



From Dysfunction to Recovery: Deploying corporate governance architecture to rescue distressed companies under administration in Nigeria

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THE PROBLEM NO ONE IS TALKING ABOUT

When a Nigerian company descends into distress, the instinctive response of lawyers, bankers, and financial advisers is to focus on the balance sheet, to renegotiate debt, restructure credit facilities, and manage the competing claims of secured and unsecured creditors.

These interventions are undoubtedly necessary. They are however, not sufficient. In the overwhelming majority of Nigerian corporate failures encountered by this writer in the course of acting as a court-appointed administrator, the narrative behind the numbers is strikingly the same: a board that did not function effectively, management that operated without supervision, internal controls that were paid lip service, and decisions of enormous commercial consequence that were taken by individuals accountable to no one.

Corporate governance failure, not sudden commodity price shocks, unfavourable exchange rate movements, or even predatory competition, is the primary underlying cause of corporate distress in Nigeria. Financial difficulties are the symptom while governance deficit is the disease. Yet, insolvency and restructuring practice in Nigeria has, for the most part, continued to treat the symptom while leaving the disease entirely unaddressed.

This article argues for a fundamental shift in the practice of corporate administration in Nigeria. It contends that the court-appointed administrator, armed with transformative powers conferred under the Companies and Allied Matters Act 2020 ('CAMA 2020'), is uniquely positioned not merely to stabilise a distressed company's finances but to rebuild the institutional architecture and governance framework, that must underpin any lasting recovery. A company whose debts have been restructured but whose governance framework remains flawed, has not truly been rescued; it has been set up for a second fall.

UNDERSTANDING ADMINISTRATION UNDER CAMA 2020

The administration regime introduced by CAMA 2020 is the most significant development in Nigerian corporate rescue framework. It provides for the appointment by the Federal High Court of an administrator, an officer of the court, to take control of a distressed company and pursue defined statutory objectives in a prescribed order of priority: first, to rescue the company as a going concern; second, to achieve a better result for creditors as a whole than would be obtained under a liquidation process and third, where neither of those objectives is achievable, to realise assets for distribution to secured or preferential creditors.¹

It is important to note that the administration framework under CAMA 2020 does not apply to commercial banks and other deposit-taking financial institutions, which are subject to a distinct regulatory and resolution regime under sector-specific legislation. The administration procedure is instead directed at the broader category of Nigerian companies

engaged in commercial, industrial, and service activities. Accordingly, the governance reform mandate advanced in this article is intended to operate within the context of these entities.

Upon appointment, the administrator assumes control of the company's affairs, and the powers of its directors are suspended.² Acting as the company's agent, the administrator may exercise any power that could ordinarily be exercised by the company or its directors. This broad grant of authority is not accidental; it reflects a legislative design intended to ensure that the administration process is genuinely transformative rather than merely palliative.³ As observed in the English case of *Bristol Airport plc v Powdrill*,⁴ so long as an order of administration is in force, the affairs, business and property of a company are to be managed by the administrator appointed by the court, and that for this purpose, the administrator is given very wide powers to carry on the business of the company.

¹ Section 444 CAMA 2020

² Section 501 CAMA 2020

³ Powers of an Administrator, Tenth Schedule, CAMA 2020

⁴ *Bristol Airport Plc v Powdrill* [1990] 2 All ER, CA, 496 (Browne-Wilkinson VC).

Most importantly, CAMA 2020 also provides for a statutory moratorium upon the appointment of an administrator. During this period, no winding-up resolution may be passed,⁵ no enforcement of security may proceed,⁶ and no legal process may be commenced or continued against the company except with the consent of the administrator or leave of the court.⁷ In the English case of *Re Atlantic Computer Systems plc*,⁸ Nicholls LJ affirmed that the moratorium must be

construed purposively, to give the administrator the breathing space necessary to develop and implement a coherent rescue strategy.

The moratorium is therefore more than a mere procedural shield; it serves as an institutional precondition for governance reform, creating the stability within which meaningful structural change becomes possible.

THE GOVERNANCE DEFICIT: WHY NIGERIAN COMPANIES FAIL

The relationship between governance failure and corporate distress is not a matter of conjecture. It is supported by a substantial body of empirical research and the practical experience of practitioners who have conducted forensic examinations of distressed Nigerian companies. In his landmark study of companies undergoing financial restructuring, Stuart C. Gilson found that board composition and management entrenchment were significant predictors of both the severity of distress and the

prospects of a successful corporate rescue. Gilson's work emphasises the importance of a well-structured board of directors, and the potential impact of management tenure on the effectiveness of restructuring efforts. Gilson posits that companies with captured boards and unchecked management consistently fared worse than those with stronger governance structures.⁹

⁹ Stuart Gilson, 'Bankruptcy, Boards, Banks, and Blockholders: Evidence on Changes in Corporate Ownership and Control when Firms Default' (1990) 27 *Journal of Financial Economics* 355, 362.

In the Nigerian context, the governance failures that most commonly precede corporate distress follow a recognisable pattern. The first, and perhaps most prevalent, is the concentration of authority in a single dominant figure; a founder-entrepreneur or controlling shareholder who simultaneously occupies executive, board, and ownership positions. In such circumstances, the notion of board oversight becomes an illusion. Strategic decisions of enormous consequence are made without challenge, independent assessment of risk, and without the procedural safeguards that corporate governance structures are designed to provide.

The second recurring failure is the breakdown of financial controls. Companies that enter administration often exhibit not merely weak accounting systems but a deeper erosion of financial discipline. This frequently manifests in the deliberate suppression of unfavourable financial information, the manipulation of reported results to satisfy lenders or investors, and the failure of internal and external audit processes to detect or disclose material misstatements. During the forensic investigations that typically accompany administration proceedings, related-party transactions, loans to connected persons, payments to shareholder-controlled entities, and asset transfers at below-market value, frequently emerge.

Collectively, these practices reveal a pattern of value extraction that leaves the company financially hollow. The third failure, closely related to the second, is the absence of effective risk governance. Companies in distress have almost invariably assumed significant contractual, financial, or operational obligations without any structured process for assessing the risks involved.

There is often no risk committee, no escalation protocol, and no management information system capable of providing the board with timely intelligence about the company's evolving risk profile. Consequently, when market conditions tighten or a key contract collapses, the company lacks institutional capacity to respond.

The Cadbury Committee's foundational definition of corporate governance as 'the system by which companies are directed and controlled'¹⁰ illuminates precisely what is absent from these failing enterprises: not just weaknesses within the system, but the absence of any coherent structure of direction and control. Similarly, the Organisation for Economic Co-operation and Development (OECD) Principles of Corporate Governance identify transparent disclosure, board accountability, and the protection of stakeholder rights as the cornerstones of effective governance.¹¹ In many Nigerian companies that ultimately require administration, all three cornerstones are missing.

¹⁰ Adrian Cadbury, Report of the Committee on the Financial Aspects of Corporate Governance (Gee Publishing 1992) 14, para 2.5.
¹¹ OECD, G20/OECD Principles of Corporate Governance (OECD Publishing 2023) 9.

THE ADMINISTRATOR AS A GOVERNANCE ARCHITECT

The central proposition of this article is that the administrator's mandate, properly understood, extends far beyond financial stewardship. The administrator who enters a distressed company and limits himself to renegotiating the debts of the company and managing its cash flow has misunderstood his role. CAMA 2020 confers on the administrator, powers that enable not merely the preservation of the company but to rebuild it, to replace the management that failed it, to reconstitute the board that neglected its oversight responsibilities, and to develop the governance architecture necessary to ensure that the company's rescue is permanent rather than temporary.

In *Re Charnley Davies Ltd*,¹² Millett J confirmed that the administrator occupies a fiduciary position in relation to the company and its creditors and must act with the care and professional skill appropriate to a person in that office. This fiduciary standard, both exacting and non-

negotiable, carries a clear implication for the governance reform agenda. Where an administrator recognises that governance failure contributed to the company's distress yet fails to take steps to address those failures during the administration, that administrator risks falling short of the standard the law requires.

The governance powers of an administrator are concrete and immediate. They include the power to appoint and remove directors,¹³ to engage or dismiss senior management,¹⁴ to call meetings of members or creditors,¹⁵ and to do anything necessary or expedient for the management of the company's affairs.¹⁶ Cumulatively, these powers give the administrator the institutional authority to redesign the company's governance structure from the ground up. The exercise of this authority should not be incidental to the administration process, rather it should form its strategic centrepiece.

¹² *Re Charnley Davies Ltd* [No. 2] [1990] BCC 605, 618 (Millett J).

¹³ Section 498 CAMA 2020

¹⁴ *Ibid.*

¹⁵ Section 499 CAMA 2020

¹⁶ Section 496 (1) CAMA 2020

RECONSTITUTING THE BOARD

The first and most visible governance intervention is board reconstitution. The King IV Report on Corporate Governance for South Africa, arguably the most sophisticated governance framework in the African context, articulates the principle that the governing body of a company should lead with integrity, be competent to govern, and be appropriately structured to exercise independent judgment.¹⁷ None of these requirements is satisfied by a board that presided over a company's descent into distress. The administrator's task is to build in its place, a board that is genuinely capable of providing the oversight that recovery requires.

Similarly, the Nigerian Code of Corporate Governance, 2018 ('NCCG 2018') is exemplary in this regard. The NCCG 2018 articulates that boards must exercise independent judgment, act with integrity, and possess the collective competence necessary to direct and monitor management effectively. It underscores the centrality of board independence, the proper separation of executive and non-executive roles, and the establishment of functional board committees. By anchoring these principles laid out in the NCCG

2018, the administrator not only achieves full compliance with Nigeria's governance standards but also creates a board capable of real oversight. In this sense, the NCCG 2018 is more than a guidance tool; it is a benchmark for governance-led rescue, providing the administrator with a structure for transforming boards.

In line with the principles, prescribed under the NCCG 2018, the reconstituted board should be anchored by an independent non-executive chairman,¹⁸ supported by a majority of independent non-executive directors,¹⁹ and equipped with functioning board committees.²⁰ This should include an audit committee chaired by a qualified accountant, a risk committee with appropriate technical expertise, and a remuneration committee committed to aligning incentive structures with long-term value creation rather than short-term performance metrics. These are not theoretical aspirations; they represent the minimum structural requirements, endorsed by both the United Kingdom Corporate Governance Code²¹ and King IV, for a board capable of performing its monitoring function.

¹⁷ Institute of Directors in Southern Africa, King IV Report on Corporate Governance for South Africa (IoDSA 2016) Principle 11.

¹⁸ Principle 3.2 NCCG 2018

¹⁹ Principle 2.3 (b) NCCG 2018

²⁰ Principle 11 NCCG 2018 Reporting Council, UK Corporate Governance Code (FRC 2024) Provisions 9–14.

²¹ Financial Reporting Council, UK Corporate Governance Code (FRC 2024) Provisions 9–14.

STRENGTHENING INTERNAL CONTROLS AND FINANCIAL INTEGRITY

Concurrent with board reconstitution, the administrator must address the internal control environment. This will typically involve the appointment of a new Chief Financial Officer with appropriate independence, the engagement of new external auditors where the integrity of the existing audit relationship has been compromised, and the establishment of management information systems capable of generating the reliable financial data that sound decision-making requires.

The rationale behind this intervention reflects a principle recognised in formal regulatory contexts across multiple jurisdictions; that the integrity of financial reporting is a governance responsibility that rests with the board and senior management, not merely an accounting compliance matter. An administration process that concludes without having established credible financial controls, leaves the recovered company exposed to the very risks that precipitated its distress.

LESSONS FROM OTHER JURISDICTIONS

Nigeria is not alone in confronting the challenge of embedding governance reform within corporate rescue proceedings. The experience of established insolvency jurisdictions offers both instructive guidance and cautionary lessons.

In the United Kingdom, the administration procedure under the Insolvency Act 1986 (as reformed by the Enterprise Act 2002) has generated a body of case law and professional practice in which governance reform is increasingly recognised as a central component of the rescue process. English courts have consistently interpreted the administrator's powers broadly and

purposively, in alignment with the statutory rescue mandate. The principle affirmed in *Powdrill v Watson*²² that administrator's duties are owed to the body of creditors as a whole, reinforces the governance reform mandate, since governance deficiencies that benefit a controlling shareholder at the expense of the general body of creditors must be addressed as a matter of legal obligation rather than discretionary practice. Finch and Milman note that the English administration practice at its best, integrates financial restructuring with institutional reform, treating the governance of the rescued entity as inseparable from the financial viability of its recovery.²³ In the United States, Chapter 11 of the Bankruptcy Code reorganisation procedure permits distressed companies to remain under the management of their existing directors and officers as a 'debtor in possession.' This approach has attracted persistent scholarly criticism. LoPucki and Whitford's landmark empirical study of Chapter 11 proceedings found recurring patterns of management self-dealing, strategies designed to preserve executive positions rather than maximise creditor recovery, and governance structures that reflected the pre-distress entrenchment of incumbent management rather than the needs of the restructuring process.²⁴

By contrast, the Nigerian administration model, which displaces the incumbent management entirely, is structurally better positioned to achieve genuine governance reform, precisely because it does not rely on distressed managers to reform themselves.

South Africa's Business Rescue regime, established under Chapter 6 of the Companies Act 71 of 2008,²⁵ is perhaps the most directly relevant comparative model, given the similarities between South Africa's and Nigeria's legal traditions and corporate governance challenges. The pervasive influence of the King Reports has produced a business rescue practice in South Africa in which governance reform is treated as an integral component of the turnaround strategy not an afterthought. Business rescue practitioners in South Africa routinely implement board reconstitution programmes, establishment of governance framework, and stakeholder engagement strategies as central elements of the rescue plan. A Nigerian administrator who adopts a comparable approach will not be innovating; they will be applying a model that has already demonstrated its effectiveness in an analogous jurisdiction.

²² *Powdrill v Watson* [1995] 2 AC 394 (HL), 448 (Lord Browne-Wilkinson).

²³ Vanessa Finch and David Milman, *Corporate Insolvency Law: Perspectives and Principles* (3rd edn, Cambridge University Press 2017) 248–254.

²⁴ Lynn LoPucki and William Whitford, 'Corporate Governance in the Bankruptcy Reorganization of Large, Publicly Held Companies' (1993) 141 *University of Pennsylvania Law Review* 669, 672–680.

²⁵ Companies Act 71 of 2008 (South Africa), Chapter 6.

A PRACTICAL FRAMEWORK FOR GOVERNANCE-LED ADMINISTRATION

Translating the governance reform mandate into practice requires a structured approach. The following three-phase framework is proposed for implementation within the administration process.

Phase One – Governance Diagnosis (Days 1–30)

appointment, the administrator should commission a governance audit covering the composition and independence of the board, the effectiveness of board committees, the integrity of financial reporting and internal controls, the adequacy of the company's risk management framework, and the nature and fairness of significant related-party transactions. Institutionalising a system for evaluating the company's corporate governance practices ensures that its governance standards, practices and processes are adequate and effective.²⁶ The findings of this audit should be documented in a governance diagnostic report, which will inform the proposals presented to creditors under Chapter 18 of CAMA 2020.²⁷

Phase Two – Architecture Design and Implementation (Days 31–120)

During this phase, the administrator should implement the structural reforms identified in the diagnostic phase. Board reconstitution should serve as the central element of this process, including the appointment of an independent chairman, the inclusion of independent non-executive directors constituting at least a majority of the board, and the establishment or reconstitution of the audit, risk, and remuneration committees.

In addition, concurrent reforms should address senior management appointments, financial control systems, and the engagement of independent external auditors.²⁸ The reformed governance structure should then be formalised within a documented governance framework and presented to creditors as part of the administrator's rescue plan.

²⁶ Principle 15 NCCG 2018

²⁷ Section 486 CAMA 2020

²⁸ Principle 20 NCCG 2018

Phase Three — Embedding and Succession (Days 121 to Completion)

Governance structures implemented during administration are worthless if they do not survive the administrator's exit. Phase three therefore focuses on embedding a governance culture within the company, ensuring that the reconstituted board and management internalise norms of transparency, accountability, and rigorous oversight. It should also involve the development of a governance succession plan that specifies the institutional arrangements that will subsist upon the company's exit from administration.

The administrator's proposals should include measurable governance milestones and an accountability framework designed to ensure that the post-administration board adheres to the standards established during the administration process.

As Goode has observed, the measure of a successful administration is not merely whether the immediate crisis has been resolved but whether the company has been placed on a sustainable commercial footing.²⁹ In governance terms, this means an administration that has not merely stabilised the company's finances but has also rebuilt the institutional architecture that makes future failure less likely.

²⁹ Roy Goode, *Principles of Corporate Insolvency Law* (4th edn, Sweet & Maxwell 2011) 346–349.

CONCLUSION: GOVERNANCE IS THE TURNAROUND

The administration framework introduced by CAMA 2020 presents a significant opportunity to reshape the culture of corporate rescue in Nigeria. This opportunity, however, will be realised only if practitioners are willing to extend their mandate and professional toolkit, beyond the familiar terrain of financial restructuring to encompass the institutional reforms that sustainable turnaround requires.

Corporate governance failure is not a peripheral feature of corporate distress in Nigeria; it is often its defining characteristic. The administrator who ignores this reality, who restructures the balance sheet whilst leaving the governance deficit intact, will in most cases, find themselves presiding over a reprieve rather than a genuine rescue. The company will return to distress, its creditors will bear additional losses, and the promise of the administration regime will go unfulfilled.

The approach advocated in this article, systematic governance diagnosis, deliberate governance architecture design, phased implementation, and rigorous embedding, transforms the administrator from a caretaker of distressed companies into an architect of recovery. It is an approach grounded in the statutory powers of CAMA 2020, supported by the jurisprudence of leading insolvency courts, reinforced by the comparative experience of the United Kingdom and South Africa, and demanded by the professional and fiduciary standards that accompany every administration appointment.

Nigeria's corporate rescue culture remains in its formative years. The practitioners who shape that culture, through the quality of their administration processes, the ambition of their rescue strategies, and the rigour of their governance interventions, will determine whether the administration regime evolves into what it was designed to be; a genuine instrument of commercial rehabilitation, capable of addressing the complexity and scale of the challenges that Nigerian business face. The journey from dysfunction to recovery does not begin with a debt restructuring plan. It begins with governance.

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agencies, regulatory bodies and international counsel to achieve effective recoveries.

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