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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF NIGERIA

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INSOLVENCY AND CORPORATE RE-ENGINEERING FACULTY NEWSLETTER

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Maiden Edition of Insolvency and Corporate Re-engineering Faculty Newsletter

The Insolvency and Corporate Re-engineering Faculty is ICANs voice on all Insolvency and Corporate Re-engineering matters. The Faculty acts as a link between the Institute and Insolvency Practitioners including stakeholders who work closely with lenders, investors and advisers in delivering effective solutions to problems and helping businesses overcome financial difficulties.

Some of the main areas of specialization in Insolvency and Corporate Re-engineering include:

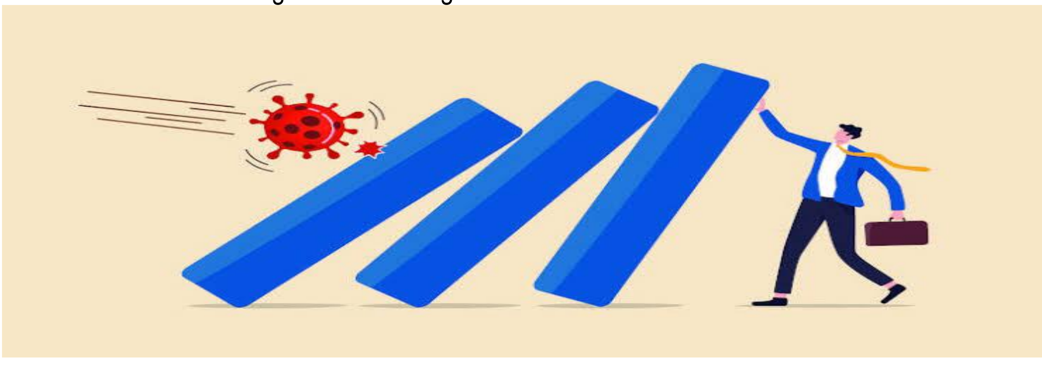
◊ **Receiverships and Secured Recoveries**
◊ **Insolvency – including Contentious Insolvency**
◊ **Reconstruction and Restructuring advice**
◊ **Deeds of Company arrangement**
◊ **Debt Reconstruction**
◊ **Liquidation and Bankruptcy**
◊ **Insurance Insolvency and Run-off**
◊ **Advisory - Advising purchasers on Acquisition of Distressed Assets**
◊ **Banking and Financial Services Insolvency.**

The Faculty Newsletter aims at providing resource materials and assist members to enhance their technical and professional skills such that they will continue to deliver value-laden services to their diverse clientele.

2020 in Retrospect

The COVID-19 pandemic in Nigeria is part of the worldwide pandemic of corona virus disease 2019 caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). The first confirmed case in Nigeria was announced on 27 February 2020, when an Italian citizen in Lagos tested positive for the virus. On 9 March 2020, a second case of the virus was reported in Ewekoro, Ogun State, a Nigerian citizen who had contact with the Index case in Nigeria. Following the developments of COVID-19 pandemic in Mainland China and other countries worldwide, the Federal Government of Nigeria set up a Coronavirus Preparedness Group to mitigate the impact of the virus if it eventually spreads to the country.

It was also a year in which Nigeria slipped into her second recession in five years. Nigerian families were cut in several different areas:



higher taxes, a malevolent global health pandemic and serial job losses on the back of multiple company shutdowns, to mention a few.

Many lost their jobs. It was a sad year in all sectors, more or less. It was the year Nigerian youths rebelled against police brutality and bad governance (ENDSARS).

The lockdown imposed by the Government to counter the spread of COVID-19 led to larger job losses, increase in insecurity, and rampant social unrest. Furthermore, efforts by the Government in collaboration with the Private Sector led Coalition Against COVID-19 (CACOVID) to reduce the adverse impact of the pandemic on households and businesses had limited effect due to weak fiscal structure, inadequate data on the citizen, poor corporate governance and revenue base (as COVID-19 hit oil prices negatively).

Value Added Tax rate rose from 5% in 2019 to 7.5% in February 2020. The increase was greeted with mixed feelings, while some analysts felt that it would improve the Government's fiscal balance, others felt that the increase would further impoverish consumers who were battling with rising cost of living reflected in a rise in headline and food inflation.

The COVID-19 pandemic is a wake-up call to policymakers as the unusual and unprecedented nature of the crisis has made it impossible for citizens to rely on foreign health care services and more difficult to solicit for international support given the competing demand for medical supplies and equipment.

Insolvency and Restructuring Practice in Nigeria: The Journey So Far

Insolvencies and reorganisations are generally governed by the Companies and Allied Matters Act (CAP C20, Laws of the Federation of Nigeria, 2020), and the Bankruptcy and Insolvency (Repeal and Re-enactment) Act 2016 (the new Bankruptcy and Insolvency Act) while Bankruptcy Rules regulate bankruptcy proceedings in Nigeria.

A. Insolvency

In Nigeria, an incorporated entity becomes insolvent only after a court has declared it so. As such, there are several pending cases bordering on issues of insolvency, and more cases are constantly being filed regarding liquidation across various industries. The large volume of cases may be attributed to provisions of the law stating that a company must be compulsorily wound up if it is unable to meet its financial obligations. Another instance in which a company may be wound up is where its members voluntarily apply for a winding-up order, especially where it is a special purpose vehicle (SPV) and the purpose has been achieved. However, this is unusual in Nigeria as most SPVs are maintained as going concerns, even after they have achieved their intended purpose.

As the global financial sector evolves, *and restructuring of such business entithe focus of modern insolvency regulation has shifted from the punishment of insolvent entities through compulsory liquidation to the more constructive alternative of reorganisation ties and their operations, with a view to rehabilitate them, ensure economic stability and financial propriety*. However, Nigerian insolvency law is still traditional in its approach, such that winding up and liquidating the company remain the sole mechanisms for dealing with instances of insolvency.

There are various laws directly and indirectly applicable to insolvency in Nigeria. They may be classified as primary and secondary legislations and they include:

Primary Legislation

- **i.** The CAMA CAP C20 Laws of the Federation of Nigeria (LFN) 2020;
- **ii.** The Companies Winding-Up Rules 2001.
- **iii.** The Bankruptcy Act as amended by Decree 109 of 1992 CAP B2 LFN 2004;
- **iv.** The Bankruptcy Rules, made pursuant to the Bankruptcy Act;
- **v.** The Investments and Securities Act (ISA) 2007;
- **vi.** The Securities and Exchanges Commission Rules (made subject to the ISA above);
- **vii.** The Secured Transactions in Movable Assets Act (the Collateral Registry Act) 2017; and
- **viii.** The Credit Reporting Act 2017.

Secondary Legislation

- i. The Banks and Other Financial Institutions Act 1991;
- ii. The AMCON Amendment Act 2015;
- iii. The Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act CAP F2, LFN 2004;
- iv. the Insurance Act CAP I17 LFN 2004;
- v. The Economic and Financial Crimes Commission Establishment Act 2004;
- vi. The Mortgage Institutions Act, CAP M19, LFN 2004; and
- vii. The Nigeria Deposit Insurance Corporation Act CAP N102, LFN 2004.

The CAMA makes provisions for the appropriate procedures to be taken in the event of insolvency. Under this statute, winding-up proceedings can be instituted voluntarily by:

- i. a company or its shareholders;
- ii. creditors;
- iii. a contributory;
- iv. a trustee or personal representative;
- v. an official receiver;
- vi. a receiver authorised by a debenture; or
- vii. The CAC.

Additionally, provisions in the Banks and Other Financial Institutions Act, as well as the Nigerian Deposit Insurance Corporation Act, also deal with insolvency as it relates to banks and other financial institutions. The Insurance Act contains certain provisions on the winding up of insurance companies.

A. Restructuring

Restructuring under Nigerian law may be broadly categorized into internal and external restructuring.

Internal Restructuring refers to the various informal strategies a company may engage in to adjust its capital structure, take on debt or defray debt. The Companies and Allied Matters Act (CAMA), the principal legislative framework within which informal workouts are conducted, allows a company to:

i. Create charges on a company's assets;
ii. Relinquish its securities to creditors;
iii. Opt to pay creditors off before a restructuring;
iv. Give creditors the option to either take shares in the company in satisfaction of debts owed or a mixture of equity and cash to liquidate debt; and
v. Arrange with creditors, receivers and administrators reorganization by way of a scheme for a compromise, and a restructuring.

External Restructuring however, essentially refers to mergers, acquisitions and other forms of buyouts. In addition to the CAMA, these activities are regulated under the Investments and Securities Act (ISA), the Securities and Exchange Commission, and the Corporate Affairs Commission (CAC), the body empowered to administer the CAMA. A company looking to restructure may – depending on, among other factors, such as its industry, the parties involved and the nature of the capital being injected – require approval from one or more of the following bodies:

i. The Nigerian Stock Exchange (NSE);
ii. The Central Bank of Nigeria (CBN);
iii. The Nigeria Deposit Insurance Corporation (NDIC); and
iv. The Asset Management Corporation of Nigeria (AMCON).

If the company operates in a regulated industry, it is likely that some form of approval will be required from the regulatory agency in charge of that industry.

Insolvency practitioners typically work with collapsed or distressed businesses, supporting them through a formal administration and bankruptcy process, or helping to turn them around and become profitable.

Until recently, the commencement of winding-up proceedings was the first recourse taken by creditors to recover bad debts, without exploring other alternatives by which debtors could achieve business recovery as a route to repayment of debts. However, in Nigeria, there is an increasing trend for companies to restructure with the objective of averting insolvency, as well as expanding operations and increasing their market share

A Career in Insolvency

Specializing in insolvency offers Chartered Accountants the opportunity to provide valuable advice to companies at challenging and difficult times. Luckily, companies that are in trouble can get help and guidance from experienced professionals during this difficult time. Accountants are often engaged when a company is facing financial difficulty. Throughthe range of different outcomes for businesses in financial distress, accountants are engaged to provide support to improve the situation and outcomes of the business.

What Skills Should an Insolvency Practitioner Have?

Some of the requisite skills necessary for excellence as an Insolvency Practitioner are:

i. Experience in the industry the distressed business(es) operates;
ii. Relevant insolvency experience in relation to the type of appointment

considered and necessary steps expected after appointment;
iii. Be a certified as an Accredited Insolvency Practitioner;
iv. Have sufficient competence to properly carry out the appointment; and
v. Reputation: have a history of making distributions to creditors.

The **duties of Insolvency Practitioners** include:

i. Advise the effective management of cash and working capital;
ii. Renegotiate existing finances;
iii. Advise on areas for business improvement;
iv. Guide the business through the insolvency or winding-up process; and
v. Explain legislation and timescales for legal procedures.

The **Soft Skills** an Insolvency Practitioner Possess are:

i. Commercial awareness;
ii. Professionalism;
iii. Emotional Intelligence;
iv. Interpersonal skills;
v. Communication skills;
vi. Diplomacy; among others.

Finance Act 2020 & Key objectives

The Finance Act 2020 was signed into law by President Muhammadu Buhari on 31 December 2020 and came into effect from 1January 2021. It introduces over 80 amendments to 14 different laws and was designed to support the implementation of the 2021 Federal Government's Budget of Economic Recovery.

The fourteen laws affected by the Finance Act 2020 are:

i. Capital Gains Tax Act
ii. Companies Income Tax Act
iii. Personnel Income Tax Act
iv. Value Added Tax Act
v. Nigeria Export Processing Zone Act
vi. Oil and Gas Export Free Zone Act
vii. Industrial Development (Income Tax Relief) Act
viii. Stamp Duties Act
ix. Tertiary Education Trust Fund (Establishment) Act
x. Federal Inland Revenue Service (Establishment) Act
xi. Public Procurement Act
xii. Companies and Allied Matters Act
xiii. The Establishment of Crisis Intervention Fund and Unclaimed Funds Trust Fund.

Key reforms introduced in the Finance Act 2020 include:

a. Compensation for loss of office up to N10 million is expired from the Capital Gains Tax;
b. Cost of donations made in cash or kind to any fund set up by the Federal or any State Government in respect of any pandemic or natural disaster, shall be tax deductible subject to a maximum of 10% of assessment profit after deduction of other allowable donations;

c. 50% reduction in minimum tax, from 0.5% to 0.25% of gross turnover less franked investment income, for companies in respect of returns for years of assessment due to a period of two years (between 1st of January 2020 and 31st December 2021);
d. Exemption of all low income earners of minimum wages or less as Personal Income Tax;
e. Exemption of all micro and small companies earning N25 million or less as annual turnover from Tertiary Education Tax;
f. Exemption of commercial airline tickets, commercial aircraft spare parts and components, interests in land and buildings, animal feed and hire, rental or lease of agricultural equipment for agricultural purposes from Value Added Tax at 7.5%;
g. Adjustment to incentives under the Finance Act 2019 such that any small or medium sized company engaged in primary agricultural production may be granted pioneer status (tax relief) for an initial period of 4 year and an additional 2 years (making a total of 6 years);
h. For companies operating in the Free Trade Zones, exemption from taxes is subject to compliance with tax filing and returns obligation to the FIRS under section 55(1) of the Companies and Income Tax Act;
i. Reduction of import duty on Tractors from 35% to 5%; mass transit vehicles for transport of more than 10 persons and Trucks from 35% to 10%, and reduction of import levy on cars from 30% to 5%;

a. Goods liable to excise duties have been expanded to potentially include Services in the future as may be prescribed in the law or an order issued by the President. However, no immediate changes due to FGN commitment to not introducing tax and tariff increases in 2020 Fiscal Year;
b. Redesignation of electronic bank transfer duties as an Electronic Money Transfer Levy of N50 on electronic receipts/ electronic transfers of N10,000 and above in any deposit money bank of financial institution. Revenue is to be shared 15% to FG & FCT and 85% to States based on derivation;
c. For the payment of tax refunds to be administered by the FIRS, the Accountant General of the Federation is to open dedicated accounts for each tax type and will be funded based on annual budgets for tax refund for each tax-type as may be approved by the National Assembly;
d. A non-resident person that makes a taxable supply to Nigeria is required to register for tax and obtain a Tax Identification Number, include VAT on its invoice, and may appoint a representative in Nigeria for the purpose of its tax obligations;
e. Service of notice of assessment and objections under CITA may be done via courier service, email or other electronic means as may be directed by the FIRS in a notice. The Tax Appeal Tribunal may conduct its hearing remotely via virtual means, using such technology or applications as may be necessary to ensure fair hearing; and
f. New 50% Cost-to Revenue Ration introduced for State-Owned and Government-Owned Enterprises. The balance of operating surplus of a corporation shall be paid to the Consolidated Revenue Fund (CRF) of the Federation on a quarterly basis. A direct deduction from TSA or other accounts of a corporation may be effected by the Minister of Finance to enforce compliance;

The key objectives of the Finance Act 2020 include to:
a. enact counter cyclical measures and crisis intervention initiatives;
b. provide fiscal relief for mass transit;
c. provide procurement reforms;
d. provide tax and fiscal responsibility; and
e. ensures ease of doing business reforms.

The effect of these amendments on insolvency and corporate re-engineering will be examined in another newsletter.

Upcoming programs for 2021

EVENT:	DATE:	FEE:	VENUE:
• Webinar,	August 30, 2021	N7,500	Virtual
• Certification Training (Part 1&2)	October 13– 15, 2021	N90,000	Lagos
• Webinar	November 3, 2021	N7,500	Virtual

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