MANAGEMENT AND COMPANY'S LIQUIDATION IN NIGERIA: A COMPARATIVE ANALYSIS OF WINDING UP OF COMPANIES IN SOUTH AFRICA AND GHANA*

Abstract

A company comes into existence by a legal process and when it desires to end its existence, it must again go through the legal process of winding up of its affairs. Keeping in mind the forgoing contention, there are established laws in Nigeria on the various mode of the winding up. However, insolvency is one of the grounds of winding up of a company. In this work we shall attempt to consider the various mode of winding up of a company under the Companies and Allied Matter Act 2020. The provision relating to both compulsory and voluntary winding up shall also be examined. The work will critically study the laws and the procedures for winding up with a view of comparing with other jurisdictions. The work will further delve into making a comparative analysis of the procedures, processes and provisions under companies and allied Matter Act 2020. It will also attempt to point out the difference in the procedure of winding up of a company in Nigeria, if any with other jurisdictions. The work will conclude by making appropriate recommendations where necessary.

Keywords: Management, Company's Liquidation, Winding up, Nigeria, South Africa, Ghana, Comparative Analysis

1. Introduction

Winding up of a company is a procedure of allocating the assets and concluding the existence of a company. It is a process of dissolving a company by collecting its assets, paying off its liabilities out of the assets of the company or from contributions by its members. If any excess is left, it is distributed amid the members in accordance with their rights. A company ceases to exist when it is dissolved. It is the process leading up to its demise which is termed winding up or liquidation. Winding up obviously occurs where the company is unable to pay its debts, i.e. it is insolvent[1]. However, 'winding up of a company is the process whereby its life is ended and its property administered for the benefit of its creditors and members. An administrator called liquidator is appointed and he takes control of the company, collects its debts and finally distributes any surplus among the members in accordance with their rights'.[2] Thus in the words 'winding up or liquidation is the process by which the management of a company's affairs is taken out of its director's hand, it's assets are realized by a liquidator, and its debts and liabilities are discharged out of the proceeds of realization and any surplus of assets remaining is returned to its members or shareholders. At the end of winding up, the company will have no assets or liabilities, and will therefore be simply a formal step for it to be dissolved, that its legal personality as a corporation to be brought to an end'.[3] The court that has jurisdiction in respect of winding up of a company is the Federal High Court Section 570(1) of the Act provides: 'The court having jurisdiction to wind up a company shall be the Federal High Court Within whose jurisdiction the registered office or head office of the company is situate'. Thus, it is the Federal High Court That possesses exclusive jurisdiction in the company's winding up proceedings. Insolvency[4] is the condition of being unable to pay debt as they fall due or in the usual course of business, it is the inability to pay debts as they mature or failure to meet obligations[5]. When a company or a corporate organization is no longer able to pay its debt when they fall due; or in the usual course of business, such an organization becomes insolvent. When a company becomes insolvent, a liquidator may be appointed to wind up the company under the creditors voluntary Winding up, members voluntary winding up or winding up by the courts[6]. A receiver or manager may also be appointed to carry on the business as a going concern and realized its assets[7]. It is also possible to use a scheme of arrangement for the reconstruction of companies.[8] Liquidation has often been seen as the only viable option for companies which are insolvent, but an effective corporate insolvency regime should be able to provide mechanisms to rehabilitate companies and rescue them from being wound up, this is the aim of

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[1] S.122(1)(f) Insolvency Act 2000

[2] LC.B. Gower, *Modern Company Law*, Sixth Edition pg. 989.

[3] Pennington's Company Law, Fifth Edition pg. 839.

[4] T. U. Akpoghome, the role of Receiver and Managers in Selected Jurisdiction, *University of Benin Law Journal*, 2012 vol. 13. No 1, 142-168.

[5]H. Huntley, Regulators call Pearlman savings plan a Fraud. St Petersburg Times, February 3, 2007, retrieved from http//en.org/wiki/Receivership, accessed on 6 June 2015. See also Black's Law Dictionary, Seventh Edition (St Paul: Minn, West Publishing Co.1999).

[6] This provided for under the companies and allied matters Act. S.401-404.

[7]S. S. 550-563 CAMA, S.29(2) (9) Insolvency Act 1986, Article 5(1) Insolvency (Northern Ireland) or 1989, 50 and 71, Insolvency Act 1986 (Scotland).

[8] Part 5.1 Corporations Act and Regulation 2001 (Australia) see also Investment and Securities Act, part XII (Nigeria)

insolvency regime. A company[9] may be struck off the register by the Corporate Affairs Commission if it becomes defunct;[10] the normal way of putting an end to the existence of a company is by winding up.

2. Modes of Winding Up

Section 564 specifies three modes by which a company may be wound up, namely;

a. Compulsory winding up by the court.
b. Winding up subject to the supervision of court.
c. Voluntary winding up.

Under section 570 of the Act, the courts having jurisdiction to wind up a company shall be the Federal High Court within whose area of jurisdiction the registered office or head office of the company is situate. A petition for winding up of a company may be brought by[11];

a. the company
b. a creditor including a contingent or prospective creditor of the company; however, the court shall not hear a winding up petition presented by a contingent or prospective creditor until sufficient security for costs has been given, and a *prima facie* case for winding up has been established to its satisfaction.[12]
c. the official receiver, under Section 419, the official receiver means the Deputy Chief Registrar of the Federal High Court or an officer designated for the purpose by the Chief Judge of the Court.
d. a contributory – this means every person liable to contribute to the assets of a company in the event of its being wound up; and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be a contributory.[13] Every present and past member shall be liable to contribute to the assets of the company as provided in Section 117 and 565.

The liability of a contributory shall create a debt of the nature a specially debt accruing and due from him from the time when his liability commenced, but payable at the times when calls are made of enforcing the liability.[14] A contributory is not entitled to present a petition for winding up a company unless;

a. the number of members is reduced below two, or
b. the shares in respect of which he is contributory or some of them, were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder.

However, a contributory may petition for winding up not withstanding that there may not be assets available on the winding up or distribution to contributories.[15] Thus, in *Re Italcomm (Western Nigeria) Ltd*[16] is no longer law in this respect.

a. a trustee in bankruptcy to, or a personal representative of a creditor or a contributory.
b. the Corporate Affairs Commission under Section 366 of the Decree; this normally results from proceedings on inspector's report submitted to the normally commission or the court by virtue of Section 368.[17]
c. a receiver if authorized by the instrument under which he was appointed, or
d. by all or any of those parties, together or separately on hearing a winding up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any that it think fit, but the court shall not refuse to make a winding up or on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets, and unless it appears to the court that some other remedy is available and that the petitioners are acting unreasonably in seeking a winding up order[18], instead of pursuing the remedy, the court on hearing a petition by contributory members of a company for relief by winding up on the ground that it would be just and equitable so to do, shall make the order as prayed if of the opinion that the petitioners are entitled to the relief sought.[19]

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[9] P. E. Oshio, Modern Company Law in Nigeria, Benin City, Lulupath publications 1995 at pg. 219.
[10] Section 692
[11] *Re Hughes King (Nig.) Ltd* [1970] N.C.LR 35; *Oil Field Supply Centre Ltd. v. Johnson* [1987] 2.N.W.LR. (pt.58) 625. *Sulaiman and or S v. Muslim Bank* (W. A) Ltd. [1970] 1A.LR Comm.388; *National Bank of Nig. Ltd v. Are Brothers (Nig.) Ltd* [1977] 1 A.LR comm. 123.
[12] Section 573(1)(b)
[13] Section 117 and 566
[14] Section 567
[15] See Section 573 (2)(a) and (4)
[16] [1975] 2 ALR Comm. 293
[17] See also Section 364 and 571(f).
[18] This enacts the ratio in *Cole v. R. Clrving & Co. Ltd* [1970] N.C.L.R. 472
[19] Section 574(1) and (2).

A company [20]can only come into existence under the statute, so also can it cease to exist only in accordance with statutory provisions. A company may be struck off the register by the commission if it becomes defunct and the court may, on a reconstruction and amalgamation of companies, dissolve a company without winding it up but the normal way of putting an end to the 'life' of a company is by winding up. Section 564 provides that this may be effected in any of the following way: -

(i) by the Federal High Court;
(ii) voluntarily; or
(iii) subject to the supervision of the court. For the purpose of this Act, a company or existing company is defined as 'a company formed and registered under this Act, as the case may be, formed and registered in Nigeria before and existence on the commencement of this Act.[21]

The incorporators[22] of a company can meet and pass a special resolution (a resolution where at least two thirds of the shareholders agree) to wind up the company[23]. The resolution is advertised in a Federal Gazette or two dailies and a copy is sent to the Corporate Affairs Commission. Thereafter they may appoint a liquidator whose obligation is to make all the company's debtors to pay their debt, sell the company's assets, satisfy the revenue, pay off creditors and distribute any balance, among the shareholders[24].
More contentious is section 571(d) CAMA which provides that a court may wind up a company if it is unable to pay its debts. Section 572 defines what it means that a company is unable to pay its debts. A company shall be deemed to be unable to pay its debts if:

a. a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding N200,000 then due has served on the company, by leaving it at the registered office or head office, a demand under his hand requiring the company to pay the sum due and the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to be reasonable satisfaction of the creditor, or
b. execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part: or
c. the court, after taking into account any contingent or prospective liability of the company is satisfied that the company is unable to pay its debts.

The process of bringing the life of a company to an end is referred to as winding up or, in the common commercial usages, liquidation. When a company is wound under the companies Act, its properties are administered for the benefit of its members and creditors. The closest analogy to what occurs in the winding up of a company is the administration of the estate of a dead person. The equivalent in company law of administrator of estate of a decreased person is the liquidator who is appointed to take over control of the company, collect its assets, pay its just debts, and finally distribute the residue among members in accordance with their class rights.[25] The period which the winding up of a company might take would be determined by a combination of factors in the size of its assets and liabilities, the scope of commercial activities, and the complexity of its business operations. For instance, it seems as if the period of winding up an insurance company, as we will later see, is likely to be more prolonged than an ordinary. Winding up is the process of settling accounts and liquidating assets in anticipation of a partnership's or a corporation's dissolution[26]. It could also mean the process whereby the company is liquidated and dissolved and its assets administered for the benefit of the creditors, members and employees. This is the antithesis of incorporation of a company. It is the process whereby the operation of a company is brought to an end. On the other hand, winding up of a company could also be referred to as the process whereby its life is ended and its property administered for the benefit of its creditors and members. The close analogy to what occurs is afforded by the administration of deceased's estate, an administrator, called a liquidator collect it assets pay its debt and finally distributes any surplus among the members in accordance with their right. But the process differs from the administration of a deceased's estate in that the estate being administered is that of a person still living. Only at the end of the winding up will the company be dissolved, administration precedes death, not vice versa. The process also resembles bankruptcy and follows its rules closely if the company 1s insolvent. A company cannot be made bankrupt; instead it must be wound up under a separate but not dissimilar procedure. But here the differences are more marked. If a company is put into winding up it cannot, like a bankrupt individual, obtain it discharge and continue freed from the burden of its debt. The liquidation winds up its affairs and then kill it although under a construction, it may sometimes rise like a phoenix from the ashes of funeral pyre. Further, the

[20] J. Olakunle Orojo, *Company Law and Practice in Nigeria*, Interpak Books Pietermaritzbury 5 edition 2008 at pg. 449.
[21] Section 620
[22] Ibid
[23] Much of dispute in *Okafor v. Igwilo* [19971 11 NWLR (pt. 527) 36 and *George Wil.v. Ekine* [1998) 8 NWLR (pt. 562)45 would have been avoided if this procedure was adopted.
[24] Akintunde Emiola, *Nigerian Company Law*, Amfitop liaison office, first edition 2001. At pg. 481.
[25] Ibid
[26] Bryan A Garner, *Black's Law Dictionary*, Eight Edition, s.v. "Winding up".

company's property does not vest in the liquidator[27], as a bankrupt's vest in the trustee in bankruptcy; all that occurs is that the liquidator assumes the functions of the directors and becomes subject the duty to deal with its assets under the statutory scheme laid down in part v of the 1948 Act[28].

However, company law by its very nature tends only to be tested where the company has failed and the ashes are raked over and knowledge of the main provisions dealing with failed companies is therefore essential. The principal statute that governor's liquidations is the insolvency Act of 19886. A company ceases to exist when it is dissolved. It is the process leading up to its demise which is termed winding up or liquidation. Liquidation means the same thing as winding-up in company law and the two words are used interchangeably. K.R. Abbott[29], defines liquidation as the process by which the life of a company is brought to an end and its property administered for the benefit of its members and creditors. A winding up may be by the court or voluntary. Also, voluntary winding up is sub-divided into two types namely (a) member's voluntary winding up and creditor's voluntary winding up. Explaining the difference between the types of winding up as stated above. Gower[30] said: 'As their names imply, an essential difference between compulsory winding up by the court and voluntary winding up is that the former does not necessarily involve action taken by any organ of the company itself, whereas voluntary winding up is that the former is possible only if the company is solvent, in which event the company's members appoint the liquidators, whereas, if it is not, its creditors have the whip hand in deciding who the liquidator shall be'. The procedure for winding up differs depending upon whether the company is registered or unregistered. A company formed by registration under the Companies Act, is known as a registered company, it also includes an existing company, which had been formed and registered under any of the earlier Companies Acts.

3. South Africa

Certain sections of the 1973 Companies Act still apply to the winding up and liquidation of companies by virtue of the transitional arrangements in Schedule 5 to the 2008 Companies Act. The main destination on whether or not the 1973 Act or the 2008 Act applies centres around whether or not the company is solvent[31]. The problem of what is meant by a 'solvent company in sub item 9(2) of schedule 5 of the 2008 Companies Act was solved. It means a commercially solvent company. 'Factual solvency is not, in itself, a reason for a company to be placed in liquidation'. A company is commercially insolvent if it is unable to pay its debts, even though its assets may exceed its liabilities. A company that is commercially insolvent it is wound up in terms of the 1973 Companies Act. A company is factually insolvent if the company's liabilities exceed its assets. But it may still be able to pay its debts most start-up companies may be factually insolvent. Factual solvency is not, in itself, a reason for a company to be placed in liquidation[32].

Winding Up of Companies

It is a well-settled practice of our courts that commercial insolvency justifies the liquidation of a company. The value of assets (other than cash) is notoriously elastic and highly subjective and is only one factor in regard to whether a company can pay its debts. This is the reason that the legislature retained the deeming provision of the Act[33] as to when a company is unable to pay its debts. This case settles the position that a commercially solvent company may only be wound up in terms of the 2008 Companies Act, irrespective of whether or not it is factually solvent. A solvent company cannot be wound up in terms of the 1973 Companies Act.[34] These days of course commercially or factually insolvent companies may be rescued by the new business rescue procedures. The winding up of solvent companies is provided for in the new Companies Act 71 of 2008. The winding up of insolvent companies remains regulated by the old Companies Act 61 of 1973. The shareholders of a solvent company may decide, for any number of reasons that despite its solvency the company should be wound up. If sufficient shareholders favour this course of action to be able to secure the passing of a special resolution at a shareholders meeting, then this process can take its course without controversy[35]. Where, however, the aggrieved shareholders cannot muster sufficient votes to pass a special resolution that the company be wound up, a further avenue is open to them, namely an application to court in terms of the Act[36]. The court may order a solvent company to be wound up if: 'a shareholder has applied, with leave of the court, for an order to wind up

[27] S.244 Bankruptcy Act 1914.
[28] *Ayerst V.C &K Construction Ltd* [1976) A.C 167, H.L.
[29] See Business Law by K.R. Abbott and N. Pendlebury, Sixth Edition, s.v. "Liquidation".
[30] LC.B. Gower Op. Cit at p. 762.
[31]North Rose Fulbright, financial institutions Legal Snapshot, http://www.financil institutions legalsnapshot.com/2014/05/solvent, accessed 3-6-2021
[32] Ibid.
[33] section 345 of the 1973
[34] Ibid.
[35] Root Inc. Attorneys, http://www.roottinc/news-letter 135.asp.accessed 3-6-2021.
[36] section 81(e) of the Companies Act 2008

Fraudulent or Otherwise Illegal Conduct

The first ground for winding up contemplated in the Act[37] is that fraudulent or otherwise illegal conduct has been engaging in by the directors or other controllers of the company. In *Pinfold* v. *Edge to Edge global Investment Ltd*[38], the court observed (at Para (5)) that the term fraud has a well-established meaning, connoting a misrepresentation with an intent to defraud which is actually or potentially prejudicial to another person. n this particular case, the fraudulent conduct that the applicant shareholders were able to demonstrate to the satisfaction of the court included factual misrepresentations made in a private placement memorandum whose purpose was to persuade investors to invest in the company, and misrepresentations regarding assets allegedly owned by the company. The expression illegal in the Act[39] is a much broader term. The illegalities on the part of the directors, alleged by the applicant shareholders in this case, included the undisputed failure for two years to issue financial statements as required by the Companies Act, and the court regarded this in a serious light. In the result, it was held that there was no genuine dispute of fact, and that the version put forward by the directors in questions was 'untenable'. The court there for granted the order requested by the applicants namely an order that the company be wound up.

Misapplication or Wasting of Company Assets

The more contentions ground for winding up, envisaged in section 81(1)(e) is that the company's assets are being wasted or misapplied. Although allegations in this regard were made in the *Pinfold v. Edge to Edge*[40], case, the court did not rely on these grounds in ordering that the company be wound up. The difficulty with this ground is that it is wide enough to include non-fraudulent mismanagement of the company and its resources. Traditionally, and for good reason, the courts have declined to become involved in such issues, which are the proper province of Board of Directors, where directors, fundamentally, have to act in good faith and are not legally accountable for mere errors of judgment. It is otherwise just and equitable for the company to be wound up. The court held that the 'just and equitable' basis for the winding up of a solvent company in terms of this section of the Act should not be restrictively interpreted and limited to circumstances referred to in the preceding sub-sections[41]. The court held that the legislature had now modified the judiciary developed deadlock category that forms part of the just and equitable ground for the winding up of a company and made its application subject to certain new requirements. Because the applicants had proved to the court there existed a justifiable lack of confidence in the conduct of one of the directors and in the management of the affairs of the two corporate entities, the court ordered the wind-up of the company and close corporation at the instance of the applicants. This is an interesting judgment in that the court has now indicated that the 'just and equitable' ground for winding up entities should be considered more broadly to also include deadlock situation.[42]

4. Ghana

In Ghana, dissolution or winding up of a company's is the termination of accompany existence as a result of winding up proceedings. The immediate consequence of dissolution is the liquidation of the company. This consists in the collection and realization of the company assets to settle a list of contributories and creditors, to pay the company's debts and liabilities and to divide the surplus (if any) amongst the members of the company in accordance with their rights. The provisions governing the dissolution and liquidation of companies are contained in Book VII of the Uniform Act. The Uniform Act does not define what company dissolution is. It enumerates the causes and indicates its consequences.[43]

Dissolution of the Company

Causes of dissolution

Under the Uniform Act the causes of dissolution are many and at time peculiar to certain forms of companies. Seven causes of dissolution have been previewed. Amongst the causes put forward, some come about under circumstance external to the company. Others are the voluntary acts of the partners themselves. In this case dissolution is said to be provoked.[44]

a. External circumstances leading to dissolution. They include the expiry of the period for which the company was formed; the realization or extinction of its object; the cancellation of the company's partnership deed; and other causes that may be provided by the Articles of Association.

[37] section 81(1) (e)
[38] Ibid.
[39] S.81(1)(e)
[40] Ibid.
[41] (see (d)(i) and d(ii) of the new Companies Act 71 of 2008, as was contended by the respondents
[42] Leander Opperman-Partner-Adams & Adams, winding up of a company and close corporation under the new companies Act, htttp://www.polity.org.za/print-version/winding-up-pf-a-Company-a, accessed 3-6-2021
[43] Winding Up of Companies, http://investin Cameroon.net/en/ business-creation/business-closure.html accessed 3-6-2021
[44] Ibid.

b. The Expiry of the duration of the company. The expiry of the term for which the company was created shall entail the automatic dissolution of the company. Partners are free to insert in their Articles of Association the date on which the company life will come to an end.[45]
c. Realisation or Extinction of its objects: The reaslisation of the objects of the company supposes the accomplishment of the task for which the company was formed. On the other hand, there is extinction of objects if the activity or activities for which the company was formed to execute turns out to be an impossibility. Realisation or extinction of objects of company as cause for dissolution operates rarely today.
d. Cancellation of the company partnership deed: Annulment of the company partnership deed is a rare event, however once this happens, the effect is that the company must be dissolved. A judgment ordering the liquidation of a company automatically calls for its dissolution.
e. Causes provide for in the Articles of Association: A company can be terminated tor all the reasons provided for in the Articles of association. The Articles of Association can indicate that should the company suffer heavy loss and the company would have to be dissolved.[46]

Provoked causes of dissolution

The dissolution of a company may be provoked either by voluntary acts of one or more partners or a court decision when have seen that partners on a common accord can decide to dissolve a company before the expiration of its term. Equally, one partner may provoke the dissolution of a company by renunciation, that is, he refuses to continue to be part of the company. The Uniform Act does not put into doubt these possibilities as it says that a company can be terminated by the decision of partners, subject to the conditions previewed for the amendments of the Articles of Association. It is then clear that there can be anticipated (premature) dissolution on common accord and by way of renunciation by a partner. A partner could equally ask for dissolution of the company if he realizes that all the shares of the company are rested in the hands of one person.

Anticipated Dissolution Mutual Agreement

Before a company's terms of existence expires, the partners can put an end to it. This is what is known as anticipated dissolution. Anticipated dissolution can be direct or indirect when it emanates from the decisions of the General Assembly of partner or in application of a clause in the Articles of Association. It is indirect if it is the consequence of another collective decision, for example, a decision to be absorbed by another company as a result of a merger or transformation into different form of company implying the disappearance of it present personality. Voluntary dissolution must not be spurred by a fraudulent motive.

Renunciation

This idea emanates from the general principle of contract law. It holds that a partner who does no longer which to be part of the company can unilaterally renounce it. Renunciation is only possible in contract whose duration is undermined either because there is no term at all or the term exceeds the human life span. Renunciation must be done in good faith and the trimming must not be so as to inflict hardship on the other members. For renunciation to be valid, all the other members must be informed by way of a bailiff.

Concentration of all Shares in one Single Hand

The concentration of all the shares in the hands of one person used to be a common cause for dissolution. Today with the coming into force of the Uniform Act, this position of law has been altered. The Uniform Act authorizes a single person to form a *Private or Public Ltd Company*[47]. Any of these companies which states however, that is the case of companies in which sole proprietorship are not allowed by the Act, the ownership of all the shares by a single person shall not entail the automatic dissolution of the company. Any party concerned may petition the president of the competent court for such dissolution where the situation is not regularized within a period of one year. The court may grant the company a maximum period of six months to regularizes the situation. It may not order the dissolution where on the date of ruling on the merit of the case the situation has been regularized.

Court dissolution on justified grounds

This previews certain situations in which a partner can ask for an anticipated dissolution of a company from the court. Examples are: -

a. failure of a partner to honour his engagement vis-a-vis the company e.g. he fails to pay contributions.
b. habitual incapacity which paralyses the company.

[45] Article 28(2) of the same Uniform Act precise that the duration of existence cannot exceed 99 years. However, the partners have the right to extent its duration or anticipate on the life of the company by reducing its duration.
[46] Ibid.
[47] Ibid.

c. other cases, whose seriousness is left for the appreciation of the judge.[48]

The Consequences of Dissolution

The immediate consequence of the dissolution of a company is that it be liquidated, when a company is dissolved, it conserves its legal personality for liquidation purposes until the liquidation procedure is completed. Liquidation of the company is the collection and realisation of the company's assets to settle a list of contributories and creditors and to pay the company's debts and liabilities and to divide the surplus (if any) among the members of the company in accordance with section 303 and section 457 of the Nigerian Companies and Allied Matters Act 1990 (as amended) their rights. This holds true under the Uniform Act as under Nigerian and Ghanaian Laws. For dissolution of a company to have effect on parties, the Uniform Act prescribes certain obligations that must be respected. Article 209 states that dissolution of a company shall have an effect on third parties only with effect from its publication in the Trade and Personal Property Credit Register. Again, concerning this aspect of publicity, Article 202 of the Uniform Act, states that the dissolution shall enter in the Trade and Personal Property Credit Register. Article 201(4) of the Uniform Act holds that the dissolution of a company in which all the shares are held by one person shall entails a total transmission of the assets and liabilities of the company to such person without resorting to liquidation. Creditors may object to the dissolution before a competent court within a period of 30 days following its publication. The court shall reject the objection or order the settlement of debts or provision of guarantees if the company offers any and if they are deemed sufficient. The transmission of the assets and liabilities and the winding up of the company shall be effective only after the expiry of the time limit or objection or where the objection has been declared inadmissible or if the settlement of debts has been effected or guarantees provided.

Compulsory Winding Up of Companies

Compulsory winding up of companies under the Companies Law, 2008 (as amended) came into force on 1 July 2008 and contains, provisions in relation to the nature, type, establishment and conduct of Guernsey incorporated companies. The company law also contains provisions for winding up a company. Winding up is the process by which affairs of the company are brought to an end, its assets realised, its liabilities determined and any available fund distributed to those legally entitled to them subject to general law concerning preferences and preferential payments. Under the Companies Law winding up of a company may be voluntary or compulsory. A company may be compulsory wound up by the Royal Court of Guernsey under the companies' law if:

a. the company has resolved by special resolution that the company be wound up by the court;
b. the company does not commence business within one year of the date of its incorporation;
c. the company suspends business for a whole year;
d. the company has no members (other than the company itself where, it holds its own shares as treasury shares);
e. the company is unable to pay its debts;
f. the company has fail to comply with a direction of the registrar of companies to change its name,
g. the company has fail to hold a general meeting of its shareholders in accordance with the companies law or the directors have fail to comply with their obligation under the Companies Law in respect of the annual general meeting.[49] Pursuant to section 200 of the Companies Law, incorporated cells are exampled from the annual general meetings and pursuant to section 201 of the Companies Law, all companies can waive the requirement to hold general meetings via a resolution passed by the members of not less than 90 percent majority called a 'Waiver' resolution under the companies law;
h. the company has failed to send its members a copy of its accounts or reports in accordance with the company's law; or
i. the court is of the opinion that it is just and equitable that the company be wound up.

An application for the compulsory winding up of a company can be made to the court by the company itself, or any member or creditor thereof, or any other interested party. On hearing an application for the compulsory winding up of a company, the court may grant the application on such terms and conditions as it deems fit, or make such other as it think fit. An order made by the court on such application operates for the benefit of all the company's creditors in the same way as if the application had been presented by them.

If a creditor makes an application to the court for the compulsory winding up of the company on the grounds that the company is unable to pay its debts, then the company is deemed to be unable to pay its debts if a written demand for payment, served through the office of Her Majesty's Sergeant, for a sum exceeding £750 has remained

[48] Article 200(5) of the Uniform Act talks of the coming to an end upon its premature dissolution pronounced by the competent court at the request of a partner for justified reasons, notably in the case of no performance by a partner of his obligations or misunderstanding between partners hampering the normal functioning of the company

[49] Ogier Guernsey, Compulsory winding up of companies-lexology httpi//www.lexology.com/library/ dittil.aspx? g-ab2fbce8-f594-44e access on 20-5-2021.

unpaid for 21 days, or if it is otherwise proved to the satisfaction of the court that the company fails to satisfy the solvency test (as described below).

The Solvency Test

A company is deemed to satisfy the solvency test if:

a. the company is able to pay its debts as they become due;
b. the value of the company' s assets is greater than the value of its liabilities, and
c. in the case of supervised company, the company satisfied any other requirements as to solvency imposed in relation to it by or under certain other legislation.[50]

5. Conclusion and Recommendations

The work recommends that the issue of debt recovery by individual or corporate bodies be it bankruptcy, winding up or insolvency proceedings in Nigeria without recourse to the legislations thereto, parties may seek to resolve to Alternative Dispute Resolution (ADR) to settle out of court and to reduce the cost of litigations and the delay that the courts may cause them. We are of the opinion that claims arising from debts as well as bankruptcy charges can only encourage investors or creditors if a resolution are agreed by parties and time frame is given to debtors to pay or settle after judgment has been obtained against. This work also recommends that commencement of winding up in all cases should be when the Court has made the final order, declaring that the company be wound up and not when the petition is presented for filing in Court. This may work great hardship on the company if the petition for winding up is truncated midway into the proceedings and the petition is either dismissed or the winding up is suspended. The work concludes by arguing that a company undergoing the process of winding up should not have ceased its operations but be allowed to operate pending the final dissolution of the company or as may be ordered by Court. This is because such company though sick but not dead. The company will be advised to stop its operation after it has been dissolved. It is further evident from this work that the procedures relating to the bankruptcy and winding up proceedings (insolvency proceedings) are quite tasking. As stated therein, the process starts from the issuance of all statutory notices, filing valid processes in the Court, complying with all relevant provisions of the applicable Acts and Rules, obtaining the orders sought from the competent Court. The Companies and Allied Matters Act 1990 (as amended) is the law that governs and regulates the activities of both the creditors and the corporate entity in their transactions. Thus, it is the Court that will give the order or judgment in the bankrupt (bankruptcy proceedings) and making a winding up order (winding up order (winding up proceedings) the process continue until the implementation of the order of the Court. The well intention attempt to salvage instead of destroying companies in financial difficulties which is equivalent of South Africa 'Judicial Management', the Australia 'Official Management' or the American Chapter II of the Bankruptcy Act as laudable as it is, is of no practicable value in Nigeria yet. There is nothing so impressive in company law than the order of nature, which is capable of nursing back to health a company presently unable to pay its debts owing to cash flow or similar difficulties. One hopes that in no far distance future, such procedure will be adopted in Nigeria company law practice. Notwithstanding the above, it would not be out of place to say that the procedure also has two main weaknesses. One, it is subject to the veto of any creditor who has validly appointed an administrative receiver prior to the consideration of the petition by the court; he must consent before the court can make such an order. Also, no such order can be made after a company has gone into liquidation or if it is insurance however of no value compared to the benefits derived from the order. The procedure is therefore a laudable and welcome development in company law practice. In Nigeria and its judicial processes, the act of bankruptcy and the rate of liquidation of companies can be attributed to the mode in which debtors and creditors take their fate to court during insolvency proceedings are not legitimate ways for the recovery of debts in Nigeria. A review of our legislation especially the rules applicable to bankruptcy and winding up of companies has to be amended in order to encourage, where a company is persuaded to settlement its debt on the threat or presentation of a bankruptcy or winding up proceeding, the proceedings, should not be encouraged as a legal means for debt recovery.

[50] Ibid.