Nigeria

Introduction

The past decade has seen the Business Recovery & Insolvency Practitioners Association of Nigeria (BRIPAN) champion the growth of insolvency and business rescue practice in Nigeria through training, advocacy and law reform.¹ This commitment resulted in the drafting of a modern, business rescue and cross-border insolvency friendly Insolvency Bill for resolution of both personal and corporate insolvency.

The draft was adopted by the Federal Ministry of Trade and Industry as an Executive Bill under the President Jonathan administration following stakeholders’ consultation sponsored by UK Department for International Development (DFID). However, the project was put in abeyance due to political change with advent of the President Buhari administration in 2015 and dissolution of the National Assembly. Under the current administration, the new session of the National Assembly saw a private members Bill to reform only the Bankruptcy Act, 1979 with the Bankruptcy and Insolvency Bill which is yet to be passed into law. The Bankruptcy and Insolvency Bill (“BIB”) was proposed to repeal the Bankruptcy Act of 1979 (“BA”). It seeks to make provision for individual insolvency, some aspects of corporate insolvency, rehabilitation of the insolvent debtor, creation of the office of supervisor of insolvency, cross-border insolvency recognition and enforcement as well as other connected matters.² While the now abandoned BIB was undergoing enactment, the Corporate Affairs Commission (CAC) proposed a Bill for amendment of the Companies and Allied Matters Act, CAMA. The new CAMA Bill incorporated some aspects of insolvency such as administration, registration of insolvency practitioners including the recognition of BRIPAN as a certifying professional body. However, although the new CAMA Bill has gone through Senate approval, it has also not received presidential assent.

This update discusses the current effort at law reform in this vital area of insolvency and the challenges faced in Nigeria. It considers the significance of Nigeria as a volcano from which regional African businesses erupt as well as its demand pull as Africa's largest population centre and producer of crude oil attracting multinational enterprises seeking to do business there. Inevitably, differences in expectation can result in insolvency with likely cross-border impact. The update concludes that the challenges of law reform in Nigeria are not peculiar and submits that only consistent engagement at the highest levels by the committed enthusiasts in both the private and public sectors would deliver the required outcome. Also, new governance institutions like INSOL should play a more significant role in assisting local private initiatives like BRIPAN in engaging with the public sector to reset their agenda towards implementation of reform.

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+ Being update presented at INSOL World Bank 2018 African Round Table at Polana Serana Hotel Maputo, Mozambique on 25th October 2018
2 Preamble to the Bankruptcy and Insolvency Bill (“BIB”)
Existing Insolvency Framework

According to John Verrill the primary purpose of all insolvency law is to replace the free-for-all situation which could arise in the pursuit of individual claims by individual creditors with a statutory regime, where creditors’ rights are suspended (in whole or in part). Under the statutory regime, there is an orderly scheme for collection and realisation of the assets and distribution of the net proceeds amongst the creditors. Most countries have followed the same process of arranged statutory distribution in event of insolvency to avoid self-help and ensure equity and fairness. Nigeria is no exception.

In Nigeria, the Companies and Allied Matters Act provides the general legal framework for asset recovery or realization. Under this law, three (3) broad types of insolvency procedures are envisaged, to wit;

1.) Receivership/Managership

2.) Liquidation/Winding-up and,

3.) Arrangement and Compromises ("A & C")

The insolvency procedures are either non-collective (involving only one creditor or class of creditors) or collective (involving all creditors or class of creditors). These insolvency proceedings are undertaken by persons commonly referred to as "Insolvency Practitioners" (from now on referred to as "IP"), for example; receiver/manager, liquidator, special manager, provisional liquidator, official receiver and others. The IP is by law vested with control and authority to deal with the assets of the company.

In terms of personal insolvency law, there is the Bankruptcy Act, but this law has not been effective because of its requirement that judgment be obtained and levied as condition of proof of bankruptcy and the ineffective discharge provisions which renders bankruptcy an unattractive option for debtors.

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4 Sir Roy Goode Principles of Corporate Insolvency Law, 4th ed., 1-08 quoted by John Verrill supra at p.6
5 Cap. C20 Laws of the Federation of Nigeria (LFN), 2004
6 A 4th type of procedure which is strictly business restructuring based, to wit, Mergers, Acquisition & Take-over bids, is envisaged under the Investment and Securities Act 2007
7 See Part XIV, ss. 387 to 400 CAMA. With the reform and the repeal of Part VII of the Companies Act 1961, under Ss.2 and 181 Ugandan IA of Sept. 2011, a receiver that is appointed to act as a manager seems to be described as an “administrative receiver” where also appointed to carry on the company’s business and manage the company’s property and affairs and perform all the functions the directors/secretary of the company would perform if the company was solvent.
8 S393(4) CAMA particularly provides that “As from the date of the appointment of a receiver or manager, the powers of the directors or liquidators in a members’ voluntary winding up to deal with the property or undertaking over which he is appointed shall cease unless and until the receiver or manager is discharged.” See also the Supreme Court case of N.B.C.I V Alfijir (Mining) Nigeria Limited (1999) 14 NWLR Pt 638 P. 176 at pages 184-185 ratio 4 where the Court held that: “In so far a company is in receivership, it cannot carry out any business. It ceases to have any right to deal with its assets from that very time. The power of the company to deal with its assets is also suspended and only the receiver/manager can lawfully do so. The company can only act through the receiver/manager.” See also S422 CAMA on liquidators’ position. Bankruptcy provisions place similar restrictions on the ability of the Bankrupt to deal with his existing assets.
9 Cap B2. Laws of the Federation of Nigeria 2004; see also Bankruptcy Rules Cap B1 LFN 2004
There is no specific legislation available in Nigeria presently for the recognition of foreign insolvency proceedings, orders, judgments or representatives. Nigeria only has a limited framework for recognition and enforcement of an international monetary judgment which must be final and conclusive, unchallenged on appeal and conditioned on reciprocity. The legislative framework creates a dual regime for Commonwealth countries and other countries. Foreign insolvency orders would scarcely fulfill such requirements. Foreign judgments are recognised and enforced through a process of obtaining leave of court and registration of the decision.

Nigeria also has no specific framework for co-operation between domestic and foreign courts, coordination of concurrent proceedings or communication of information in insolvency proceedings save for the existence of the restricted provisions highlighted above on recognition and enforcement of final foreign money judgments.

An Evaluation

The Nigerian insolvency system is unduly creditor friendly and liquidation focused. There is no general business recovery law and though we have argued that the scheme of arrangement provisions under the Companies and Allied Matters Act could be used to encourage business recovery, the jurisprudence has not taken up the challenge. The conflict between CAMA provision of 75% approval majority and Investment and Securities Act provision of 90% approval majority for buyout of dissenting minority and the approach of the Securities and Exchange Commission to interpretation of those provisions has practically taken the sail off schemes of arrangement as business rescue tool. Also, the provision that a provisional liquidator cannot be appointed before the advertisement of a winding up petition means that secured creditors and the company cannot use the appointment of a provisional liquidator and suspension of exercise of security rights (moratorium) to achieve restructuring as advocated and implemented jurist like Justice Ian Kawaley of Bermuda in the face of similar absence of a general business rescue law. Then, there is the catastrophic decision of the Supreme Court of Nigeria in FMBN V NDIC, to the effect that what is prohibited by the stay provisions of s. 417 of CAMA where a provisional liquidator is appointed for a company except with the leave of court, is an action or proceedings pending or instituted in the Federal High Court only. By this decision, s.412 of CAMA which

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10 For the foreign judgment to be recognized or registered, there must be a judgment debt unsatisfied in whole or part and the application to register the judgment must be made within six years of the date of the judgment

11 Foreign Judgment (Reciprocal Enforcement) Ordinance of 1922 and Act of 1961. S.3 of the Foreign Judgment (Reciprocal Enforcement) Act 1961 empowers the minister of justice to extend the right to register a foreign country judgment in Nigeria. By this law, only foreign countries which accord reciprocal treatment to judgments given in Nigeria are granted such permission to enforce their judgments in Nigeria. Section 10 of the Foreign Judgment Reciprocal Enforcement Act Cap F35, LFN 2004 which require the Minister to issue a list of countries whose judgments or orders would be accepted.

12 Ibid

13 The courts are yet to explore the option of common law assistance to a foreign court

14 For more details on the Nigerian jurisprudence showing conflict between forces of liquidation and those of business rescue and how practitioners maneuver the terrain, see Anthony Ikemefuna Idigbe, ‘Ranking of Claims in Post-Commencement Finance in Business Rescue in Nigeria’ (presented at the BRIPAN 2018 International Insolvency Conference, Lagos Nigeria Four Points by Sheraton Oniru VI, 2018).


16 (1999) 2 NWLR 591, page 333
empowers grant of stay was therefore only applicable to proceedings before the Federal High Court, which is the court that has jurisdiction in bankruptcy cases.\textsuperscript{17} Effectively, there is no automatic stay regime and the bankruptcy court’s inherent power to bind everyone by a stay order on the threat of contempt has been effectively circumscribed. We have argued that the consequence of the decision has been that both creditors and debtors have resorted to various antics to either gain priority or moratorium, as there is no effective moratorium even when the company is in liquidation.\textsuperscript{18}

The few exceptions where some framework exists for rescue is in the context of regulated industries such as banking and telecommunications. The AMCON Act\textsuperscript{19} allowed the government to set up an asset management company to purchase eligible bank asset which is usually toxic assets which the regulator Central Bank of Nigeria (CBN) or the bank itself wants out of their books. AMCON is then given extensive powers to recover the assets using various tools including restructuring or liquidations.\textsuperscript{20} AMCON has been more amendable to restructuring compared with the banks. It is significant that AMCON was supposed to be a temporary solution designed to last for only seven years but has become an albatross that has refused to die. Even then it no longer buys assets being focused on the realisation of the assets to repay the bonds it issued to make the purchases. The CBN has now authorised private asset management companies, but our observation of the operation of this system is that it is restricted to the financial institutions using them to manage their books. One would have expected broad-based investor interest in this area. Our view is that AMCON Act is not indeed an insolvency regime but legislation to protect banks from collapse. It cannot, therefore, be a permanent solution. It purports to give a solution to the banks but leaves the debtors entirely at the mercy of AMCON with its draconian powers. The need for general insolvency and business rescue law that would render AMCON intervention unnecessary is imperative.

Also, the Nigerian Deposit Insurance Corporation Act\textsuperscript{21} was amended\textsuperscript{22} to enable the appointment of a liquidator for a failed or failing bank or financial institution without the need to go through the filing and advertisement of a winding-up petition. It is sufficient that the CBN Governor has withdrawn the license of the institution. Banking regulators have abandoned the use of appointment of liquidator as a tool for liquidation or restructuring. They now prefer the creation of bridge banks as it enables the bank to continue business the next business day after a weekend as a new bank. The 2009 banking crisis was managed using AMCON and bridge banks.

The recent collapse of Etisalat the fourth largest telecommunication company in Nigeria now called 9mobile further betray the need for a general business recovery law.\textsuperscript{23} However, for the fact that that

\textsuperscript{17} See s.251 of the 1999 Constitution as amended
\textsuperscript{18} Idigbe, ‘Ranking of Claims in Post-Commencement Finance in Business Rescue in Nigeria’.
\textsuperscript{19} Asset Management Corporation of Nigeria Act 2010 as amended by AMCON (Amendment) Act 2015
\textsuperscript{21} Cap. N102 Laws of Federation of Nigeria (LFN) 2004. NDIC was initially established under the NDIC Decree No 22 of 1988 consolidated in LFN 2004 and amended in 2006. NDIC says on its website that its establishment was a response to government’s search for a third leg of the financial safety-net components which comprised one, the lender of the last resort performed by the Central Bank of Nigeria (CBN), two, effective banking supervision by both the CBN and NDIC and third, the NDIC’s unique role as deposits insurer.
\textsuperscript{22} NDIC Act No 16 of 2006 amended and replaced the Cap. N102 LFN 2004
the creditors were banks regulated by CBN and the debtor a telecommunication company regulated by Nigerian Communication Commission (NCC), it would have been another situation of liquidation and not business rescue. CBN drove the process for the banks including having a representative on the new board constituted for the company. It also allowed conversion of the bank debts to equity. NCC drove the process of keeping the business as a single going entity that continued to render uninterrupted service to its over 30 million customers. The judicial orders obtained to support the restructuring process is currently under legal challenge.

**Wither the recent Bankruptcy and Insolvency Bill?**

Quite frankly it has added nothing to the debate and has brought little or no solution to the table. It is neither a general corporate insolvency law nor a business recovery law. It merely introduces a few personal bankruptcy law provisions. There is no indication that it has received presidential assent. The Bill was not the result of review of government policy review or organised private sector, such as Business Recovery and Insolvency Practitioners Association of Nigeria (BRIPAN). It was introduced by a member of the National Assembly who wanted quick credit for legislative work.

The Bill did little to give a working definition of is who a bankrupt or insolvent person. It defined a "bankrupt" to mean “a person who has made an assignment or against whom a receiving order has been made under section 5(10).” In the same vein, an “insolvent person” was defined as a person who “is not bankrupt and who resides, carries on business or has property in Nigeria, whose liabilities to creditors provable as claims under this Act amount to not less than one million naira, and: (a) who is for any reason unable to meet his obligations as they generally become due; (b) who has ceased paying his current obligations in the ordinary course of business as they generally become due; or (c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing.”

It is arguable that the Nigerian terminology relating to bankruptcy refers to personal or individual insolvent status while insolvency refers to corporate insolvency. To this end, the name of the Bill is somewhat misleading as the scope is restricted since virtually all its provisions dealt with individual and not corporate insolvency.

Under the existing Bankruptcy Act (BA), acts of bankruptcy occur where a creditor has obtained a final judgment or order against the debtor for any amount, without execution being stayed and same served on the debtor. Also, the debtor fails to satisfy the Court of an adverse claim equalling or exceeding the judgment debt within fourteen days of being served with the notice; and execution has been levied against the debtor and goods have been sold or held by the bailiff for twenty-one days. Finally, the debtor files in Court a declaration of inability to pay his debts.

There is no difficulty in asserting that the BIB seeks to improve substantively on certain provisions of the BA. It sought to expand the definition of acts of bankruptcy in the BA to include two new sub-sections. For instance, "when a debtor disposes any item of plant or machinery funded by the creditor in parts or wholly where such items are collateral without prior notice and express agreement of creditor" and

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24 S3 of the BIB
"when a debtor relocates his business from known and unknown address without prior notification of the creditor with the intention of avoiding his obligation."25

In expanding the BA definition of acts of bankruptcy, the BIB has introduced a unique perspective to the definition of acts of bankruptcy by declaring as a fraudulent action, any conveyance, gift, delivery or transfer of property with intent by the debtor to defeat or delay creditors, or departing from his dwelling or absenting himself from creditors.26

Presumably guided by the need to exterminate all incidences of fraud, s.23(a) of the BIB refers to law applicable to corporate debtor, and places reliance on the provisions of ss.289 to 302 of CAMA dealing with unlimited personal liability of directors, fiduciary duties of directors and secretaries, and shareholders minority protection in the event of oppressive and illegal conduct. Of importance is the fact that there are specific provisions in the above-referred sections of CAMA which touch extensively on corporate governance as well as director’s liability in the management of the Company. The provisions of the Company and Allied Matters Act has well-articulated provisions on personal liability of directors to avoid incidences of fraud27, and enjoins all companies to keep a register of its directors and secretaries which records shall be open to the public.28 Specifically, where the articles of a company so provide, a company can by special resolution render unlimited the liability of its directors.29 Similarly, to check the ambitiousness of directors, the law limits the power of a company to incorporate into a contract, provisions which seek to make contract of employment of directors exceed five years, unless such a term is first approved by the general meeting.30 The law also encourages every company to have a highly qualified and competent secretary to assist in the management of the company. An attempt is made to place a distinction between the office of a director and secretary by mainly avoiding acts done by persons doubling as director and secretary.31 The purport of the above-referred sections is to prevent incidences of fraud perpetrated against a company.

Section 23(b) of the BIB provides that where its provisions are inconsistent with those of ss.289 to 302 of the CAMA, the BIB shall prevail. It is important to note that the provisions of s.23, dealing with corporate insolvency does not repeal insolvency provisions of CAMA but merely assert supremacy of BIB in the event of inconsistency between provisions of BIB and the specific provisions of ss.289 to 302 CAMA.

Where the debtor is adjudged a bankrupt or the Court has ratified a proposal made to creditors under the BIB, the priorities in receivership, of distribution of the property of a debtor shall be as established by Division 3 of Part IV of CAMA dealing with the priority of interest in the distribution of the debtors’ assets. This deference to CAMA further underscore that the fact that notwithstanding the passing reference in the Bill to regulation of both corporate insolvency, it is practically limited in scope to personal insolvency: 32

25 S4(1) of the BIB
26 See S4 (a-h) of the BIB
27 Section 290 of CAMA
28 Section 292 of CAMA
29 Section 289 of CAMA
30 Section 291 of CAMA
31 See Sections 293-298 CAMA
32 Sections 3 and 5 of BIB in relation to a bankrupt person appear restricted only to an individual
One major reform in BIB is the provision for rehabilitation of an insolvent debtor. It creates the Office of Supervisor of Insolvency and Licensing and generally gives oversight function in the administration of the Act to the Minister of Industry, Trade and Investment. The Supervisor is saddled with responsibility of receiving applications for licence to act as trustee and issue licenses to persons whose applications have been approved amongst other responsibilities provided for in the BIB. Another point of deviation of the BIB from the BA was in the area of the court with jurisdiction to entertain bankruptcy claims. Whilst the BA defined court to mean the Federal High Court sitting in its bankruptcy jurisdiction, the BIB defined court to mean the High Court. These underscore our earlier contention that the BIB is practically limited in scope to personal insolvency, because the provisions of CAMA which deal with corporate insolvency defines "court" or "the court" to mean the Federal High Court and includes the Court of Appeal and Supreme Court of Nigeria.

The BIB defined “Registrar” to mean the Registrar of the Supreme Court, but the BA defines “Registrar” to include the Chief Registrar of the Federal High Court and any Deputy Chief Registrar. Another innovation of the BIB is seen in s.71(2) which increases the number of days which a Claimant shall be deemed to have abandoned or relinquished all his rights to or interest in the property to the trustee from 15 days to 30 days because the earlier period was too short for any meaningful transaction to be actualised. Similarly, publication of notice will now be published in three national dailies to give it wider reach instead of “local newspaper” mentioned in the previous law.

Other areas of important reform and promotion of business rescue for personal insolvency are in Part V of the BIB which is designed to facilitate the rehabilitation and re-organisation of individuals in financial difficulties. It provides for the category of people who are competent to propose and the various classes of claims to which such proposals can be made.

Part VIII also provides for counselling services and examination of bankrupt persons. It provides that a trustee shall provide for counselling for an individual bankrupt and the cost of such counselling shall be borne by the estate of the bankrupt as administration cost and where the bankrupt is a corporation, the officer executing the assignment, or, having control of the corporation shall attend before the Supervisor for examination and shall perform all of the duties as may be imposed therein failing which the officer or person is punishable as though that officer or person were the bankrupt.

Part IX creates the office of the Supervisor of Insolvency and Licensing as pointed out earlier. This office is obligated to assist in the formulation and implementation of the plan of re-organisation and claims of creditors amongst other functions. More importantly is the fact the BIB provides for a list of public records to be kept by the Supervisor of Insolvency.

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33 Section 175 of the BIB. Perhaps the reasoning was that the entire process of establishment and regulation of business organisations, investments including bankruptcy and insolvency is under the jurisdiction of the Ministry of Industry, Trade and Investments
34 Sections 175-178 of the BIB
35 Section 3 of the BIB
36 Section 142 of the Bankruptcy Act
37 Section 648 CAMA
38 Section 26 of BIB
39 Section 148-174 of the BIB
40 Section 175-178 of BIB
41 Section 178 of BIB
Part XI described as "International Insolvencies" provides a framework for cross-border insolvencies such as recognition of a foreign representative, proceedings by foreign representatives, cooperation and assistance between courts and others. In the absence of equivalent provisions under general law for companies, it may well form the basis for development on Nigerian cross-border insolvency jurisprudence.

**Other Reform Effort: New CAMA Bill**

Other effort at law reform have continued despite the Bill. In the current session of the National Assembly, the most significant effort is the Corporate Affairs Commission (CAC) proposed Bill for amendment of the Companies and Allied Matters Act. There were at least three versions of the CAMA Bill. The Bill eventually earned the support of the Presidential Ease of Business Committee (PEBEC) which is pursuing an agenda of omnibus commercial laws because of difficulty of passing laws through the National Assembly. Consequently, the new Bill was updated by CAC with some assistance from the World Bank and a section added with subtitle “Business Rescue Procedure”, where UK style administration, company voluntary arrangement and the UNCITRAL Model Law on Cross-Border insolvency were introduced.

Though there is no standalone insolvency or business rescue law under consideration at this time at the National Assembly, the CAC sponsored Bill would address some of the current shortcomings. The liquidator or administrator once appointed has 28 days to submit a report to court on whether a creditors meeting should be summoned to approve a voluntary arrangement. If the court so approves then the liquidator or administrator shall summon the meeting to approve the arrangement. Any member of the company has 28 days to challenge the meeting and the court can decide whether a members meeting be held and which of members and creditors meeting to prefer.

Also, under the new CAMA Bill, the effect of administration is the dismissal of any winding-up petition and vacation of any receiver-manager appointed by secured creditors or holders of floating charge. There is also automatic moratorium on enforcement of any security or repossession of goods and premises. This law when effective will bring some sanity to the current practice of appointment of multiple receiver-managers and provisional liquidators. It will be clear that the administrator would have priority and failing administration be converted to a liquidation or a separate liquidator takes over in an orderly fashion. It will therefore definitely provide a slightly wider framework for business recovery and a framework for regulation of insolvency profession by requiring licensing of practitioners by CAC and recognizing BRIPAN as a professional body whose certification is a condition for licensing. It should be mentioned that the Nigerian Bar Association Section on Business Law (NBA-SBL) did a lot of work as part of PEBEC in reviewing commercial laws for PEBEC and key members of the NBA-SLA PEBEC

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42 Sections 237-245 BIB
43 Given elections scheduled for February 2019, nothing much can be achieved by the current session of the National Assembly
44 It has passed in the Senate since May 2018 but is yet to be assented to by the President as at early October 2018 when this paper was finalised. The Lagos Business School is organising a one day The New CAMA and its Relevance for the Ease of Doing Business in Nigeria on 17th October 2018. The Key Note speaker is Dr Jumoke Oduwole a Senior Adviser to the Vice President who heads the PEBEC unit. It is hoped that matter is still on the front burner at the presidency
subcommittee who worked on the new CAMA Bill are also BRIPAN members and were involved in the now moribund BRIPAN reform effort.

**Why is Nigeria potentially significant in cross-border insolvency?**

Recent data disclose that Nigeria now has a population of about 198 million people.\(^45\) It is projected to grow at over 6.5% per annum and should hit 250 million in 2050. Nigerian businesses are growing not just across Africa but globally. Some have made the Fortune 500 list.\(^46\) With multinational companies like Dangote, UBA, Ecobank, Glo and others spread all over Africa, the need for effective solution for management of cross-border insolvency in Nigeria seems like an open wound requiring attention.

**So how do we cope?**

Managing insolvency and business restructuring in Nigeria given its inadequate legal framework requires creativity and inventiveness.\(^47\) At times some practitioners have gone overboard raising ethical issues. Recently a Senior Advocate of Nigeria was stripped of his title for professional misconduct for filing multiple cases in different cities against the same debtor over the same debtor in a strategy to simply wear down the debtor’s ability to fight back.\(^48\) Another undesirable practice is filing for winding up and obtaining a Mareva injunction (freezing order) when the company has not been found insolvent and the petitioner is not a security holder but end up exercising security rights over assets of the company even before judgment or winding up order.

A combination of understanding of the legal process and the principles of informal workout can be of great assistance in achieving restructuring in a creditor-friendly and liquidation focused system. The creditors usually respond positively if the debtor voluntarily appoints a reputable firm to do an independent business review which is shared with creditors and such move can kickstart informal workout. At other times, a case challenging interest and penalties may be all that is needed to bring an uncooperative creditor to the table.

**Evaluation of current state of reform Agenda**

Agitation by BRIPAN and other stakeholders, has had an impact on reform of some aspects of our personal and corporate insolvency laws. The National Assembly and existing institutions like the Corporate Affairs Commission have been well sensitised and seem to be working at some relevance in the reform process. However, vigilance is required to ensure that reform is focused on improving the insolvency regime and not merely donating additional powers to ill-conceived or moribund institutions. Also, following amendment of the AMCON Act the use of receiver by AMCON has improved the environment for insolvency practice and development of some culture of business rescue and AMCON initiated receiverships now constitute the significant segment of Nigerian insolvency practice. However,

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\(^47\) Idigbe, ‘Ranking of Claims in Post-Commencement Finance in Business Rescue in Nigeria’ supra for more detailed discussion of various techniques practitioners use.

\(^48\) ‘LPPC Withdraws SAN Rank from Senior Lawyer – Punch Newspapers’ [https://perma.cc/53BJ-XMBC] [accessed 8 September 2018].
the failure of AMCON to recognise that it must deliver a general business rescue law as its parting legacy to the Nigerian insolvency system has left institutions like CAC scrambling to fill the vacuum.

Further, following constant engagement through training and attendance of INSOL African Roundtable, practitioners and bankruptcy judges, are now more commercial-minded. The judges are more willing to use their powers under their enabling Act and rules to direct litigants to settle disputes amicably, encourage business rescue through negotiations and settlement, thereby creating the environment for multi-creditors workouts, a rare feat. Creditors who were previously only used to working in silos, each engaged in a race to collect, now engage with each other. The implementation of credit reporting law is beginning to positively affect credit behaviour as debtors who take advantage of information asymmetry between lenders are finding their loophole to over-indebtedness and delinquency blocked.

The progress registered remains somewhat piecemeal and uncoordinated and may lead to unnecessary conflicts between old and new institutions/offices created under the old and new legislation. Furthermore, issues such as the regulation of the profession, robust cross-border insolvency regulations, promotion or recognition of formal corporate business rescue proceedings and informal workouts, including multi-creditor workouts, the liability of directors, insolvency of enterprise groups and many others are still hanging in the air!

BRIPAN continues to agitate for a more holistic review and reform of the general Nigerian insolvency framework and has presented to the National Assembly its draft Insolvency Bill. At the Senate Committee public hearing on the BIB earlier this year, BRIPAN made extensive presentation on the need for harmonization of reform effort and focus on a holistic insolvency law. BRIPAN’s Executive and Legislative Agenda Committee continues to work towards achievement of a holistic solution and counts on the support from INSOL and the World Bank. Odetola in assessing reform effort in Africa argues that it has become almost impossible to speak of purely national reforms in many areas of commercial law, including bankruptcy law and the trend is towards global convergence. He asserts and we agree that INSOL has been playing the role of facilitator of global norm convergence in insolvency law. We testify that INSOL has been holding the hands of BRIPAN through collaboration on many subjects such as the development of training curriculum, engagement with the National Judicial Institute, sending facilitators to conferences, the highly successful African Round Table, and others.

Conclusion

I would conclude with the statement of Sir David Clementi when he said in the context of the reform of the legal profession in the United Kingdom, that:

Reform will not be easy. Whilst there is pressure for change, from consumer groups and also from many lawyers, reform will be resisted by other lawyers who are comfortable with the system as it is. Lawyers who are opposed to the reforms in this Review will either argue that I am mistaken and have failed to understand the special characteristics that set the law apart, or call

49 Even BRIPAN draft of the Insolvency Bill needs reconsideration in view of UK move toward Chapter 11 Light
50 Damilola Odetola, ‘Contesting the Trend Towards the Globalisation of Laws in Corporate Bankruptcy: The Experience in Africa’, International Insolvency Institute
51 Ibid
for further research and consultation, kicking reform into the long grass. Changes will require significant political commitment, partly to meet the expected criticism from some lawyers and partly because reform will need primary legislation, which requires scarce Parliamentary time.\textsuperscript{52}

The reforms Clementi was talking about took 9 (nine) years to achieve in the UK. Even though insolvency reform in Nigeria has taken over a decade, because of the importance of the economy as the largest economy in Africa and given its large population which has social and security implications, all hands, locally and internationally, must still be on deck to ensure its successful realisation of an efficient insolvency regime as a matter of mutual interest.

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\textsuperscript{52} David Sir Clementi, \textit{REVIEW OF THE REGULATORY FRAMEWORK FOR LEGAL SERVICES IN ENGLAND AND WALES FINAL REPORT} (London: Secretary of State for Constitutional Affairs UK, December 2004).