company could appoint a firm of accountants as receivers to take control of the assets with the primary objective of realising the creditors' securities.

The receivers only had to relinquish the company after completing the tasks of debt recovery and the company rarely survived this procedure because its sole aim was to maximise returns to the creditors, in particular the principal creditors holding the floating charge, rather than having any concern for the survival of the company [6]. At the time in the UK, corporate insolvency was governed by the Companies Act 1948 which provided procedures for involuntary liquidation initiated by creditors, and voluntary liquidation initiated by the company directors or shareholders.

The procedures for a compromise or arrangement between a debtor company and its creditors as provided under the Companies Act 1948, and which heralded modern statutory Scheme of Arrangement, were not aimed at corporate rescue or business resuscitation. Therefore, the position in the UK during the period was that the insolvency procedures lacked any real method for rescuing companies in financial difficulties. While some of the statutory procedures in existence such as receivership appeared to meet the aim of preventing immediate collapse of financially distressed companies, they were however not effectively fit for modern purposes and the fundamental objective of corporate rescue [7].

Consequently, the Cork Committee in 1977 reviewed the insolvency system in the UK and recommended an insolvency regime that is geared towards the objective of corporate rescue. The recommendations of the Cork Committee culminated in the UK Insolvency Act 1986, and it introduced company administration as a corporate rescue procedure in this 21st century as currently provided in the UK Enterprise Act 2002 and Companies Act 2006. The UK efforts at developing effective legal procedures for corporate rescue apparently influenced the Australian Law Reform Commission's 1988 General Insolvency Inquiry Report.

The Inquiry was conducted to ascertain the existing procedure for dealing with insolvent companies in Australia and to recommend best practices for corporate rescue. At the time of the Inquiry, the existing legal procedures were the scheme of arrangement and official management. While the court-supervised scheme of arrangement was considered cumbersome, slow, and costly, the official management which could only be used to facilitate debt repayment, was rarely invoked [8]. The Inquiry Report recommended the adoption of a constructive approach to corporate insolvency that focuses on the possibility of saving a business as distinct from the company itself [9].

The Inquiry Report led to the enactment of the Australia's Corporate Reform Act 1992 which eventually ushered in the current regime of the Corporations Act 2001. The Australia's Corporations Act 2001 provides for procedures for corporate rescue which largely reflect the administration procedures under the UK Insolvency Act 1986 as adapted in the extant Companies Act 2006. In both jurisdictions, the introduction of company administration provided the procedures for corporate rescue to the extent that serves the interests of all stakeholders more than what a winding up or liquidation of an insolvent company may achieve.

As a common law country with a long history of adoption or replication of statutes in existence in the UK, the Nigerian company administration as provided in the CAMA 2020 is bound to be heavily influenced by the UK statutory procedures for corporate rescue. Examined below are the statutory provisions of the UK and Australia relating to company administration and the role of the administrator. The purpose of the examination is to establish the standard by which the Nigerian provisions are subsequently analysed in the second section of this paper.

1.1 Company administration: Functions and powers of an administrator in the UK and Australia

In the UK, the Insolvency Act 1986 introduced the objective of promoting corporate rescue through two procedures of company voluntary administration applicable to companies prior to formal insolvency, and administration for companies that are closer to insolvency. The two procedures were a simplified and stripped-down version of the scheme of arrangement and receivership already in existence under the Companies Act 1948. But administration, as introduced in the Insolvency Act 1986, was more formal a process directed by an administrator under the overall supervision of the court.

As noted by Omar and Grant, unlike receivership, administration under the Insolvency Act 1986 was in nature a collective procedure, thus serving the interests of all creditors, both secured and unsecured, rather than just the secured principal creditor [10]. As envisaged by the Cork Committee Report, administration was expected to allow the company's business to continue, thus preserving employment, trading and the making of profits, as well as the eventual satisfaction of most of the company's creditors [11].

Therefore, the administration procedure required that it would lead to one of four possible outcomes which had to be specified in the administration order to include: the survival of the company or a part of it as a going concern; the approval of a company voluntary administration; the sanctioning of a scheme of arrangement; or for some more advantageous realisation of the company's property than might be attained in a straight liquidation [12]. Accordingly, administration was viewed as leading somewhere, not just to the company being rescued but also to some other potentially rehabilitative procedure being successfully implemented [13].

The procedure required an application for administration to be presented to court by the insolvent company, its directors or secured creditors and the effect of the order, when granted, was to place a moratorium on any contractual enforcement against the company. Based on the order, a

qualified insolvency practitioner was appointed as the company administrator. The role of the administrator was vested with wide powers to investigate and ascertain the company's affairs, take managerial control of the company, and deal with its assets as necessary to the performance of his duty [14].

The administrator was required to publish a statement of his proposals for the company which was to be considered at a creditors' meeting. And the administrator was obligated to provide necessary information to the creditors until they were eventually presented with the administrator's recovery plan. According to the provisions of the Insolvency Act 1986, the adoption of the recovery plan could normally be approved during a meeting called by the administrator, however, dissenting shareholders or creditors could seek remedies in court if they perceived that they had suffered unfair prejudice in the plan [15].

But the implementation of the recovery plan could lead to the administrator selling the whole of the business, or as individual business units, as a going concern with the shell of the company being wound up, following which the administrator was discharged [16]. One fundamental shortcoming of company administration under the Insolvency Act 1986 was that the administrator was faced with four objectives of which corporate rescue was as equally relevant as the three other hierarchy of objectives. Thus, the role of the administrator was not truly geared towards rescue and resuscitation of insolvent companies.

Indeed, the UK government considered the administration procedure as not sufficient to promote a rescue culture, and therefore instituted a Review of Company Rescue Mechanisms [17]. The principal recommendations of the Review were subsequently adopted in the Enterprise Act 2002. According to Lord MacIntosh of Haringey during the debate on the Enterprise Bill; 'We want to put company rescue at the heart of insolvency procedures because we want to save companies which have a decent chance of survival so that they are not driven to the wall unnecessarily' [18].

Since its enactment, the UK Enterprise Act 2002 is noted to have reshaped the UK corporate insolvency law because it was intended to effectively facilitate corporate rescue more than the old legal regime and to produce better returns for all the creditors of the company. Of contextual relevance is that the Enterprise Act 2002 provides a useful prism through which to understand the administrator's duties and powers as the 'crisis organ' of the company, taking over when the board of directors can no longer successfully deal with the company's financial difficulties [19].

The Enterprise Act 2002 imposes on the administrator a specific duty to be efficient — to 'perform his functions as quickly and efficiently as is reasonably practicable' [20]. The administrator is obligated to act with utmost loyalty and for proper purposes. The duty of loyalty implies that the administrator's powers must be exercised in the interests of all the company's creditors, and proper purposes mean one of the three stated objectives of administration, namely, (a) rescuing the company as a going concern, or (b) achieving a better result for all the company's creditors 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 creditors or preferential creditors [21].

Essentially, the administrator must perform his duties in good faith and must not exercise his power for a collateral purpose. In the context of incorporated business entities under the UK Companies Act 2006, an administrator has a duty to investigate the company's affairs, business, property, and financial circumstances, and to form an opinion as to: (i) whether it would be in the interests of the company's creditors to approve a compromise binding on the company and its creditors or a class of creditors; (ii) whether it would be in the creditors' interests for the administration to end; (iii) and whether it would be in the creditors' interests for a liquidator of the company to be appointed [22].

According to the provisions of the Companies Act 2006, an administrator has the functions and powers to: (a) carry on the company's business; (b) manage the company's property and affairs; (c) terminate or dispose of all or any part of the company's business; (d) dispose of all or any part of the company's property; (e) exercise any power, and perform any function, that the company or any of its officers could perform or exercise if the company were not under administration; (f) with leave of the Court, remove from office a director of the company; (g) with leave of the Court, appoint a person as a director of the company, whether to fill a vacancy or not; (h) execute a document, bring or defend proceedings, or do anything else, in the company's name and on its behalf; (i) do whatever else is necessary for the purposes of achieving the objectives of the administration [23].

An administrator has control of the company's business, property, and affairs and when exercising his assigned powers or performing his conferred duties he is taken to be acting as the company's agent [24]. The implication of this provision is that an administrator occupies a fiduciary relationship with the company and as such must act in good faith and in the best interest of the company. It should be noted at this point that the duties and powers of an administrator as provided in the UK Companies Act 2006 are the same as the provisions of the Australia Corporations Act 2001 dealing with procedures for corporate rescue [25].

For example, the Corporations Act 2001 provides for the powers of an administrator in terms of appointing and removing the company's directors, doing 'anything else' in the name of the company and 'whatever else is necessary for the purposes' of the administration [26]. The Corporations Act 2001 further provides for an administrator's duty of care, particularly while exercising power of sale of the company's property subject to security interest or a retention of title clause [27]. This duty of care is not expressly provided in the UK Companies Act 2006 but is implied in the general powers of an administrator. However, both the Companies Act and the Corporations Act expressly provide for the limitation of the powers and functions of the administrator [28].

In the next section, the limitation on the powers and functions of an administrator is examined in detail and in comparison, with the Nigerian provisions in the CAMA 2020. Instructively, the foregoing discourse on company administration and the functions of an administrator under the UK and Australian statutes indicates that the relevant provisions in the CAMA 2020 cannot be original to Nigeria. It also shows the incremental reforms in both jurisdictions towards attaining a level where the statutory procedures for company administration are sufficiently effective to ensure

the rescue and resuscitation of financially distressed companies. It is in that light that the relevant provisions of the Nigerian CAMA 2020 are critically examined in the following section.

2. Company administration under the Nigerian CAMA 2020

It is important to note at the outset that the CAMA 2020 does not represent a comprehensive statute dealing with insolvency in Nigeria because it is not an insolvency statute. The CAMA 2020 is mainly a legal framework for the registration and regulation of corporate entities as such its provisions relating to insolvency apply only as far as any of such entities is in financial distress. Unlike the UK, the procedures for dealing with insolvent companies as contained in the relevant provisions of the CAMA 2020 are not traceable to any insolvency statute in Nigeria.

In the erstwhile Nigerian Companies Act 1990 such procedures only involved arrangement and compromise between insolvent corporate entities and their creditors, including procedures for the appointment of a receiver, the liquidation, and winding up of insolvent companies [29]. The procedures revolved around the interest of only secured creditors without any consideration for the rescue or resuscitation of the financially troubled company, hence no companies survived the procedures.

Therefore, the CAMA 2020 provisions on company administration with the primary objective of 'rescuing the company, the whole or any part of its undertaking, as a going concern' [30] is a novel corporate rescue procedure that does not have historical precedent in Nigerian statute books. However, the CAMA 2020 provisions show Nigeria's recognition of the value of corporate rescue in modern economy, and an indication of the desire to adopt and entrench its practice in the country.

2.1 Duties [31] and powers of an administrator under CAMA 2020

According to the CAMA 2020, 'a company enters administration when the appointment of an administrator takes effect', and 'a company is in administration while the appointment of an Administrator of the company has effect' [32]. Therefore, it is the appointment of a person as an administrator by an order of court, the holder of a floating charge, the company, or its directors [33], that effectively puts an insolvent company into administration. A company does not have to be in actual state of insolvency before it can enter administration because it is provided that an administration order may be made where the company 'is or likely to become unable to pay its debts' [34].

For the purpose of administration, the CAMA 2020 provides that an administrator of a company may do all such things as may be necessary for the management of the affairs, business and property of the company, and shall perform his functions with the following hierarchy of three objectives: (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 [35].

The CAMA 2020 makes it expressly clear that notwithstanding objectives (b) and (c) above, the rescue of the company is the primary objective of an administrator in the performance of his duties, 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 objective in order of priority as specified in (a) and (b) respectively [36]. Accordingly, an administrator must pursue the objective of corporate rescue as the priority of the administration but may only consider any of the other two objectives if he is of the opinion that it is not reasonably practicable to achieve a rescue or resuscitation of the company [37].

In any case, an administrator of a company shall perform his duties in the interests of the company's creditors, and the performance of his duties must not unnecessarily harm the interests of the creditors of the company as a whole [38]. The standard of performance of duties required of an administrator is that of acting 'quickly and efficiently as is reasonably practicable' [39]. And in the performance of his duties the CAMA 2020 confers on an administrator the general powers of doing 'anything necessary or expedient for the management of the affairs, business and property of the company' [40].

There is presumption of regularity in favour of the power of an administrator to act in the performance of his duties. Because the CAMA 2020 provides that in the exercise of an administrator's general power a person who deals with an administrator in good faith and for value need not inquire whether an administrator is acting within his powers [41]. More so, an administrator is deemed to act as the agent of the company while performing his statutory duties [42]. Accordingly, upon appointment an administrator is required to take custody or control of all the property to which he thinks the company is entitled [43].

Significantly, in addition to the general powers of an administrator, the CAMA 2020 provides that an Administrator shall exercise the powers specified in the Tenth Schedule to the Act [44]. Under the Schedule, a total of twenty-three powers are listed to be exercisable by an administrator. In comparison with the UK Companies Act 2006 and the Australian Corporations Act 2001, the list of an administrator's powers under the CAMA 2020 is exhaustive and includes some otherwise implied powers of an administrator under the UK and Australia statutes [45].

Also, some of the listed powers constitute obligatory duties of the administrators, in contrast to actual powers which the administrator may exercise with discretion depending on the peculiar facts and circumstances. It is useful to draw a practical line between the 'powers' and 'duties' of an administrator under the Tenth Schedule to the CAMA 2020. The usefulness of such line would manifest in terms of deciding where and when an administrator must act as a matter of positive obligation, or when and where to act with discretional latitude.

The legal implication is that while a mandatory order can be issued to compel an administrator to perform an obligatory duty, the court would allow an administrator a degree of discretion as to whether to exercise a particular power. Like directors, administrators formally owe their duties to the company as its agents and for which they act [46], but an administrator must exercise his powers in the overall interest of all the company's secured creditors.

Thus, while an administrator's duties are expressly provided to be performed for the company under the CAMA 2020,

the exercise of his powers is circumscribed by the dictates of his common law fiduciary obligation of duty of care to the company's creditors. It is for this purpose of legal clarification that the following table is created to differentiate between what constitute an administrator's 'powers' and 'duties' under the Tenth Schedule to the CAMA 2020. This paper refers to the tabular presentation below as the 'Administrator's Table of Duties and Powers'.

Table 1: The administrator's table of duties and powers

Provisions under tenth schedule	Discretionary power	Obligatory duty	Remark
1. Power to take possession of, collect and get in the property of the company and, for that purpose, to take such proceedings as may seem to him expedient.	No	Yes	Upon appointment, the administrator must take possession of the company's property.
2. Power to sell or otherwise dispose of the property of the company.	Yes	No	The administrator may decide whether to sell the company's property or not.
3. Power to raise or borrow money and grant security therefor over the property of the company.	Yes	No	The administrator need not raise or borrow money.
4. Power to appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions.	Yes	No	Not compulsory for the administrator to make such appointments.
5. Power to bring or defend any action or other legal proceedings in the name and on behalf of the company.	No	Yes	It is necessary for the administrator to defend any action on behalf of the company.
6. Power to refer to arbitration any question affecting the company.	No	Yes	The administrator must refer such question to arbitration.
7. Power to effect and maintain insurances in respect of the business and property of the company.	No	Yes	Such insurance is compulsory, and the administrator must comply with it.
8. Power to use the company's seal.	No	Yes	It is compulsory for the administrator use the company's seal.
9. Power to do all acts and to execute in the name and on behalf of the company any deed, receipt or other document.	No	Yes	Administrator must act in the name and on behalf of the company.
10. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company.	No	Yes	Administrator must endorse all documents in the name and on behalf of the company.
11. Power to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees.	Yes	No	It is not compulsory for the administrator to appoint such agents.
12. Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the company.	No	Yes	The administrator must do all that is necessary towards the objective of the administration.
13. Power to make any payment which is necessary or incidental to the performance of his functions.	No	Yes	The administrator must make all necessary payments.
14. Power to carry on the business of the company.	Yes	No	It depends on the peculiar circumstances.
15. Power to establish subsidiaries of the company.	Yes	No	It is not compulsory.
16. Power to transfer to subsidiaries of the company the whole or any part of the business and property of the company.	Yes	No	It depends on the decision of the administrator.
17. Power to grant or accept a surrender of a lease or tenancy of any of the property of the company, and to take a lease or tenancy of any property required or convenient for the business of the company.	Yes	No	This depends on the discretion of the administrator.
18. Power to make any arrangement or compromise on behalf of the company.	Yes	No	The administrator will have to make the right decision.
19. Power to call up any uncalled capital of the company.	No	Yes	The administrator must make such call.
20. Power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the company and to receive dividends, and to accede to trust deeds for the creditors of any such person.	Yes	No	This depends on the discretion of the administrator.
21. Power to present or defend a petition for the winding up of the company.	No	Yes	The administrator must defend such petition.
22. Power to change the situation of the company's registered office.	Yes	No	This is discretionary.
23. Power to do all other things incidental to the exercise of the foregoing powers.	Yes	No	This depends on necessity.

The above Administrator's Table of Duties and Powers summarizes, clarifies, and simplifies all the provisions relating to aspects of company administration where an administrator needs to take a decision either out of legal

compulsion or circumstantial discretion. As contained in the Schedule, the provisions are as ambiguous as they are blurring of the distinctive line between the acts which an administrator has a right to perform (powers) and those he must perform (duties). The provisions of the CAMA 2020 on company administration are a direct replication of the provisions of the UK and Australian statutes, including provisions of the duties and powers of an administrator.

However, one significant omission by the CAMA 2020 is the provision on the limitation of the duties and powers of an administrator as contained in the UK Companies Act 2006 and the Australian Corporations Act 2001. According to the UK Companies Act 2006, an administrator's powers and functions are subject to the powers and functions of a secured creditor or a receiver so far as it concerns perishable property of the company, or the company's property under a charge [47]. In similar verbiage, the Australian Corporations Act 2001 also delimits the duties and powers of an administrator on the same grounds [48].

Notably, the CAMA 2020 omitted this limitational provision, and the omission seems understandable because the provision has the potential to undermine the statutory duties and powers of an administrator. In practical terms, the provision can result in a conflict of powers between an administrator and the secured creditor or a receiver. It is difficult to find a case or an instance where the provision has been seamlessly applied either in the UK or in Australia, but the uncertainty of a potential conflict is a valid reason for its omission in the CAMA 2020.

Consequently, under the CAMA 2020 the duties and powers of an administrator may easily be delimited by using the Administrator's Table of Duties and Powers which shows where and when an administrator can perform his duties or exercise his powers. If an administrator must act, it is a duty but if an administrator may only act depending on the factual circumstances, then it is a power. Therefore, in the application of the provisions of the CAMA 2020 with respect to company administration, any confusion as to the limit of the duties and powers of an administrator can simply be resolved by having recourse to the Administrator's Table of Duties and Powers.

Conclusion

An effective company administration procedure serves the interests of many stakeholders of a financially distressed company such as its business, employees, and the wider community in which the company operates. The secured creditors of such company are no longer in an exclusive position of terminal entitlements to the detriment of other stakeholders. This is because the main objective of company administration as originally formulated and applied in the UK and Australia is to rescue and resuscitate an insolvent company from terminal arrangements like receivership, liquidation and winding up.

The provisions of the CAMA 2020 relating to company administration and the central role of an administrator are direct adoptions from the UK and Australia statutes. However, one unique aspect of the CAMA 2020 is its omission to include the provisions relating to limitations on the duties and powers of an administrator as contained in the UK and Australia statutes. This paper finds that the omission is reasonable and valid though it leaves a gap of not providing expressly for when and how the duties and powers of an administrator may be clearly defined or determined. This paper has filled the gap with the creation of the Administrator's Table of Duties and Powers to which easy recourse can be had for clarity purpose.

As a novel introduction in the CAMA 2020, the provisions on company administration may have some other areas of gap which need to be identified and highlighted, with cautious expectation that they may be addressed in future review of the statute or taken into consideration in the adjudicatory process. Legal scholars and commentators need to critically examine the entire procedures for company administration as provided in the CAMA 2020 to determine whether it can achieve its objective of corporate rescue within the Nigeria's legal and economic contexts.

More so because company administration is not the only and most effective corporate rescue procedure for insolvent companies. For example, Chapter 11 of the Bankruptcy Code of the United States is internationally acknowledged as providing effective corporate rescue procedures [49]. The choice of company administration under the CAMA 2020 needs to be interrogated and justified outside the colonial ties that bind Nigeria to the UK. Specific aspects of the statutory procedures such as the appointment of an administrator also requires to be examined to identify and fill any gap like this paper has done with respect to the duties and powers of an administrator.

References

1. The Companies and Allied Matters Act 2020 (commonly referred to as CAMA 2020); See generally Chapter 18 of the statute.
2. In receivership the overriding interest is to recoup the creditor's funds from the company's business or assets, after which it may be left to collapse. See V. Finch, (2009). Corporate Insolvency Law: Perspectives and Principles (Cambridge University Press); Without prejudice to the newly introduced company administration, receivership is preserved in Chapter 19 of the new CAMA 2020.
3. This is the expressly stated purpose of company administration under section 435A of the Australian Corporations Act 2001 and section 156 of the United Kingdom Companies Act 2006. It has been reproduced with slight modification in verbiage as the Purpose of administration under section 444 of the Companies and Allied Matters Act 2020.
4. See section 435A of the Australian Corporations Act 2001 and section 156 of the United Kingdom Companies Act 2006.
5. Omar Paul, Gant Jennifer. Corporate Rescue in the United Kingdom: Past, Present and Future Reforms. 24 Australian Insolvency Law Journal,2016:40:2. Available at SSRN: https://ssrn.com/abstract=3848575
6. Ibid, p. 3
7. These were part of the conclusions of the report of the Cork Committee which was instituted in 1977 to examine the existing insolvency practice in the UK with a view to recommending procedures for an effective insolvency regime that is aimed at ensuring corporate rescue. See P. Omar, (2013). International Insolvency Law: Reforms and Challenges (Ashgate), pp. 193-228).
8. See the Australian Law Reform Commission (ALRC), General Insolvency Inquiry Report No 45 (1988), para 8.

9. Jenny Fu, Roman Tomasic. The Use of Non-Court Based Corporate Rescue – Does the Australian Voluntary Administration Procedure Provide a Model for China? Presented at the Commercial Law in the 21st Century Forum in Tsinghua University, Beijing, 2016, 29-30.
10. Omar Paul, Gant, Jennifer. Corporate Rescue in the United Kingdom: Past, Present and Future Reforms, op.cit, at, 2016, 8.
11. See Chapter 9 of the Cork Committee Report
12. See generally section 8 of the Insolvency Act 1986.
13. Omar Paul, Gant, Jennifer. Corporate Rescue in the United Kingdom: Past, Present and Future Reforms, op.cit, at, 2016, 8.
14. See generally sections 11 – 22 of the Insolvency Act 1986.
15. See sections 23 – 27 of the Act.
16. See section 18 of the Act.
17. See the Insolvency Service, A Review of Company Rescue and Business Reconstruction Mechanisms (London: TSO, 1999).
18. See Hansard, HL Deb 2 July 2002, Col 188.
19. Armour, John and Mokal, Riz, Reforming the Governance of Corporate Rescue: The Enterprise Act 2002 (2004). ESRC Centre for Business Research Working Paper No. 288, Available at SSRN: http://dx.doi.org/10.2139/ssrn.567306.
20. Ibid, at p. 23.
21. See the Explanatory Notes to the Enterprise Act 2002 (London: TSO, 2002), para 647.
22. Section 169.
23. See Schedule 8, Part 2, Clause 6.
24. Schedule 8, Part 1, Clause 1.
25. See Part 5.3A, section 437A on the role of administrator.
26. See section 442A.
27. See section 442CB of the Corporations Act 2001.
28. See Schedule 8, Part 2, Clause 7 of the Companies Act 2006 and Part 5.3A, section 442D of the Corporations Act 2001.
29. See Parts XIV, XV and XVI of the Companies and Allied Matters Act 2004.
30. Section 444(1)(a)
31. For contextual clarification, the UK Companies Act 2006 and the Australian Corporations Act 2001, including the CAMA 2020, use the term ‘functions’ instead of ‘duties. But when discussed in conjunction with the ‘powers’ of an administrator like in this paper, ‘functions’ and ‘duties’ essentially assume the same meaning. This paper uses the term ‘duties’ where the three statutes use the term ‘functions’.
32. Section 549(2).
33. Section 431(1).
34. Section 449 of the CAMA 2020.
35. Section 444(1); Note that this provision is a verbatim adoption of the provisions of the UK Enterprise Act 2002. See footnote 24 above.
36. See section 444(2).
37. See section 444(4)-(5).
38. See section 444(3) and (5) (b).
39. Section 445.
40. Section 496(1).
41. Section 496(3).
42. Section 506.
43. Section 504.
44. Section 497.
45. Cf. Part 5.3A of the Australian Corporations Act 2001 and Schedule 8, Part 2 of the UK Companies Act 2006.
46. This point has been judicially affirmed by the UK Court of Appeal in the case of *Kyrris v Oldham* [2003] EWCA Civ 1506.
47. See Schedule 8, Part 2, Clause 7 of the Companies Act 2006.
48. See Part 5.3A, section 442D of the Corporations Act 2001.
49. See Elizabeth Warren, Jay L. Westbrook. The Success of Chapter 11: A Challenge to the Critics, 107 MICH. L. REV, 2009, 603.