



COMPANY VOLUNTARY ARRANGEMENT UNDER CAMA 2020: A REVIEW*

Abstract

Company Voluntary Arrangement (CVA)¹ is a corporate rescue mechanism that allows financially distressed companies to restructure their debts in order to continue operating. CVA is one of the innovations introduced by the Companies and Allied Matters Act (CAMA) 2020. The introduction of CVA into CAMA, 2020 marked the formal introduction of corporate rescue into Nigerian Law. The provisions of CAMA, 2020 on CVA is modelled after the practice in UK under the United Kingdom Insolvency Act, 1986. CVA is a device available to companies that are insolvent or facing imminent insolvency, but still have a viable business. A CVA enables such companies to reach an agreement with their creditors to restructure their debts, usually by offering them a percentage of the amount owed over a period of time. The CVA is overseen by a supervisor who is appointed by the court to ensure that the agreement is properly implemented. A CVA helps a company in financial difficulty to restructure its finances and operations, so it can continue to trade and hopefully return to profitability. This paper reviewed the provisions of CAMA, 2020 on CVA with the view of discovering its importance, relevance and limitations. It is the finding of this paper, that, a CVA in Nigeria is a form of debtor-in-possession procedure but lacks protection of a moratorium on action, which may be a challenge to the rescue process. The implication is that creditors can individually pursue claims or enforcement actions while the CVA is ongoing. This paper recommends a standalone moratorium not linked to any other procedure, to aid the effectiveness of a CVA, instead of first going into administration, as a means of benefiting from a moratorium hence increasing cost and complexity of the process. This paper employed a doctrinal research methodology.

Keywords: Company Voluntary Arrangement, Nominee, Supervisor, Corporate Rescue, Financially Distressed, Insolvency Practitioner.

1. Introduction

The provisions for Company Voluntary Arrangement (CVA) are contained in Chapter 17 of CAMA 2020. A CVA is a rescue device available to companies facing financial challenges, that can be used to structure the repayment of debts to their creditors. It is a legally binding agreement between a company and its creditors, aimed at restructuring the company's debts and facilitating its recovery. A CVA enables the company to continue trading whilst paying off its debts over a fixed period of time. The CVA process is overseen by an insolvency practitioner, who acts as a nominee and facilitates negotiations between the company and its Creditors.

The purpose of a CVA is to provide a way for a financially distressed company to avoid liquidation and continue operating, whilst also ensuring that creditors receive a proportion of the money owed to them. The terms of a CVA can vary depending on the specific circumstances of the company, but typically involve a reduction in the amount of debt owed and a repayment plan that runs over a period of time. The success of a CVA is dependent on the cooperation of creditors and the oversight of an Insolvency Practitioner.

2. Definition of Concepts

2.1. Company Voluntary Arrangements (CVA)

CVA is a rescue device, whereby 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.² CVA is a form of business rescue arrangement which allows a company in financial difficulties to propose to its creditors to enter into an agreement with them regarding the repayment of all, or a part, of its

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¹ Hereinafter referred to as a CVA

² Section 434(1) CAMA, 2020.



debts over an agreed period of time.³ It Involves an arrangement by an insolvent corporation, which is used to structure debt repayment plans to their creditors, to accept to be paid all or less than what they are owed by the debtor.

In 2021, Nigeria had its first CVA, being the case involving Tourist Company of Nigeria (TCN) in Suit No. *FHC/L/CS/1250/2021- Re: Seyi Akinwunmi & Okorie Kalu*. TCN is a company engaged in the hospitality business, and owns the Federal Palace Hotel in Lagos. The directors of TCN, in their CVA proposal dated 30th August, 2021, claimed that TCN is facing cash-flow challenges induced by the Covid-19 pandemic. The proposal stated that TCN's revenue had dropped from NGN7.7billion in 2019 to NGN1.3billion in 2020. TCN's 2020 audited financials shows that its cumulative outstanding obligation to creditors, is over NGN27billion. TCN's directors proposed a restructuring of its loans by waiving accruals and payment of interests from 1st March, 2020 to an agreed future date.⁴ In their report dated 15th September, 2021, the nominees appointed by the directors opined that the proposal was viable and fair to creditors and the company. The nominees also opined that the proposed arrangement had reasonable prospect of being approved by creditors, and being implementable.

2.2. Administration

Administration is also a rescue device. The two rescue routes recommended by the Cork Report that marked the beginning of the rescue regime in UK are Administration and CVA.

CAMA did not define the meaning of an Administration. However, Section 549(1) of CAMA, 2020 defined an "administrator" of a company as a person appointed under any of the means under this Chapter⁵ to manage the company's affairs, business and property.⁶

Section 549 (2)(a) went further to state that a company "enters administration" when the appointment of an administrator takes effect, while Section 549 (2)(b) explained that a company is "in administration" while the appointment of an Administrator of the company has effect. The above definition did not suggest that administration is a rescue device. The duties of an Administration looked more like the duties of a regular manager. However, Section 444(1) of CAMA tried to shade more light on Administration by stating the purpose behind an administration, which includes rescuing the company, as a whole or any part of its undertaking, as a going concern; or 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 realising property in order to make a distribution to one or more secured or preferential creditors.

The rescue of the company remains the primary objective of the administrator in the performance of his functions⁷ unless he believes that it is not reasonably practicable to rescue the company or that winding up the company after going into administration would achieve a better result for the company's creditors as a whole.⁸ The administrator is only allowed to perform his functions with the objective of realizing property in order to make a distribution to one or more secured or preferential creditor under in Section 444 (1) (c) of CAMA if he believes that it is not reasonably practicable to achieve either of the objectives specified in subsection (1) (a) and (b) of Section 444 of CAMA.⁹

³ Udo Udoma & Belo-Osagie, 'Nigeria: The Companies and Allied Matters Act 2020 – What You Need To Know -Part 11 – Company Voluntary Arrangements' available at <www.mondaq.com>, accessed 25th March, 2023.

⁴ Kubi Udofia, 'A Preliminary Appraisal of Nigeria's First-Ever Company Voluntary Arrangement Insolvency Discourse' available at <<https://www.thisdaylive.com>> accessed 5th April, 2023.

⁵ Chapter 17 of CAMA, 2020.

⁶ Section 549(1) CAMA, 2020

⁷ Section 444(2) CAMA, 2020

⁸ Section 444(4) CAMA, 2020

⁹ Section 444(5) CAMA, 2020



2.3. Nominee

Part 1 of the Insolvency Regulation 2022 defined a “Nominee” as a person duly appointed under Section 434 of CAMA and includes a proposed nominee or supervisor in relation to a proposal for a CVA. Section 434(2) of CAMA also described a Nominee as a person appointed to act in relation to a CVA, either as trustee or otherwise for the purpose of supervising its implementation . Section 434(2) added, that, such a nominee shall be a person who is qualified to act as an insolvency practitioner in relation to the company.

2.4. Insolvency Practitioner

Part 1 of the Insolvency Regulation, 2022 defined an Insolvency Practitioner as one or more persons duly accredited by the Corporate Affairs Commission to undertake insolvency proceedings.

3. Features of a CVA

i. It’s a debtor -in- possession procedure

Unlike Administration a CVA is in form of a debtor- in- possession procedure because CVA allows directors to remain in control of the affairs of the company while the company continues to conduct its business as a going concern under the supervision of an insolvency practitioner. A Company Voluntary Arrangement (CVA) differs from other options for rescuing a company, such as administration, in that it permits directors to retain control of the company’s affairs while the business continues to operate.

ii. It is similar to a scheme of arrangement

CVAs share some similarities with schemes of arrangement, but the crucial difference lies in their nature. Specifically, CVAs are contractual and only require the approval of both creditors and members of the company to come into effect, whereas schemes of arrangement involve the courts and require court orders to convene meetings and ratify passed resolutions. CAMA 2020's Section 715 has also introduced a statutory moratorium of six months under schemes of arrangement, during which no creditor can bring winding-up petitions or enforcement actions against the company. In contrast, this feature is absent in CVAs.

iii. It does not enjoy a Statutory Moratorium

Under CAMA 2020, CVAs lack a moratorium on enforcement actions, which means that creditors can individually pursue claims or enforcement actions while the CVA is ongoing. This makes it challenging to achieve a successful rescue of the struggling company when it is under the pressure of multiple litigations and enforcement proceedings. Although CVAs in the UK also do not have a moratorium on actions, some small UK companies’ CVAs were previously allowed a 28-day statutory moratorium. But, the UK’s Corporate Insolvency and Governance Act (CIGA), 2020 Act repealed a small companies-specific moratorium under the previous schedule A1 of the UK’s Insolvency Act largely due to its lack of use. Today in the UK, it is now possible for the directors to acquire a short-term standalone moratorium under Part A1 of the 2020 Act, without the need to enter administration.

A moratorium on actions prevents creditors from enforcing their legal rights against the company without the court’s permission, giving the company in financial difficulty a temporary relief from creditors’ harassment. During this period, the Nominee can put forward a proposal to the creditors, attempting to rescue the company’s assets for their benefit.¹⁰

However, Nominees have may negotiate a standstill on enforcement actions with creditors with significant claims. This was the case with TCN, as their proposal included an agreement to

¹⁰ S. Griffin, *Company Law Fundamental Principles* (4th Edition Pearson Education Limited 2006) 259.



temporarily halt any ongoing or potential legal proceedings regarding the loans mentioned in the proposal.¹¹

Alternatively, a company undergoing CVA may be put in administration to enable the statutory moratorium come into effect. Therefore, even though a CVA under CAMA, 2020 is a distinct procedure from Administration, but because a CVA lacks the advantage of a moratorium, a company may be placed in administration to enable it benefit from the moratorium, even where the aim is to rescue via a CVA. However, the administration option usually increases the cost and complexity of the process.

iv. Once a CVA is approved, it has binding effect

Once approved by the meetings of creditors and members, a Company voluntary arrangement becomes binding on any creditor that was entitled to vote at the meeting as if he was party to the arrangement. This is irrespective of whether or not the creditor voted at the meeting, attended the meeting or received notice of the meeting. In the old UK regime, creditors who were not given notice of the meeting were not bound by approved arrangements. Although this appeared reasonably “fair”, it often resulted in exclusion of large claims which undermined the potency of the arrangements.

v. Immunity for Secured and Preferential Creditors

CVAs do not affect the rights of secured and preferential creditors. Creditors or members are not permitted to make proposals or modifications to proposals which affect the rights of secured creditors without their consent.¹² The approval by creditors of a company to a CVA only binds the company and all unsecured creditors (including those who do not agree to the CVA) once it has been approved by the creditors. Secured creditors who do not consent to the CVA, on the other hand, are not bound by the CVA and can enforce their security regardless of the CVA.¹³ Creditors and members are not also permitted to make proposals which alter the payment priority of preferential creditors without their consent.

An implication of the above is that secured creditors may enforce their security whilst CVAs are ongoing. Such secured creditors may appoint receivers or call in administrators, which could disrupt the CVA. Similarly, preferential creditors may enforce their claims whilst the CVA is ongoing. Such preferential creditors may frustrate the CVA by filing winding-up petitions against the company.

4. The CVA Process

4.1. A CVA Proposal

A CVA is commenced by the directors of a company in financial difficulty making a proposal which provides for the appointment of someone known as “the nominee”, to act either as trustee or a supervisor of the implementation on the proposal.¹⁴ The nominee shall be a person who is qualified to act as an insolvency practitioner in relation to the company.¹⁵ A CVA proposal should include the company's identification information and provide reasons why the proposer believes that a CVA is desirable. Additionally, it should clarify why the creditors are likely to approve the CVA, and must be signed and dated by the proposer.¹⁶

A proposal can only be amended if the report has not been filed with the court or in a situation where the nominee is not the company's liquidator or administrator, the report is supported by a

¹¹ Kubi Udofia, ‘A Preliminary Appraisal of Nigeria’s First-Ever Company Voluntary Arrangement Insolvency Discourse’ available at <<https://www.thisdaylive.com>> accessed 5th April, 2023.

¹² Section 437(3) CAMA, 2020.

¹³ Section 437(3) CAMA, 2020.

¹⁴ Section 434(2) CAMA, 2020

¹⁵ *ibid*

¹⁶ Part 2, Regulation 2.01(1) Insolvency Regulation, 2022



nominee's written agreement. Any other amendment to a proposal can only be effected with court's approval.¹⁷

A proposal for a CVA could be made either where an administration order is in force in relation to a company, by the administrator¹⁸ or where a company is being wound up, by the liquidator.¹⁹ A proposal for a CVA is still possible, where, a nominee appointed is not a liquidator or administrator.²⁰

The Proposal shall contain the details of the company's assets, the nature and amount of the company's liabilities, how preferential creditors and secured creditors will be dealt with, Nominees and Supervisor's fees and expenses, identification and contact details for the supervisor, the functions to be performed by the supervisor, guarantees and proposed guarantees, the proposed duration of the CVA, how the business of the company will be conducted during the CVA, details of any further proposed credit facilities for the company, and how the debts so arising are to be paid.²¹

Where the nominee is not the liquidator or the administrator, a nominee who consents to act as one shall deliver a notice of that consent to the proposer within three (3) days after the proposal has been submitted to the nominee under section 435(3).²² The notice shall state the date the nominee received the proposal.²³ Where the company is being wound up by the court, the liquidator shall deliver to the official receiver, a copy of the proposal²⁴ and the name and address of the nominee, if the nominee is not the liquidator.²⁵

4.2. Submit a Report to the Court

In a situation, where the nominee is not the liquidator or administrator of the company, the nominee shall within 28 days after he is given notice of the proposal for a voluntary arrangement or such longer period as permitted by court may allow, submit a report to the court.²⁶ The nominee's report shall be accompanied by a copy of the report, a copy of the proposal and a copy of the statement of the company's affairs or a summary of it.²⁷ For the purposes of computing the period of twenty-eight (28) days within which the nominee shall submit a report to the court under section 435(2) of CAMA, the computation begins on the date the nominee receives the proposal as stated in the notice.²⁸ The report shall state why the nominee considers the proposal does or does not have a reasonable prospect of being approved and implemented, and why the members and the creditors should or should not be invited to consider the proposal.²⁹ The requirement for the nominee to submit a report to the Court only applies where the company is not in administration or winding up. Where the company is in administration or winding up, the nominee may proceed to summon the necessary meetings without recourse to the Court.

The Federal High Court matter on CVA involving Tourist Company of Nigeria (TCN),³⁰ has been criticized for following some erroneous procedures. The nominees in the case did not only submit a report to court stating their opinions as envisaged under Section 435(1) of CAMA 2020,

¹⁷ Regulation 2.01(3) Insolvency Regulation, 2022

¹⁸ Section 434(3)(a) CAMA, 2020.

¹⁹ Section 434(4)(b) CAMA, 2020.

²⁰ Section 435(1) CAMA, 2020.

²¹ Regulation 2.02(1) Insolvency Regulation, 2022.

²² Regulation 2.04(2) Insolvency Regulation, 2022.

²³ Regulation 2.04(3) Insolvency Regulation, 2022.

²⁴ Regulation 2.05(a) Insolvency Regulation, 2022.

²⁵ Regulation 2.05(b) Insolvency Regulation, 2022.

²⁶ Regulation 435(1) CAMA, 2020.

²⁷ Regulation 2.09(1) Insolvency Regulation, 2022.

²⁸ Regulation 2.04(4) Insolvency Regulation, 2022

²⁹ Regulation 2.09(2) Insolvency Regulation, 2022.

³⁰ FHC/L/CS/1250/2021- Re: Seyi Akinwunmi & Okorie Kalu.



but also made an application to court to summon meetings. TCN's counsel was criticized to have erroneously used the procedure for schemes of arrangement under Chapter 27 of CAMA 2020, where meetings are convened by order of court and an applicant must issue an originating summons with an affidavit. But contrary to the procedure followed a CVA requires minimal court involvement. This position was revealed in Sir Kenneth Cork Committee's Report which originated CVAs in the UK. The part of the Report proposing CVAs is titled "Voluntary Arrangements without an Order of the Court."³¹

In line with that position rule 2.9(3) of the UK Insolvency Rules 2016 only requires a court, upon submission of a nominee's report, to "endorse the nominee's report and the copy of it with the date of filing and deliver the copy to the nominee."³² The role of courts is purely administrative. The nominee's report has to be filed as part of the CVA becoming effective, the court probably does not look at it at all. Though a report is made to the court, this is largely a matter of record only. The court does not become judicially involved in the CVA unless a problem arises.³³ An application to court is only required under sections 435(4), 438(3), 440(1), 442(3) and 442(4) of CAMA, 2020.

In order to enable the nominee to prepare his report, the person intending to make the proposal shall submit to the nominee a document setting out the terms of the proposed voluntary arrangement,³⁴ and a statement of the company's affairs.³⁵ The statement of the company's affairs that contain the particulars of its creditors, its debts and other liabilities and of its assets as may be prescribed,³⁶ and other information as may be prescribed.³⁷ The court shall endorse the nominee's report and the copy of it with the date of filing and deliver the copy to the nominee.³⁸ The nominee shall deliver a copy of the report to the company.³⁹

In a situation where the Nominee is not the Liquidator or Administrator and it appears to the nominee that his report to the court cannot properly be prepared on the basis of information in the proposal and statement of affairs, the nominee may require the proposer to provide⁴⁰ more information about the circumstances and the reasons why, a CVA is being proposed,⁴¹ as well as particulars of any previous proposals which have been made in relation to the company,⁴² and any further information relating to the company's affairs which the nominee thinks necessary for the purposes of the report.⁴³ The nominee may require the proposer to inform the nominee of the director and officers of the company involvement in the affairs of the company which has been subject of insolvency proceedings or been made bankrupt, subject to an order for debt relief or entering into an arrangement with creditors in the last two (2) years before the date the nominee received the proposal.⁴⁴ The proposer shall give the nominee such access to the company's accounts and records as the nominee may require to enable the nominee to consider the proposal and prepare the nominee's report.⁴⁵

³¹ Kubi Udofia, 'A Preliminary Appraisal of Nigeria's First-Ever Company Voluntary Arrangement Insolvency Discourse' available at <<https://www.thisdaylive.com>> accessed 5th April, 2023.

³² *ibid*

³³ *ibid*

³⁴ Section 435(3)(a) CAMA, 2020.

³⁵ Section 435(3)(b) CAMA, 2020.

³⁶ Section 435(3)(b)(i) CAMA, 2020.

³⁷ Section 435(3)(b)(ii) CAMA, 2020.

³⁸ Regulation 2.09(3) Insolvency Regulation, 2022

³⁹ Regulation 2.09(4) Insolvency Regulation, 2022

⁴⁰ Regulation 2.08(2) Insolvency Regulation, 2022

⁴¹ Regulation 2.08(2)(a) Insolvency Regulation, 2022

⁴² Regulation 2.08(2)(b) Insolvency Regulation, 2022

⁴³ Regulation 2.08(2)(c) Insolvency Regulation, 2022

⁴⁴ Regulation 2.08(3) Insolvency Regulation, 2022

⁴⁵ Regulation 2.08(4) Insolvency Regulation, 2022.



In a situation where the nominee failed to submit the report required for the CVA, the Court may, on an application made by the person intending to make the proposal, direct that the nominee be replaced by another person qualified to act as an insolvency practitioner in relation to the company.⁴⁶ A person who intends to apply to the court under section 435(4) of CAMA for the nominee to be replaced shall deliver a notice that such an application is intended to be made to the nominee at least five (5) working days before filing the application with the court.⁴⁷ A nominee who intends to apply to be replaced shall deliver a notice that such an application is intended to be made to the person intending to make the proposal, or the proposer, at least five (5) working days before filing the application with the court.⁴⁸ The court shall not appoint a replacement nominee unless a statement by the replacement nominee has been filed with the court confirming that person consents to act and is qualified to act as an insolvency practitioner, in relation to the company.

4.3. Summoning of the Meeting

Section 436(1) provides that where the nominee has “reported” to Court, the nominee shall “unless the Court orders otherwise”, summon the meetings of creditors and members. In a situation where the nominee is the liquidator or administrator, he has a duty to summon meetings of the company and of its creditors to consider the proposal for such a time, date and place as he thinks fit.⁴⁹ But, where the nominee is not the liquidator or administrator, and it has been reported to the Court that such meetings should be summoned, the person making the report shall (unless the Court otherwise directs) summon those meetings for the time, date and place proposed in the report.⁵⁰ The persons to be summoned to a creditors’ meeting are every creditor of the company of whose claim and address the person summoning the meeting is aware.⁵¹

The nominee shall invite the creditors⁵² and members of the company, to consider a proposal by summoning a meeting of the creditors and company respectively as required by section 436.⁵³ In the case of the members, the nominee shall deliver to every person whom the nominee believes to be a member a notice which shall⁵⁴ identify the proceedings, state the venue for the meeting and their voting rights.⁵⁵

The notice shall be accompanied by a copy of the proposal, a copy of the statement of affairs, or if the nominee thinks fit a summary including a list of creditors with the amounts of their debts, the nominee’s comments on the proposal, unless the nominee is the administrator or liquidator, and details of each resolution to be voted on.⁵⁶

For the creditor’s meeting, the nominee shall deliver to each creditor a notice which shall identify the proceedings, the venue for the meeting, and the fact that a creditor is only entitled to vote at a meeting of creditors, if the creditor has delivered to the chair a proof of the debt claimed, and that the proof must have been received by the chair not later than 4.00pm on the working day before the meeting, or at a later time where the chair is content to accept the proof, and that the proof has been admitted for the purposes of entitlement to vote.⁵⁷

⁴⁶ Regulation 435(4) CAMA, 2020.

⁴⁷ Regulation 2.10(1) Insolvency Regulation, 2022.

⁴⁸ Regulation 2.10(2) Insolvency Regulation, 2022.

⁴⁹ Section 436(1)(b) CAMA, 2020

⁵⁰ Section 436(1)(a) CAMA, 2020

⁵¹ Section 436 (2) CAMA, 2020.

⁵² Regulation 2.11(2) Insolvency Regulation, 2022

⁵³ Regulation 2.11(1) Insolvency Regulation, 2022

⁵⁴ Regulation 2.11(3) Insolvency Regulation, 2022

⁵⁵ Regulation 2.11(3)(i)a,b and C Insolvency Regulation, 2022

⁵⁶ Regulation 2.11(3)(i)(d) Insolvency Regulation, 2022.

⁵⁷ Regulation 2.11(4)(i) Insolvency Regulation, 2022.



A proxy-holder is not entitled to vote on behalf of a creditor unless the chairman has received that the proxy is intended to be used on behalf of that creditor.⁵⁸ The claim must be due from the company to the person seeking to be entitled to vote.⁵⁹ The chairman is empowered to call for any document or other evidence to be produced if the chairman thinks it necessary for the purpose of substantiating the whole or any part of a claim.⁶⁰ Every creditor, secured or unsecured, who has notice of the meeting is entitled to vote in respect of that creditor's debt.⁶¹

Quorum for Creditor's Meeting shall be a Majority (in value) of Creditors whose Proof of Claim has been admitted.⁶² Votes are calculated according to the amount of each creditor's claim at the date the company went into liquidation where the company is being wound up or the date the company entered into administration (less any payments made to the creditor after that date in respect of the claim and any adjustment by way of set off) where it is in administration.⁶³ Where the company has not gone into liquidation or administration, it will be on the date of the meeting.⁶⁴

Where the proposed CVA is in relation a debt of an unliquidated or unascertained amount, it is to be valued at one naira for the purposes of voting unless the chairman decides to put a higher value on it.⁶⁵ Where a debt is wholly secured its value for voting purposes is nil.⁶⁶ Where a debt is partly secured its value for voting purposes is the value of the unsecured part.⁶⁷ However, the value of the debt for voting purposes is its full value without deduction of the value of the security where the administrator has made a statement under section 489(1)(b) of CAMA and the administrator has been requested to seek approval under section 489(3) of CAMA, 2020.⁶⁸ No vote may be cast in respect of a claim more than once on any resolution put to the meeting.⁶⁹

The chairman in a creditors meeting is empowered to ascertain entitlement to vote and admit or reject claims accordingly.⁷⁰ The chairman of a meeting in a CVA shall be the nominee or an appointed person.⁷¹ The chairman may admit or reject a claim in whole or in part.⁷² If the chairman is in any doubt whether a claim should be admitted or rejected, the chairman shall mark it as objected to and allow votes to be cast in respect of it, subject to such votes being subsequently declared invalid if the objection to the claim is sustained.⁷³ Where a vote is declared invalid or an objection is sustained, a Creditor may apply to the Federal High Court for review within twenty-eight (28) days of the declaration.⁷⁴ Where the nominee invites either the members or creditors to consider the proposal at a meeting, the notice to members or creditors shall also specify the purpose of, and venue for the meeting and has to be accompanied by a blank proxy.⁷⁵

The nominee shall put the convenience of those invited in consideration in fixing the venue for a meeting or the resumption of an adjourned meeting.⁷⁶ The date of the meeting shall not be more than twenty-eight (28) days from the date on which the nominee's report was filed with the court

⁵⁸ Regulation 2.11(4)(ii) Insolvency Regulation, 2022.

⁵⁹ Regulation 2.11 (4)(iii) Insolvency Regulation, 2022.

⁶⁰ Regulation 2.11(4)(c)(i) Insolvency Regulation, 2022.

⁶¹ Regulation 2.11(4)(c)(i) Insolvency Regulation, 2022.

⁶² Regulation 2.12 Insolvency Regulation, 2022.

⁶³ Regulation 2.12(1) Insolvency Regulation, 2022.

⁶⁴ Regulation 2.12(1) Insolvency Regulation, 2022.

⁶⁵ Regulation 2.12(2) Insolvency Regulation, 2022.

⁶⁶ Regulation 2.12(3) Insolvency Regulation, 2022.

⁶⁷ Regulation 2.12(4) Insolvency Regulation, 2022.

⁶⁸ Regulation 2.12(5) Insolvency Regulation, 2022.

⁶⁹ Regulation 2.12(6) Insolvency Regulation, 2022.

⁷⁰ Regulation 2.13(1) Insolvency Regulation, 2022.

⁷¹ Regulation 2.21 Insolvency Regulation, 2022.

⁷² Regulation 2.13(2) Insolvency Regulation, 2022.

⁷³ Regulation 2.13(3) Insolvency Regulation, 2022.

⁷⁴ Regulation 2.13(4) Insolvency Regulation, 2022.

⁷⁵ Regulation 2.14(1) & 2.15(1) Insolvency Regulation, 2022.

⁷⁶ Regulation 2.14(2) & 2.15(2) Insolvency Regulation, 2022.



under Regulation 2.09 of Insolvency Regulation 2022, except where the nominee is the administrator or liquidator of the company.⁷⁷

The meeting of the creditors may be on the same day as, or on a different day from the meeting of the company.⁷⁸ But the creditors' decision on the proposal shall be made before the members' decision.⁷⁹ The members' decision shall be made not later than five (5) working days after the creditors' decision. In computing the time of the creditors' decision or the members' decision (as the case may be), it is either the date and time of the meeting of the creditors or the company or, where the nominee invites creditors or members to consider the proposal by correspondence (if permitted by the Insolvency regulations or another statute), the deadline for receipt of creditors' or members' votes (as the case may be).⁸⁰

For the members meeting, a notice summoning a meeting of the company shall be delivered at least fourteen (14) days before the day fixed for the meeting to all the members and to every officer or former officer of the company whose presence the nominee thinks is required and all other directors of the company.⁸¹ Where the creditors and members are invited to consider a proposal, the consideration is presumed to have duly taken place even if not everyone to whom the notice is to be delivered received it.⁸²

If, at either a meeting of the company or the creditors to consider the proposal, a resolution is moved for the appointment of a person other than the nominee to be supervisor, the person moving the resolution shall produce to the chairman at or before the meeting a confirmation that the person proposed as supervisor is qualified to act as an insolvency practitioner in relation to the company, and that person's written consent to act (unless that person is present at the meeting and there signifies consent to act).⁸³

A member is entitled to vote according to the rights attaching to the member's shares in accordance with the articles of the company.⁸⁴ A member's shares include any other interest that person may have as a member of the company.⁸⁵ The value of a member for the purposes of voting is determined by reference to the number of votes conferred on that member by the company's articles.⁸⁶ A resolution is passed by members at a meeting of the company when a majority of those voting have voted in favour of it.⁸⁷ This is subject to any express provision to the contrary in the articles.⁸⁸ In the case of a single member company, a resolution is passed when the single member votes in favour of it.⁸⁹

Where the Court based on an application made before it replaces a nominee for failure to submit his report, the member who applied for the order shall deliver a copy of it to the proposer and the supervisor (if the supervisor is different from the proposer).⁹⁰ If the proposer are the directors, a single copy may be delivered to the company at its registered office.⁹¹ It is the responsibility of the supervisor, or the proposer where there is no supervisor, to as soon as reasonably practicable deliver a notice that the order has been made to every person who had received a notice to vote on the matter

⁷⁷ Regulation 2.14(3) & 2.15(3) Insolvency Regulation, 2022.

⁷⁸ Regulation 2.16(1) Insolvency Regulation, 2022.

⁷⁹ Regulation 2.16(2) Insolvency Regulation, 2022.

⁸⁰ Regulation 2.16(4) Insolvency Regulation, 2022.

⁸¹ Regulation 2.18(1) Insolvency Regulation, 2022.

⁸² Regulation 2.19 Insolvency Regulation, 2022.

⁸³ Regulation 2.20 Insolvency Regulation, 2022.

⁸⁴ Regulation 2.22(1) Insolvency Regulation, 2022.

⁸⁵ Regulation 2.22(2) Insolvency Regulation, 2022.

⁸⁶ Regulation 2.22(3) Insolvency Regulation, 2022.

⁸⁷ Regulation 2.23(1) Insolvency Regulation, 2022.

⁸⁸ Regulation 2.23(2) Insolvency Regulation, 2022.

⁸⁹ Regulation 2.23(3) Insolvency Regulation, 2022.

⁹⁰ Regulation 2.24(2) Insolvency Regulation, 2022.

⁹¹ Regulation 2.24(3) Insolvency Regulation, 2022.



or who is affected by the order.⁹² The member who applied for the order shall, within five (5) working days of the order, deliver a copy to the Corporate Affairs Commission.⁹³

4.4. Approval of a CVA

The meetings summoned shall decide whether to approve the proposed voluntary arrangement with or without modifications.⁹⁴ An approval of a proposal or a modification in a proposed CVA is made when three-quarters or more (in value) of those entitled to vote at the meeting voted in favour of it.⁹⁵

A CVA cannot be proposed to affect the right of a secured creditor to enforce his security, except with his concurrence.⁹⁶ It is also not possible to approve a proposal that either affects the priority of payment⁹⁷ or constitutes a reduction in proportion of the amount to be paid to a preferential creditor in comparison to another preferential debt without the consent of the preferential creditor.⁹⁸ The meeting may, as part of its modification confer the functions proposed to be conferred on the nominee on another person qualified to act as an insolvency practitioner.⁹⁹

In a proposed CVA any other decision is not made if more than half of the total value of the unconnected creditors vote against it.¹⁰⁰ A creditor is deemed unconnected unless the chairman decides that the creditor is connected with the company.¹⁰¹ In deciding whether a creditor is connected reliance may be placed on the information provided by the company's statement of affairs or otherwise in accordance the Insolvency Regulations, 2022.¹⁰² The total value of the unconnected creditors is the total value of those unconnected creditors whose claims have been admitted for voting. The chairman of the meeting shall at the conclusion of either meetings, report the result of the meeting to the court, and, shall immediately after reporting to the Court, give notice of the result of the meeting to such persons as may be prescribed.¹⁰³

The decision reached at the meeting becomes binding, if, in accordance with the rules it was taken by meetings of both the company and of its creditors under section 436¹⁰⁴ or it has been taken by the creditors' meeting subject to the order of Court under Section 438(4) of CAMA 2020.¹⁰⁵ If the decision taken by the creditors' meeting differs from that taken by the company meeting, a member of the company may make an application to court¹⁰⁶ not later than 28 days after the decision was taken by the creditors meeting¹⁰⁷ or at a later day, where the decision of the company meeting was taken on a later day.¹⁰⁸ When the court receives the application, the Court may order the decision of the company meeting to have effect instead of the decision of the creditors' meeting¹⁰⁹ or make such other order as it deems fit.¹¹⁰

⁹² Regulation 2.24(4) Insolvency Regulation, 2022.

⁹³ Regulation 2.24(5) Insolvency Regulation, 2022.

⁹⁴ Section 437 (1) CAMA, 2022.

⁹⁵ Regulation 2.11(4) (c)(ii) Insolvency Regulation, 2022.

⁹⁶ Section 437 (3) CAMA, 2022.

⁹⁷ Section 437(4)(a) CAMA, 2022

⁹⁸ Section 437(4)(b) CAMA, 2022

⁹⁹ Section 437(2) CAMA, 2022.

¹⁰⁰ Regulation 2.11(4) (c)(ii) Insolvency Regulation, 2022.

¹⁰¹ Regulation 2.11(4)(c)(ii) Insolvency Regulation, 2022.

¹⁰² Regulation 2.11(4)(ii) Insolvency Regulation, 2022.

¹⁰³ Section 437(6) CAMA, 2022.

¹⁰⁴ Section 438(2)(a) CAMA, 2022.

¹⁰⁵ Section 438(2)(b) CAMA, 2020.

¹⁰⁶ Section 438(3) CAMA, 2020.

¹⁰⁷ Section 438 (4)(a) CAMA, 2020.

¹⁰⁸ Section 438 (4)(b) CAMA, 2020.

¹⁰⁹ Section 438 (5)(a) CAMA, 2020.

¹¹⁰ Section 438 (5)(b) CAMA, 2020.



Where the court orders the decision of the company meeting should have effect instead of the decision of the creditors' meeting, the decision takes effect as if made by the company at the creditors' meeting¹¹¹. In that case the decision binds every person who, in accordance with the rules was entitled to vote at that meeting, it even binds creditors who are entitled to vote at the meeting but did not receive notice of the meeting, and creditors, whether or not they were present or represented at the meeting.¹¹²

Where the company is being wound up or is in administration, the Court may by its order, stay all proceedings in the winding-up or provide for the appointment of the administrator to cease to have effect.¹¹³ The court may, in order to give effect to the order of Court that the decision of the company meeting should have effect, instead of the decision of the creditors' meeting, give, such directions, with respect to the conduct of the winding-up or the administration as it considers appropriate for facilitating the implementation of the order of the Court.¹¹⁴ The Court shall not make an order later than 28 days beginning with the first day on which each of the reports required by section 435(2) of CAMA, 2020 has been made to the Court¹¹⁵ or at any time when an application under section 435(4) of CAMA, 2020 or an appeal in respect of such an application is pending, or at any time in the period within which such an appeal may be brought.¹¹⁶

4.5. Report of Consideration of Proposal

It is the responsibility of the chairman of the meeting to prepare a report after the consideration of a proposal under section 437(6) of CAMA.¹¹⁷ The report shall state whether the proposal was approved or rejected, whether the proposal was approved by the creditors alone or by both the creditors and members and, whether the approvals was with any modifications.¹¹⁸ The report shall list the creditors and members who voted or attended or who were represented at the meeting at which the proposal was considered, setting out (with their respective values) how they voted on each resolution.¹¹⁹ The report shall identify which of those creditors were considered to be connected with the company,¹²⁰ and include such further information as the nominee or the chair thinks it appropriate to make known to the court.¹²¹ A copy of the report shall be filed with the court, within four working days of the date of the company meeting.¹²² The court shall endorse the copy of the report with the date of filing.¹²³ The chairman in the case of a company meeting shall give notice of the result of the consideration of the proposal to everyone to whom notice of a meeting was delivered as soon as reasonably practicable after a copy of the report is filed with the court.¹²⁴ Where the decision approving the CVA has effect under section 438 with or without modifications, the supervisor shall as soon as reasonably practicable deliver a copy of the chairman's report to the Corporate Affairs Commission.¹²⁵

¹¹¹ Section 439(2)(a) CAMA, 2020.

¹¹² Section 439(2)(b) CAMA, 2020.

¹¹³ Section 439(4)(a) CAMA, 2020.

¹¹⁴ Section 439 (4)(b) CAMA, 2020

¹¹⁵ Section 439(5)(a) CAMA, 2020.

¹¹⁶ Section 439 (5)(b) CAMA, 2020.

¹¹⁷ Regulation 2.25(1) Insolvency Regulation 2022

¹¹⁸ Regulation 2.25(2)(a) Insolvency Regulation 2022

¹¹⁹ Regulation 2.25(2)(b) Insolvency Regulation, 2022.

¹²⁰ Regulation 2.25(2) (c) Insolvency Regulation, 2022.

¹²¹ Regulation 2.25(2)(d) Insolvency Regulation, 2022.

¹²² Regulation 2.25(3) Insolvency Regulation, 2022.

¹²³ Regulation 2.25(4) Insolvency Regulation, 2022.

¹²⁴ Regulation 2.25(5) Insolvency Regulation, 2022.

¹²⁵ Regulation 2.25(6) Insolvency Regulation, 2022.



4.6. Implementation of Proposal

It is the duty of the Nominee or a supervisor to implement the voluntary arrangement approved by the meetings.¹²⁶ Where any of the company's creditors or any other person is dissatisfied by any act, omission or decision of the supervisor, he can apply to the Court, and based on his application, the Court may confirm, reverse or modify any act or decision of the supervisor or give him directions or even make such other order as it deems fit.¹²⁷

The supervisor may also apply to the Court for directions in relation to any particular matter arising under the voluntary arrangement.¹²⁸ He can also make an application for the winding-up of the company or for an administration order to be made in relation to it.¹²⁹

The Court may, whenever it is expedient to appoint a person to perform the functions of the supervisor,¹³⁰ and it is inexpedient, difficult or impracticable for an appointment to be made without the assistance of the Court, make an order appointing a person who is qualified to act as an insolvency practitioner in relation to the company, either in substitution for the existing supervisor or to fill a vacancy.¹³¹ The Court is empowered to exercise this power when there is need to increase the number of persons performing the functions of supervisor or, where there is more than one person performing those functions, so as to replace one or more of those persons.¹³²

Not more than twenty-eight (28) days after the full implementation or termination of the CVA the supervisor shall deliver a notice that the CVA has been fully implemented or terminated to all the members and those creditors who are bound by the arrangement.¹³³ The notice shall state the date the CVA took effect and shall be accompanied by a copy of a report by the supervisor which summarises all receipts and payments in relation to the CVA, explains any departure from the terms of the CVA as it originally had effect, and if the CVA has terminated, sets out the reasons why.¹³⁴ The supervisor shall within the twenty-eight (28) days send to the Corporate Affairs Commission and file with the court a copy of the notice to creditors and of the supervisor's report.¹³⁵ The supervisor shall not vacate office until after the copies of the notice and report have been delivered to the Corporate Affairs Commission and filed with the court.¹³⁶

5. Challenge of Decisions

A CVA can be challenged in court by persons entitled to vote at either the creditor's or members meeting,¹³⁷ or persons who would have been entitled, in accordance with the rules, to vote at the creditors' meeting if they had had notice of it¹³⁸. A CVA may also be challenged by Nominees or persons who replaced them under section 435 (4) or 437 (2) of CAMA, 2020¹³⁹ or by the liquidator or administrator, if the company is being wound up or is in administration.¹⁴⁰

A CVA can be challenged on the ground that it has an effect that unfairly prejudices the interests of a creditor, member or contributory of the company¹⁴¹ or, that, there has been some

¹²⁶ Section 442(2) CAMA, 2020.

¹²⁷ Section 442(3) CAMA, 2020.

¹²⁸ Section 442(4) CAMA, 2020

¹²⁹ *ibid*

¹³⁰ Section 442(5)(a) CAMA, 2020.

¹³¹ Section 442(5) CAMA, 2020.

¹³² Section 442(6) CAMA, 2020.

¹³³ Regulation 2.31(1) Insolvency Regulation, 2022.

¹³⁴ Regulation 2.31(2) Insolvency Regulation, 2022.

¹³⁵ Regulation 2.31(3) Insolvency Regulation, 2022.

¹³⁶ Regulation 2.31(4) Insolvency Regulation, 2022.

¹³⁷ Section 440 (2)(a) CAMA, 2020.

¹³⁸ Section 440(2)(b) CAMA, 2020.

¹³⁹ Section 440 (2) (c) CAMA, 2020.

¹⁴⁰ Section 440 (2)(d) CAMA, 2020

¹⁴¹ Section 440(1)(a) CAMA, 2020.



material irregularity at or in relation to either of the meetings.¹⁴² An application challenging a CVA shall not be made after the end of 28 days beginning with the first day on which each of the reports required under section 435 (2) of CAMA,2020 has been made to the Court¹⁴³, but an application made by a person on the ground that the voluntary arrangement prejudices his interests may be made after the arrangement has ceased to have effect, unless it came to an end prematurely.¹⁴⁴

Where the court is satisfied that the effect of the decision taken at the meeting being challenged will unfairly prejudices the interests of a creditor, member or contributory of the company,¹⁴⁵ the Court may revoke or suspend any decision approving the CVA or in the case of some material irregularity at or in relation to either of the meetings, revoke or suspend any decision taken by the meeting in question.¹⁴⁶

The Court may also give direction to any person to summon further meetings to consider any revised proposal, the person who made the original proposal may make the proposal.¹⁴⁷ In a situation where there has been some material irregularity, at, or, in relation to either of the meetings, a further company or creditors' meeting will be summoned to reconsider the original proposal.¹⁴⁸

Where after giving a direction for the summoning of meetings to consider a revised proposal the Court is satisfied that the person who made the original proposal does not intend to submit a revised proposal, the Court shall revoke the direction and revoke or suspend any decision approving the voluntary arrangement.¹⁴⁹

Where the Court gives a direction¹⁵⁰ or revokes or suspends an approval the Court may give such supplemental directions as it deems fit and, in particular, directions with respect to things done under the voluntary arrangement since it took effect.¹⁵¹

It is an offence liable on conviction to imprisonment for a term of one year or a fine as the Court deems fit or both¹⁵², for an officer of a company to make any false representation¹⁵³, or to fraudulently do or omit to do anything¹⁵⁴ for the purpose of obtaining the approval of the members or creditors of a company to a proposal for a voluntary arrangement.¹⁵⁵

6. Conclusion

The provisions of the CAMA 2020 on CVA are modelled after Part 1 of the UK's Insolvency Act, 1986, and Part 2 of the UK's Insolvency Rules. Under a CVA the directors of a company may make proposals to its creditors for a composition in satisfaction of the company's debts or scheme of arrangement of its affairs for rescuing the company from its financial distress.¹⁵⁶ CVA is a form of business rescue arrangement which allows a company in financial difficulties to propose to its creditors to enter into an agreement with them regarding the repayment of all, or a part, of its debts over an agreed period of time. The proposal will provide for a qualified insolvency practitioner to act as a nominee for supervising its implementation. This can also be initiated by a liquidator or an administrator where the company is in liquidation or administration. The new Companies and Allied

¹⁴² Section 440 (1)(b) CAMA, 2020.

¹⁴³ Section 440 (3)(a) CAMA, 2020.

¹⁴⁴ Section 440 (3)(b) CAMA, 2020.

¹⁴⁵ Section 440(1)(a) CAMA, 2020.

¹⁴⁶ Section 440 (4)(a) CAMA, 2020.

¹⁴⁷ Section 440(4)(b) CAMA,2020.

¹⁴⁸ *ibid*

¹⁴⁹ Section 440(5) CAMA, 2020.

¹⁵⁰ Section 440 (6)(a) CAMA, 2020.

¹⁵¹ Section 440(6)(b) CAMA, 2020.

¹⁵² Section 441(2) CAMA, 2020.

¹⁵³ Section 441(1)(a) CAMA, 2020.

¹⁵⁴ Section 441(1)(b) CAMA, 2020.

¹⁵⁵ Section 441(1) CAMA, 2020.

¹⁵⁶ Section 434 CAMA, 2020.



Matters Act, 2020 introduced many rescue devices for insolvent companies which were not available under the old CAMA, 1990. Before now, the conventional rescue device was scheme of arrangement and compromise. The new CAMA has introduced rescue devices like administration and CVAs, while retaining receivership, arrangement and compromise with varying amendments.

Prior to the emergence of the UK's CIGA, 2020, one of the criticisms against the restructuring procedures available in the UK was the lack of a "debtor in possession" process under which the directors of a company are left in control to implement a rescue or restructuring plan. The closest procedure UK had to such a "debtor in possession" process, is the CVA. However, the challenge with the CVA in United Kingdom, which, was also the situation in Nigeria was a lack of moratorium in action. Therefore, a company had to first enter into administration to take advantage of the provision of moratorium, hence increasing the cost of the rescue process by the appointment of an insolvency practitioner to run the company in place of existing management.

7. Recommendation

This article recommends a standalone moratorium not linked to any other procedure, like what is obtainable under the Corporate Insolvency and Governance Act (CIGA), 2020 in Part A1 to the UK Insolvency Act. This Standalone moratorium may be combined with other formal procedures or used as a standalone process to implement a refinancing or turnaround. It could be a precursor to a CVA, administration, scheme of arrangement or restructuring plan.

According to the United Kingdom Department for Business, Energy & Industrial Strategy (BEIS), the aim of the new moratorium is to provide struggling companies with a streamlined moratorium procedure that has the advantage of keeping administrative burdens to a minimum, and which makes the rescue process as quick as possible and does not add disproportionate costs to the struggling businesses."

The negotiation process with the key unsecured creditors is vital in a CVA and can take several months, and it is often difficult to achieve without the protection of a moratorium, as individual creditors can threaten to take enforcement steps in the negotiating period. Moratorium aids rescue by giving a company in financial difficulty a breathing space within which to come up with a CVA or restructuring plan to rescue an ailing company. Whilst the moratorium is in place, the business can trade in the ordinary course. With this standalone procedure, management are not to be displaced and the company's image is not tarnished by entering into an insolvency procedure. It is cheaper and carry less stigma than administration whilst having the protections that a CVA lacks.