COMPILATION OF THE WORLD BANK QUESTIONNAIRE

INTRODUCTION

The questionnaire was sent out to several insolvency and corporate practitioners for their comments based on their vast experiences in these areas of law. Both soft and hard copies of the questionnaire were sent out to all the practitioners contained in the BRIPAN list. Out of over 170 practitioners to whom these were sent, only five responses were received.

ANALYSIS

All responses were received from legal practitioners. These responses were received from Dr. Bolanle Adebola, Charles Musa, the Law firms of Austen Peters & Co, George Ikoli & Okagbue, Cliff Kpogho & Co, PUNUKA Attorneys & Solicitors and the following points were raised and agreed/disagreed upon;

| Total number of questionnaires distributed | 170 |
| Total number of those that responded       | 6   |
| Total number of those who did not respond  | 164 |

![Bar chart showing total number of questionnaires distributed, total number of those that responded, and total number of those who did not respond.]](chart.png)
Introductory questions on the insolvency procedures available in the relevant jurisdiction.

1. What insolvency procedures – either liquidation or reorganization procedures – are available for distressed or insolvent companies?

- All the responses are in agreement that winding up in whatever form is a reorganisation procedure.

- 4 of the 6 responses received are in agreement that in addition to liquidation, merger/Acquisition, buyout and takeover are also part of the procedures available for distressed companies.

- 2 out of the 6 further stated that Scheme of Arrangement and Receivership also form part of the reorganisation procedure.

**Further Responses**

- 4/6: Merger/Acquisition, Buyout and Takeover
- 2/6: Scheme of Arrangement and Receivership

2. Are there special insolvency procedures available for financial institutions or for other special classes of companies?

- 3 out of the 6 responses received are of the view that there exists no special procedure applicable to other institution contrary to that already set out in the Companies and Allied Matters Act, 2004.
3 responses dissented and stated that there are other procedures set out for the other classes of companies. The dissenting views are on the point that the special nature of these institutions demand for the special procedures. Reliance was placed on the AMCON Act and NDIC Act.

3. Are there any specific legal provisions that apply to debt restructurings achieved without a full formal insolvency process?
   - 5 out of the 6 responses agree that AMCON Act allows for debt restructuring without a full formal insolvency process.
   - One view stated that there exists no specific provision on out of court restructuring but informal workouts are common in practice.
4. What are the commencement criteria for insolvency procedures?

- 4 out of the 6 responses states that this is by way of petition or resolution depending on the nature of the winding up/liquidation.

- 3 out of the 6 further stated that it could be at the appointment of a receiver in the case of receivership.

- 2 out of the 6 also opined that it is the receipt of a notice to the company stating that the company is unable to meet its financial obligation. Reliance on Section 408 CAMA
5. Who can propose a restructuring plan? (e.g. corporate bodies, insolvency representatives, creditors)

- 5 out of the 6 responses are in agreement that restructuring plan can be proposed by any of the persons mentioned in Section 410 CAMA. They are also in agreement that where it is a restructure plan, the board may propose, subject to the approval of the board.

- 1 out of the 6 in addition, cited Section 539 CAMA which relates to Scheme of Arrangement.
6. Please describe whether and to what extent shareholders’ rights can be affected by a situation of distress/insolvency of a company before and/or irrespective of the opening of a formal insolvency proceeding (e.g., are there any fiduciary duties of the shareholders to approve corrective measures/plans proposed by the board?)

- 5 out of the 6 responses are of the view that the rights of the shareholders will be affected since they will be liable to the balance of their shares. Section 92 and 402 of CAMA were copiously relied upon.

- 3 out of the 6 opined that the members of a company must approve whatever restructuring option was proposed by the company.
II. Shareholders’ Rights in Companies Subject to Insolvency Proceedings

7. Are shareholders notified of the initiation of an insolvency process? If notification is individualized, what are the mechanisms used to identify shareholders?

➢ There is an agreement in all the responses that notice must be given individually to all the shareholders before the initiation of insolvency proceedings.

➢ One of the responses relying on the combined effect of sections 217, 233 and 458 CAMA stated that 21 days’ notice must be given to all the shareholders. The other 4 responses added that the notice would be in an official gazette or a newspaper. Also Sections 392-399 was relating to Receivership and the need to notice was cited.

8. Are shareholders required to file claims in the insolvency proceeding? What are the consequences of not filing a claim?

➢ 4 out of the 6 opined that shareholders are NOT required to file a claim. One of the views went further to state that only creditors are required to file a claim.

➢ 1 out of the 5 opined that shareholders who are secured shareholders can file a claim in insolvency proceedings.

➢ 1 response opined that shareholders are required to file a claim in insolvency. According to this response, this claim enables them to stake a claim in assets of the company.
9. Can shareholders continue to trade and transfer shares after the initiation of an insolvency proceeding affecting the company?

➢ There is unanimity that once insolvency proceedings is initiated then parties cannot trade in the shares of the company unless with the consent of the liquidator or court as the case may be. Section 413, 416 and 461 of CAMA was relied upon.

10. Do shareholders have the right to request that a shareholders’ meeting is held, even if the company is insolvent? (If there are separate reorganization and liquidation procedures, does this affect the response?)

➢ 4 out of the 6 responses are in agreement that shareholders have the right to request for meeting at any time without any restriction whether the company is insolvent or not. However 2 out of this 4 further stated that in the case of RECEIVERSHIP, such meeting is not feasible.

➢ 2 out of 6 hold the opinion that only liquidators can call for such meeting. The shareholders cannot summon such a meeting. 1 of the 2 dissenting opinions further stated that in a scheme of compromise or arrangement, the company or creditors or shareholders are allowed to apply to the court in a summary way for the court to order a meeting of the creditors or class of creditors, or of the members/shareholders of the company, or class of members, as the case may be to determine and agree on the Scheme
11. Do shareholders have the right to request information in an insolvent company? Do they have information rights as to the progress of a reorganization procedure? Can they exercise that right vis-à-vis the directors of the company -if they remain in charge of the company-or vis-à-vis the insolvency representative?

- There is an agreement in all the responses that shareholders have the right to request for information in an insolvent company. One of the views went further to state that the shareholders can sue where the affairs of the company is run in a prejudicial manner.
- 1 view stated that in other reorganisation procedures, it is not clear whether such right is available to shareholders. In contrast to this, one response opined that in Scheme of Arrangement, members are entitled to the Scheme document which contains detail of how the company is to be restructured. Usually the notice by way of advertisement will include a notification that copies of a statement explaining the effects of the compromise or arrangement proposed can be obtained by creditors or members entitled to attend the meeting. In which case every such creditor or member shall, on making application in the manner indicated by the notice, be furnished by the company free of charge with a copy of the statement.

12. Can shareholders make proposals for nomination of directors, if the directors continue managing the company?

- There is also an agreement in the responses that the shareholders retain their right to nominate directors during insolvency especially where the insolvency does not affect the management of the company.
- One view further stated that where the company is under receivership, the power of the directors or liquidator in members’ voluntary winding up to deal with the property of the company shall cease unless the receiver/manager is discharged. The view further stated that the appointment of a provisional liquidator or a liquidator will suspend the powers of directors. However the shareholders may be able to remove the directors in concurrence with the IP.

13. If special categories of shares exist whose holders are granted additional governance rights, are these additional rights affected by the opening of an insolvency procedure? (If there are separate reorganization and liquidation procedures, does this affect the response?)
4 out of the 6 responses agree on the point that the opening of an insolvency procedure infringes on the rights of all classes shareholders. 1 out of the 4 however stated that this right may not be affected in a scheme of arrangement.

1 out of the 6 opined that these rights are not affected in any way.

I opined that majority shareholder may exercise his right and veto an insolvency plan by voting against it. In essence the rights are not affected.

14. Can shareholders challenge the decisions of the shareholder meeting, if it is still active? Do they retain the possibility of taking action against the acts of the directors? And against the acts of an insolvency representative? Is any authorization by a judicial or administrative body required to do so or, more generally, to exercise corporate rights? (If there are separate reorganization and liquidation procedures, does this affect the response?)

4 out of the 6 responses opine that they can challenge the decision of shareholders and can also challenge the action of directors if prejudicial and ultra vires and can also challenge the action of an insolvency practitioner.

1 out of the 6 mentioned that the authorization of the court is required to challenge the action of the directors and the insolvency representative.
There is a unanimous position that the position might be different in other restructure proceedings.

15. **Do shareholders have the right to call a special investigation of the affairs of the insolvent company?**

4 out of 6 opined that they have the right to call a special investigation into the affairs of the insolvent company. Reliance placed on sections 314-328 CAMA.

2 out of the 6 responses opined that this can only be done through an application to the court for an order for the investigation of the affairs of the company where it is discovered that the affairs of the company is being mismanaged.
16. Does the law provide for the establishment of a shareholders’ committee (or several committees, in case of different share classes)? What are their powers? Who bears the related costs?

3 out of the 6 posit that the law provides for the establishment of shareholders committee. Reliance on section 432 and 433 CAMA.

The other 2 are of the position that there is no provision in our law for the establishment of shareholders committee.

1 out of the 6 is silent on the position of the law.
17. Can shareholders voluntarily transfer shares of the company undergoing insolvency proceedings against any provisions in the articles/bylaws restricting transfers of shares?

- Unanimous position that the constitution and article of the company will continue to apply and the shareholders cannot transfer their shares as same will be illegal and void. Section 461 and 413 again referred to.

18. Can outstanding shares of the company undergoing insolvency proceedings be assigned to third parties without the consent of the relevant shareholders? If yes, under what conditions? Are existing shareholders entitled to compensation? What other safeguards are provided? (e.g., does the law include a principle according to which the affected shareholders should not receive less than in a liquidation procedure?)

- 3 out of the 6 responses opined that it cannot be assigned to a third party and further stated that in the unlikely event that it can be assigned the Article of the Association of the company has to be followed. 1 of the 3 further stated that Cancellation of shares or assigning of shares will have to be authorized at the AGM or EGM

- 2 responses are of the opinion that it can be assigned. 1 out of the 2 stated however that before such assignment to third party can be undertaken, the shares must be first offered to the shareholders.
I response stated that there are no provisions in the Nigerian Act like the Absolute Priority Rule in the US to protect the shareholders from receiving less than the liquidation value of their shares.

19. Can outstanding shares of the company undergoing insolvency proceedings be cancelled without the consent of the relevant shareholders? If yes, under what conditions? Are existing shareholders entitled to compensation? What other safeguards are provided? (e.g., does the law include a principle according to which the affected shareholders should not receive less than in a liquidation procedure?)

3 out of the 6 posit that the shares of the company undergoing insolvency cannot be cancelled and even if it can be cancelled it must be in accordance with the Article of the company.

The other 2 responses did not provide any answer to this question.

1 response is of the opinion that it can be cancelled if such shares are not backed up by cash or have not been paid for.
20. Do shareholders of the company undergoing insolvency proceedings have pre-emption rights over new issues of shares? (2) Are there special conditions for the suppression of pre-emption rights if the company is insolvent (if there are separate reorganization and liquidation procedures, does this affect the response?).

- The general response to this question is that the shareholders right of pre-emption will continue to apply being a right contained in the Articles of the company.
- 1 of the responses went further to state that if the reorganization is carried out through a scheme, pre-emption rights would typically be renegotiated and the relevant resolutions passed. Another view is that in their restructuring then recourse will be made to the Articles of the company. Where the reorganization is carried out through receivership, which would typically involve the hiving off of viable portions of the business and a subsequent sale of the business free from the rights of previous owners, rules on pre-emption rights would not apply.

21. Can shareholders retain a participation in the company that has emerged from an insolvency process (or in the company to which the insolvent company’s assets have been transferred) even if the company was insolvent according to a balance-sheet test? (i.e., where the value of its liabilities exceeds the value of its assets) If yes, under what conditions? (If there are separate reorganization and liquidation procedures, does this affect the response?)
5 out of the 6 stated that where the insolvency results in liquidation, then the Company dies. However where it results in any other reorganisation it then depends on the agreement with the emerging company.

1 out of the 6 stated that for a company under receivership, once the receiver/manager is appointed, he is charge of the company thus curtailing shareholders involvement. The same position applies in winding up once a liquidator has been appointed or where a provisional liquidator is appointed.

The dissenting view stated that shareholders can retain a participation in the company that has emerged from an insolvency process and participate by attending extra-ordinary general meetings of the company to pass winding-up resolutions in accordance with Section 457 of the Companies and Allied Matters Act 2004 (CAMA). It was further stated in the dissenting response that shareholders also participate by attending meetings summoned by the liquidator to present accounts of his acts and dealings in respect of the winding up during the preceding year, see Section 477 CAMA.

22. Are the ranking of classes of shares and the preferential rights of classes of shares affected (and if yes, to what extent) by the fact that the company is
undergoing an insolvency process? (If there are separate reorganization and liquidation procedures, does this affect the response?)

23. Can shareholders, in the course of an insolvency procedure, supply goods, services or financial resources to the company? If yes, under what conditions (e.g., judicial authorization)? What would their ranking position be towards other creditors?
24. Can shareholders, in their capacity as counterparties, be under a duty to continue a contractual relationship with the insolvent company during an insolvency procedure? (If there are separate reorganization and liquidation procedures, does this affect the response?)

Responses

- 4/6: Nothing in our law prevents the shareholders from supplying goods or transacting with the company undergoing insolvency procedure. Accordingly, they will be treated as secured creditor and ranked higher in priority.

- 2/6: In the course of an insolvency procedure, shareholders CANNOT carry on with their business in relation to the company. 1 of the 2 view further stated that such supplies by shareholders may qualify as fraudulent preference.

- 4/6: The contractual relationship with the company will continue to exist irrespective of the insolvency procedure.

- 2/6: Did not give an answer to this question.
25. Can shareholders (or companies of the same group) holding credit claims against the company under insolvency procedure participate in the creditors’ meeting and vote on the insolvency plan without restrictions? (If there are separate reorganization and liquidation procedures, does this affect the response?)

- There seems to be an agreement in all the responses that there are no restrictions on the shareholders holding credit against the company from participating in the meeting of the company. **Section 472 CAMA** and the case of **Ado Ibrahim & Co Ltd v B.C.C. Ltd.**

26. If shareholders (or companies of the same group) do not hold credit claims against the company under insolvency procedure, must/can they participate in the creditors’ meeting? If that is the case, what rights or duties do they have in that meeting? (If there are separate reorganization and liquidation procedures, does this affect the response?)

5 out of the 6 responses are stated that the shareholders with no credit claims against the company under insolvency cannot participate in the meeting as there is no Nigerian provision of the law authorizing them so to do. One of the views went further to dissent a bit by stating that a scheme under Section 539 CAMA would require shareholders’ approval if it would affect their right as shareholders.

1 out of the 6 dissented on the ground that such shareholders are allowed to attend as they will take part in decisions made to affect the beneficial winding up of the company.
27. Do shareholders in an individual company have information rights as to the filing of insolvency proceedings by the parent or other related companies?

3 out of the 6 responses provide that the shareholders in an individual company have information rights as to the filing of insolvency proceedings, if they are affected.

2 responses agree that they do not have such right but gave different reasons for their answers. One stated that they do not have such right because Nigerian law regards subsidiaries as different and distinct entities with respect to shareholders rights while the other stated that winding up petitions are advertised in gazette and national dailies so shareholders in individual company indirectly have notice thus there is no information right.

1 response posits that the Nigerian Companies Act, in its present state, has no procedures dealing with the insolvency of groups of companies.
III. The Role of the Shareholders’ Meeting in Companies Subject to Insolvency Proceedings

28. Does the shareholders’ meeting continue to exist in insolvency proceedings? (If there are separate reorganization and liquidation procedures, does this affect the response?)

5 out of the 6 responses posit that shareholders’ meeting does not exist once the winding up order is granted and the liquidator appointed. However the liquidator may requisition a meeting to present the account of his act and dealings with the company. These responses stated that whether there will be shareholders meeting in the other reorganisation procedures will depend on the form of reorganisation in place.

1 out of the 6 stated the there is provision for shareholders meeting but that this is usually summoned by the liquidator.
29. Does the shareholders’ meeting preserve all of its competences, generally? (If there are separate reorganization and liquidation procedures, does this affect the response?)

2 out of the 6 responses stated that when the shareholders’ meeting is held, they retain all its competencies and has the same effect held when the company is still solvent.

2 out of the 6 dissented on the ground that the shareholders will not have all the competencies because the ultimate power rests on the liquidator. Section 467 CAMA. One of the dissenting response stated that in a Scheme of arrangement/compromise or restructuring through mergers and acquisitions, shareholders meetings will be required and the shareholders are entitled to vote and exercise their powers as provided in CAMA.

1 out of the 6 did not comment on this question.

The remaining response stated that it depends on the nature of the procedure, as well as the desired outcome. For example, though shareholders retain their rights, they cannot pass a resolution insisting on a scheme being proposed to them if they are out of the money. In essence they will not retain their competencies in some procedures but will in some others.
30. Does the shareholders’ meeting need to approve the accounts of the distressed/insolvent company?

3 out of the 6 responses stated that the shareholders meeting need to approve the accounts of the distressed company. Reliance was placed on sections 429, 470(3), 470(8) and 496 CAMA.

3 out of the 6 responses posit that they have no right to approve the accounts once a liquidator is appointed. The duty is bestowed on the liquidator and the committee of inspection. At best, they will be informed or given the right to information, according to the provisions guiding the procedure in question.
31. **Does the shareholders’ meeting have the power to dismiss directors – if directors are still in charge of the insolvent company? Can the shareholders’ meeting request the removal of the insolvency representative? (If there are separate reorganization and liquidation procedures, does this affect the response?)**

- 3 out of the 6 stated that where the directors are still in charge then the shareholders still have the right to dismiss such directors Section 259 and 262 CAMA. These two responses only agree on this point but differed on the point that the Shareholders can remove an insolvency representative. The proponent of this right of the Shareholders to request for removal of insolvency representative cited section 466 (1) CAMA. One of the 3 stated that even though shareholders can remove the directors, this might be difficult since the directors are the ones that call for the meeting and place the agenda for the meeting. The only option is for the shareholders to requisition a meeting which will pose a very difficult task.

- 2 out of the 6 stated that the question does not apply because once the insolvency is commenced; the powers of the directors are in abeyance.

- 1 out of the 6 whist avoiding the question whether the shareholders meeting can dismiss directors stated that the procedure for removal of the liquidator is stipulated by the Act. Typically, creditors have greater rights in this regard and their choices tend to prevail.

- The shareholders do not choose the receiver/manager. They have no rights with regard to the appointee. The directors remain in charge at schemes and the usual company law provisions relating to the appointment and removal of directors.
32. Is a shareholders’ meeting authorisation required to start an insolvency procedure? (If there are separate reorganization and liquidation procedures, does this affect the response?)

3 out of the 6 stated that shareholders’ meeting is required to commence an insolvency proceeding. Section 131 ISA and section 486 CAMA. It is noteworthy to state that one common thread in the 3 responses is that this is mostly done in voluntary winding up - Section 457 CAMA.

2 out of the 6 agree that shareholders meeting/approval is required in voluntary winding up but not in creditors winding up. One of the views further stated that shareholders meetings/approval is required to sanction a scheme of merger or Arrangement and compromise.

The last response on this stated that Shareholders’ meeting authorisation is not required to start insolvency proceedings, but this is possible in other scheme of arrangements.

![Responses Pie Chart]

- 3/6: The shareholders’ meeting is required.
- 2/6: The shareholders meeting/approval is required in voluntary winding up but not in creditors winding up.
- 1/6: The shareholders’ meeting authorisation is not required.
33. Does the shareholders’ meeting need to approve an insolvency or reorganization plan? Can shareholders, even individually, challenge an insolvency or reorganization plan?
4 out of the 6 responses stated that the shareholders’ meeting need to approve an insolvency or reorganization plan. Sections 129 and 131 ISA relied upon. Also section 486 and 539 CAMA.

2 out of the 6 stated that the shareholders meeting need not approve all reorganisation plans. 1 of the responses further stated that shareholders’ approval will only be sought under a scheme that seeks to modify their rights.

34. Is a shareholders’ meeting decision required to issue new shares of the company undergoing insolvency proceeding? Can a new share issue be decided by the board? Can a new share issue be decided by the insolvency representative? (3) If a capital increase has to take place through the conversion of claims into new shares, does this affect the response?

On whether a shareholders’ meeting decision is required to issue new shares of the company, 4 out of the 6 responses are of the view that the shareholders meeting is not required to issue new shares of the company. On this point, 1 view out of the 4 is that where shares are to be issued, the provisions of the Companies and Allied Matters Act relating to such matters must be complied with. The default provisions of the Act are
subject to the constitution of the company which may grant the board the power to issue
shares subject to stated conditions

1 out of the 6 dissented that shareholders’ meeting may be required to issue new shares
for instance where in a winding up the liquidator feels he can refloat the company by
converting some debt into equity or reduce the rights of shareholders to make it attractive
for new shareholders the question is how can he go about it. this view is that if what he
proposes will refloat the company, he may apply to the court and the court sanctioned
meeting and shareholders had meeting and some approved. Please rewrite this answer.
Shareholder approval may be required. Also court approval. Usually by scheme which
the IP may propose.

On the second limb of the question whether the board can approve the issuance of new
shares; 4 out of the 6 responses are silent on this; 1 out of the 6 posits that new share
issues are decided by the board. The remaining response stated that this is decided by the
liquidator.

On the third limb of the question; whether insolvency representatives can decide on new
shares, 3 out of the 6 are silent on it. 2 out of the 6 answered in the negative.

35. Can an insolvency/reorganization plan affect the structure of the corporate
entity (e.g., by merger, spin-off, or change of the legal form)? Is a shareholders’
meeting authorization required for this?

All the responses agree that an insolvency plan can affect the structure of the corporate
entity and that the shareholders’ meeting authorization is required.

36. On what conditions can the company carry on business during an insolvency
procedure? (If there are separate reorganization and liquidation procedures,
does this affect the response?) Is a shareholders’ meeting authorisation
required?

3 out of the 6 responses stated that the company ceases to carry on business except as
far as may be required for the purpose of concluding the winding up proceedings.
Section 460 CAMA

2 out of the 6 response stated that the company can carry on business in insolvency
proceedings.

1 out of the 6 response stated that whether the company can carry on business is
dependent on the decision of the liquidator. Section 425 (1) & (2) CAMA.
On the second limb of the question; whether shareholders’ meeting authorization is required? 3 out of the 6 stated that shareholders’ authorization is not required. 3 out of the 6 were silent on this.

37. In the course of an insolvency procedure, what provisions apply to the sale of specific assets out of the ordinary course of business and to the sale of the entire business operation of the company? Is a shareholders’ meeting authorisation required? (If there are separate reorganization and liquidation procedures, does this affect the response?)

There seems to be divergent views on this point. However 3 out of the 6 stated that upon commencement of insolvency proceedings, the company cannot deal on the properties of the company.

1 of the responses stated that “Where the sale is executed by the receiver, the provisions relating to receivership apply. In a scheme, the law guides the process of agreement but contractual powers may also regulate the execution of the agreement. In neither case is the authorisation of shareholders required. However, if the rights of shareholders will be modified, or where they are in the money, then their approval must be sought in the case of a scheme”.

### Responses

- **3/6**: The company ceases to carry on business except winding up proceedings. Section 460 CAMA
- **2/6**: The company can carry on business in insolvency proceedings.
- **1/6**: Its dependent on the decision of the liquidator. Section 425 (1) & (2) CAMA.
Another view stated “In the course of an insolvency procedure, the Company and Allied Matter Act (CAMA) 2004, gives full powers to the insolvency representative to deal on the assets of the company. A shareholders’ meeting authorisation is not required.”

And the last response stated “secured creditors take precedence over unsecured”

38. Does the shareholders’ meeting have any power in relation to a decision of the board or the insolvency representative to continue or reject any favourable, unfavourable or essential contract during an insolvency procedure? (If there are separate reorganization and liquidation procedures, does this affect the response?).

4 out of the 6 responses stated that the shareholders have no power in relation to the decision of the board or the insolvency representation. However one of the views stated even though there seems to be no statutory provision for shareholders to reject any unfavourable contract these shareholders sometimes challenge the action of the IP in court and have succeeded in some of these cases.

2 out of the 6 responses stated that since the directors and liquidator are agents of the shareholders, they are answerable to the shareholders during the winding up proceedings.

![Responses](image)
39. If an insolvency plan can be presented for a whole corporate group, must that plan be approved by the shareholders’ meetings of each company of the group, including of those that are balance-sheet insolvent? How are the different meetings’ decisions coordinated? Are there specific safeguards (e.g., any veto power or other remedy) for the minority shareholders of the companies that are not insolvent?

4 out of the 6 responses stated that approval of shareholders meetings of each is required. A resolution will be passed approving the plan. A minority shareholder that dissents to this approval may have his share or interest purchased by the liquidator at a mutually agreed value or as may be valued by SEC pursuant to section 538(2)(b) & (4) CAMA

3 out of the 6 are not sure of the proceeding that applies in this case.

40. If companies belonging to the same group file separate insolvency proceedings, are there specific requirements/mechanisms to provide for coordination of those proceedings? Are shareholders’ meetings of the relevant companies involved in the coordination mechanisms, if any?
3 of the 6 responses stated that there is no specific mechanism in our law. One of the views stated that the court has the power to consolidate the cases filed by the companies.

2 out of the 6 are silent on the position

1 out of the 6 stated that the mechanism is that each individual company co-ordinates the separate insolvency proceedings.

IV. Other obstacles for insolvency procedure found in company Law

41. Please list any other legal provisions in company law that in your opinion or in your experience may interfere with insolvency procedure of a company in your jurisdiction.

The following are the views of the practitioners on this question:

1. The Nigerian judicial system is unfortunately slow in its operations. By the provisions of CAMA, every liquidation process, voluntary or otherwise, is made by an order of court, pursuant to an application filed by an interested party. The straightforward procedure usually takes time from commencement to conclusion and this is even when there are no adverse claims which can further lengthen the procedure.
2. Bureaucratic bottlenecks encountered at the relevant regulatory bodies are another bane of the procedure. This invariably lengthens the procedure and the procedure makes it more costly.

3. The insolvency proceedings in our own jurisdiction are of two kinds:
   Voluntary winding up
   Creditors winding up

While voluntary winding up may not pose a challenge to the court, a creditors’ winding up may pose a challenge to the court if the amount that necessitated the winding up process is disputed, and the creditor company has not come up with any concrete evidence or proof that will move or compel the court to go ahead with the winding up process. For example, if company A is indebted to company, A disputes the amount, it is not enough for company B to obtain a court judgment, company B has to convince the court that through a garnishee proceedings, the amount left in the account of company A will not be enough to satisfy the debt.