CORPORATE INSOLVENCY AND BUSINESS RESCUE IN NIGERIA: ASSESSING THE ROLE OF ADR IN STAKEHOLDER CLAIMS RESOLUTION POST-COVID-19

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Abstract

The COVID-19 pandemic significantly disrupted global markets and exposed the vulnerability of corporate entities, particularly in emerging economies such as Nigeria. These disruptions underscore the urgency of robust insolvency and business rescue frameworks that can preserve viable enterprises while equitably balancing the interests of creditors, employees, shareholders, and other stakeholders. The enactment of the Companies and Allied Matters Act 2020 introduced new statutory mechanisms aimed at facilitating corporate rescue. Yet, the effectiveness of these reforms remains uncertain, particularly in addressing the multiplicity of claims that typically arise during insolvency proceedings. This paper critically examines the potential role of Alternative Dispute Resolution (ADR) in supplementing Nigeria's formal insolvency regime. It explores ADR's capacity to foster quicker, confidential, and cost-efficient resolution of stakeholder disputes, while also mitigating the systemic delays and rigidity often associated with judicial processes. Drawing insights from comparative jurisdictions, the paper evaluates whether ADR can effectively bridge institutional and procedural gaps in Nigeria's corporate rescue framework or whether persistent structural challenges, including weak enforcement mechanisms and limited expertise, may hinder its success. The paper ultimately argues that a strategic integration of ADR into insolvency practice presents a pragmatic pathway for achieving sustainable corporate recovery and enhancing stakeholder protection in the post-COVID era.

Keywords: Corporate insolvency, *ADR, Stakeholder Claims, Resolution, COVID-19*

1. Introduction

Corporate insolvency represents a fundamental challenge to commercial stability because of its ripple effects on creditors, employees, investors, and the broader economy.[1] In Nigeria, insolvency proceedings have historically been dominated by liquidation, with little emphasis on business rescue or reorganisation.[2]This liquidation centred approach often destroys corporate value, the loss of jobs, and the inability of creditors to recover optimal returns. The outbreak of COVID-19 exacerbated these challenges. Many Nigerian businesses, particularly small and medium enterprises (SMEs), faced unprecedented financial pressures due to supply chain disruptions, declining consumer demand, and regulatory restrictions.[3] The pandemic significantly increased the number of distressed companies, thereby placing pressure on Nigeria's underdeveloped

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[1] R Goode, Principles of Corporate Insolvency Law (Sweet & Maxwell 1997) 2

[2] A M Shemi & M.N Mupa, 'The Role of Stakeholder Engagement in Business Rescue: A Legal and Strategic Perspective' (2024), 8(4) *IRES Journal*, 38-56.

[3] O. K Omoregie, 'Business Rescue and Insolvency Regulation and Practice in Nigeria: The Imperatives of Globalization' (2019), *7*(3), *Archives of Business Research,* 87–104.

insolvency and restructuring framework. This context underscores the need for mechanisms that can preserve viable businesses while balancing the interests of stakeholders.

The enactment of the Companies and Allied Matters Act 2020 (CAMA 2020) introduced significant reforms aimed at modernising Nigeria's corporate law regime.[4] For the first time, statutory provisions on corporate rescue mechanisms such as company voluntary arrangements and administration were incorporated. [5]These provisions align Nigeria's insolvency framework more closely with international standards and reflect an emerging recognition of the importance of corporate rescue in sustaining economic growth. Despite these reforms, Nigeria's insolvency system still faces deep-rooted challenges. The heavy reliance on litigation, delays in judicial processes, and limited expertise in insolvency law have hindered the efficiency of stakeholder claims resolution.[6] Moreover, the adversarial nature of court proceedings often aggravates tensions among stakeholders, rather than fostering the cooperation required for business recovery. There is therefore a gap in exploring complementary mechanisms that could support the formal insolvency framework in Nigeria.

This paper seeks to critically examine the role of Alternative Dispute Resolution (ADR) in resolving stakeholder claims within Nigeria's corporate insolvency and business rescue regime. It situates its analysis within the post-COVID context, where the need for efficient and flexible mechanisms is particularly urgent. By adopting a doctrinal and comparative approach, the paper explores how ADR can enhance efficiency, reduce conflict, and promote sustainable corporate recovery. The paper is structured as follows. Section 2 sets out the conceptual and theoretical framework, clarifying the notions of corporate insolvency, business rescue, and ADR. Section 3 examines the legal framework for insolvency and business rescue under Nigerian law. Section 4 discusses the role of ADR in resolving stakeholder claims. Section 5 provides comparative insights from other jurisdictions, while Section 6 offers a critical analysis of the feasibility of ADR in Nigeria. Section 7 concludes with recommendations for embedding ADR into Nigeria's insolvency practice.

[4] O Nwosu, 'Analysis of the Legal Framework on Corporate Insolvency in Nigeria Under CAMA 2020 and Companies Winding up Rules 2001' (2023), 12 (2), *Benue State University Law Journa*l, 388-410.

[5] O O Onakoya, 'Corporate Rescue as Sustainable Mechanism for Strengthening Companies in Nigeria?' (2022), 118, *Journal of Law, Policy and Globalizatio*n, 54.

[6] OAL, 'Reforming Court Rules for Speedy Justice Delivery: A Catalyst for Nigeria's Economic Growth' (2024) https://oal.law/reforming-court-rules-for-speedy-justice-delivery-a-catalyst-for-nigerias-economic-growth/. Accessed 18 September, 2025.

2. Conceptual and Theoretical Framework

Corporate insolvency refers to a financial state in which a company is unable to meet its debts as they fall due, or its liabilities exceed its assets.[7] Traditionally, insolvency laws in Nigeria and many common law jurisdictions have prioritised liquidation as the primary mechanism for dealing with corporate failure.[8] However, liquidation is often destructive, as it rarely maximises the value of assets and typically results in job losses and reduced recoveries for creditors. In contrast, the concept of 'business rescue' emphasises the preservation of viable companies through reorganisation, restructuring, or negotiated settlements with creditors.[9] Business rescue is rooted in the recognition that many distressed firms may still be commercially viable if afforded temporary relief and a structured process for rehabilitation. CAMA 2020 has, for the first time, introduced statutory provisions on business rescue in Nigeria, including company voluntary arrangements and administration.[10] These measures signal a shift towards a more progressive approach that prioritises continuity over liquidation.

2.1 The Place of Stakeholders in Insolvency

Insolvency proceedings inherently involve multiple stakeholders; creditors, employees, shareholders, directors, and sometimes regulatory authorities whose interests are often in conflict. Stakeholder theory provides a useful analytical framework by recognising that corporations exist not only to maximise shareholder value but also to balance the rights and interests of a broader group of parties.[11] Applying this theory to insolvency, the law should ensure that decisions promote fairness among competing interests, while also supporting long-term economic stability.[12] Disputes commonly arise in this context: creditors may, for instance, contest repayment priorities, employees may seek protection of wages, while shareholders often resist dilution of equity. The traditional court process has proven slow and adversarial in resolving such conflicts. This creates the need for more flexible mechanisms such as ADR that can preserve relationships while producing enforceable outcomes.

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[7] P R Wood, *Principles of International Insolvency* (2nd edn, Sweet & Maxwell 2007) 12.
[8] J A Nwobike, 'Unresolved Tensions in the Intersections of Corporate Insolvency, Data Protection and Conflict of Laws Under the Nigerian Legal Framework' (2025), 16, *Beijing Law Review*, 1-28.
[9] R Parry, *Corporate Rescue* (3rd edn, Sweet & Maxwell 2008) 20.
[10] Companies and Allied Matters Act, 2020, ss 434–442.
[11] R E Freeman, *Strategic Management: A Stakeholder Approach* (Pitman, Boston 1984) 56.
[12] B Ibrahim, 'Corporate Restructuring in Nigeria: An Analysis of Rescue Mechanisms under the Companies and Allied Matter Act 2020' (2024) http://dx.doi.org/10.2139/ssrn.4980581. Accessed 10 September, 2025.

2.2 ADR as a Framework for Dispute Resolution in Insolvency

Alternative Dispute Resolution (ADR) encompasses mechanisms such as mediation, arbitration, and negotiation that provide parties with non-judicial avenues for resolving disputes. In the insolvency context, ADR has the potential to de-escalate conflicts, reduce costs, and encourage consensual settlements that facilitate business rescue.[13] For example, mediation may assist creditors and debtors in negotiating repayment plans, while arbitration may be employed for contractual disputes that arise during administration. Despite its promise, ADR in insolvency raises theoretical concerns. Insolvency is by nature a collective proceeding governed by statutory rules, while ADR is premised on party autonomy. Reconciling these two requires careful design. Hence, ADR should complement statutory obligations without undermining the collective interests protected by insolvency law.[14]

2.3 Comparative Perspectives

Comparative experience demonstrates that ADR can be successfully integrated into insolvency frameworks. In South Africa, business rescue proceedings under the Companies Act 2008 encourage negotiation and mediation between stakeholders.[15]Similarly, the UK's administration procedure facilitates structured settlements between companies and creditors, while the United States' Chapter 11 system strongly emphasises negotiated reorganisation plans.[16] These models highlight that embedding ADR in insolvency practice can promote efficiency and reduce reliance on adversarial litigation. For Nigeria, the challenge is to adapt these lessons within the constraints of its legal culture, institutional capacity, and enforcement mechanisms.

3. The Legal Framework for Corporate Insolvency and Business Rescue in Nigeria

The enactment of the CAMA 2020 marked a significant milestone in Nigeria's corporate regulation and insolvency landscape.[17] Before its introduction, insolvency practice in Nigeria was governed by the Companies and Allied Matters Act 1990, which was largely outdated and failed to address the complexities of modern corporate failures.[18] The 2020 reform modernized

[13] R Parry and Y Long, 'Arbitration in Cross-border Insolvency Proceedings: The Chinese Perspective' (2025) 34(1), *International Insolvency Review*, 77-102.
[14] P Wagner, 'Insolvency and Arbitration: A Pleading for International Insolvency Law' (2011) 5 *Dispute Resolution International* 189.
[15] South African Companies Act, 2008, ss 128–153
[16] US Bankruptcy Code, Chapter 11 (11 USC).
[17] P Kirgis, 'Arbitration, 'Bankruptcy, and Public Policy: A Contractarian Analysis ADR Meets Bankruptcy: Cross-Purposes or Cross-Pollination' (2009) 17 *American Bankruptcy Institute Law Review* 503, 520.
[18] R Parry, *Corporate Rescue* (3rd edn, Sweet & Maxwell 2008) 20.

insolvency administration by introducing innovative business rescue mechanisms that align with international best practices.[19] The Act now incorporates procedures such as company voluntary arrangements, administration, and receivership, all designed to encourage corporate rehabilitation over liquidation.

Under Part XXVIII of CAMA 2020, company voluntary arrangements (CVAs) enable a distressed company to reach a binding compromise with its creditors regarding repayment or restructuring plans. This provision mirrors the UK's Insolvency Act 1986, which promotes early intervention to rescue viable businesses.[20] Similarly, the administration procedure under CAMA 2020 empowers an insolvency practitioner (the administrator) to manage the company's affairs, business, and property with the objective of achieving a better outcome for creditors than immediate winding up.[21] These mechanisms collectively signify a legislative shift from punitive insolvency procedures to a rehabilitative and rescue-oriented model.

Importantly, CAMA 2020 also clarifies the priority of creditors, providing a structured order for the settlement of debts and recognising the rights of secured, preferential, and unsecured creditors.[22] It introduces provisions that promote transparency and accountability in insolvency proceedings, while emphasising that insolvency practitioners must act in good faith and in the best interests of all stakeholders. Despite these commendable reforms, the practical application of these provisions remains constrained by institutional weaknesses and inadequate infrastructure to support business rescue culture in Nigeria.[23]

3.1 Institutional Actors in the Insolvency and Business Rescue Framework

The success of any insolvency or business rescue regime depends significantly on the institutional framework governing its operation. In Nigeria, several key actors are central to the insolvency ecosystem, each performing distinct yet interdependent roles.[24]

The Federal High Court is the court of competent jurisdiction for all corporate insolvency matters. It is responsible for granting winding-up orders, supervising administration processes, and adjudicating disputes among stakeholders. However, the efficiency of the court system in handling

[19] Companies and Allied Matters Act, 2020, Part XXVIII.
[20] UK Insolvency Act, 1986, s 1–7.
[21] Companies and Allied Matters Act, 2020, ss 434–438.
[22] Companies and Allied Matters Act, 2020, ss 439–442.
[23] O Nwosu, 'Analysis of the Legal Framework on Corporate Insolvency in Nigeria Under CAMA 2020 and Companies Winding up Rules 2001' (2023) 12(2), *Benue State University Law J.,* 388 -410
[24] O O Chukwuocha, 'Company Voluntary Arrangement under CAMA 2020: A Review' (2023) 19 (2) *UNIZIK Law Journal,* 41.

insolvency matters has been questioned, as procedural delays and lack of specialization often frustrate timely resolution. Some scholars have called for the establishment of specialized commercial or insolvency divisions within the judiciary to ensure technical efficiency and consistency in adjudication.[25]

The Corporate Affairs Commission (CAC) serves as the regulatory authority overseeing company registration, compliance, and liquidation procedures. It also plays a critical role in maintaining records of insolvency practitioners and ensuring that company directors adhere to statutory obligations during distress. In addition, insolvency practitioners, who are licensed professionals including accountants and lawyers, are instrumental in managing insolvency processes such as administration, receivership, and liquidation. Their professional independence and ethical conduct are essential to ensuring transparency and fairness in the resolution of insolvency cases.

Furthermore, creditors, shareholders, and employees constitute the primary stakeholders whose interests must be balanced during insolvency. Creditors seek repayment or recovery of debts, while shareholders are concerned with preserving residual value. Employees, on the other hand, have an interest in job security and unpaid wages. Effective coordination among these actors is critical to achieving the goals of business rescue. Yet, in practice, conflicting interests and lack of trust often hinder cooperative approaches to insolvency management.[26]

3.2 Gaps and Limitations in the Current Framework

While CAMA 2020 represents progress in Nigeria's corporate insolvency regime, several structural and procedural deficiencies persist. A major limitation is the absence of a strong institutional framework for implementing business rescue mechanisms.[27] Despite the introduction of administration and CVA procedures, there remains limited awareness among practitioners and corporate managers about their utility.[28] Many insolvency cases still result in liquidation rather than rescue, reflecting a cultural and institutional bias toward terminal outcomes.

[25] B. Adebola, K Olude, and S Mba, 'Comprehending and Resolving the Challenges of the Nigerian Insolvency Law in Practice: The Performance Improvement Approach' (2025) 25 (1), *Journal of Corporate Law Studies*, 145-183.
[26] Templers, 'When the Debtor Sinks: Creditors' Rights in Corporate Insolvency under Nigerian Law' (8 September, 2025) https://www.templars-law.com/app/uploads/2025/09/When-the-Debtor-Sinks.pdf. Accessed 5 October, 2025.
[27] B Adebola, K. Olude & S. Mba (n 25)145–183.
[28] E. Ishie-Johnson, 'Strengthening the Regulatory and Institutional Framework Governing Insolvency Practice in Nigeria' (6 October, 2025) https://www.opinionnigeria.com/strengthening-the-regulatory-and-institutional-framework-governing-insolvency-practice-in-nigeria-by-ishie-johnson-emmanuel-esq/. Accessed 5 October, 2025.

Another significant gap is the lack of integration of Alternative Dispute Resolution (ADR) mechanisms within insolvency proceedings. Disputes among creditors, debtors, and administrators often escalate to litigation, thereby prolonging resolution and diminishing asset value.[29] Embedding ADR processes such as mediation or arbitration could promote faster, confidential, and less adversarial outcomes. Yet, there is no express statutory provision under CAMA 2020 mandating or even encouraging ADR in insolvency disputes.

Moreover, the absence of specialized insolvency courts has compounded the challenges of delay and inconsistent judgments.[30] The Federal High Court, already overburdened with other matters, often lacks the expertise and speed required for efficient insolvency administration.[31] The limited number of trained insolvency practitioners and the absence of a formal regulatory framework for professional standards further weaken the system.

Finally, Nigeria's insolvency framework does not adequately address cross-border insolvency, an essential feature in a globalised business environment. Unlike jurisdictions such as South Africa and the UK, which have adopted the UNCITRAL Model Law on Cross-Border Insolvency, Nigeria lacks a statutory basis for recognition of foreign insolvency proceedings.[32] This deficiency hinders international cooperation in asset recovery and business restructuring.

In sum, while the legal reforms under CAMA 2020 represent a commendable step forward, their effectiveness is undermined by weak institutions, procedural inefficiencies, and limited embrace of ADR as a complementary mechanism. A holistic reform that strengthens institutional capacity, promotes ADR integration, and aligns domestic laws with international standards is imperative to achieving an efficient business rescue regime in Nigeria.

4. ADR and Stakeholder Claims Resolution

Insolvency and business rescue processes commonly give rise to a cluster of disputes that reflect competing legal and commercial priorities. Creditors' disputes are prominent: secured creditors contest the enforcement or scope of security interests, while unsecured trade creditors vie for pro

[29] O Otisi, 'ADR will ease Court Burden, Aid insolvency: Legal Experts' (26 September, 2025) https:// gazettengr.com/adr-will-ease-court-burden-aid-insolvency-legal-experts/; S Nadeau-Seguin, 'When Bankruptcy and Arbitration Meet: A Look at Recent ICC Practice' (2011), 5 *Dispute Resolution International* 79.

[30] C Adiele, 'Business Rescue in Nigeria: A Step in the Right Direction' (April 23, 2021) http://dx. doi.org/10.2139/ ssrn.3832465 .Accessed 9 October, 2025.

[31] O M Atoyebi,'The Role of Insolvency Practitioners in Nigerian Corporate Restructuring: Legal and Ethical Consideration' (22 July, 2024) https://omaplex.com.ng/the-role-of-insolvency-practitioners-in-nigerian-corporate-restructuring-legal-and-ethical-considerations/#:~:text=An%20insolvent%20practitioner%20in%20 Nigeria,Act%20(CAMA) %20of%202020. Accessed 8 October, 2025.

[32] UNCITRAL, *Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation* (2014).

rata distributions and challenge preferential payments or set-offs.[33] Preferential claims (taxes, employee wages) and priority arrangements frequently provoke litigation over ranking and statutory entitlements.[34] Employee-related claims wages, severance, pensions and statutory entitlements often require urgent resolution because of their social significance and statutory protections.[35] Shareholders, though last in priority, may initiate derivative or oppression actions where rescue proposals threaten equity value. Directors and management may face misfeasance or fraudulent trading allegations, spawning separate civil or criminal proceedings that complicate rescue efforts.[36]

In addition, insolvency often unearths pre-insolvency transactions (preferences, transactions at undervalue, fraudulent conveyances) which administrators or liquidators may seek to challenge; adjudication of such avoidance actions is time-sensitive and fact-intensive. Cross-border creditors and counterparties raise further complexity where parallel insolvency or enforcement processes occur in multiple jurisdictions.[37]These overlapping and time-critical claims create a procedural environment ill-suited to protracted adversarial litigation, hence the appeal of consensual dispute resolution tools that can be adapted to multi-party settings.[38]

4.1 ADR Mechanisms Appropriate to Insolvency Contexts

A range of ADR techniques can be adapted to insolvency disputes. Mediation including multi-party and shuttle mediation facilitates negotiated compromises between creditors, debtors and other stakeholders and is particularly useful for restructuring proposals and compromise agreements.[39]Conciliation and facilitative negotiation likewise enable stakeholders to explore value-preserving solutions with the assistance of a neutral third party. Arbitration may be appropriate for discrete contractual disputes (e.g., supply contracts, leases) whose resolution will

[33] A I Bassey, 'An Appraisal of the Legal Machinery for the Protection of Company Stakeholders; Interests' (2022) *AJLHR, 6 (2),* 30-37.
[34] Companies and Allied Matters Act, 2020, ss 434–442; See also P.R Wood, *Principles of International Insolvency* (Sweet & Maxwell 2007) 18.
[35] O Adedeji, 'Receivership Procedure in Nigeria: An Exposition of Pre and Post-CAMA 2020' (2025) V(1), *Adeleke University Law Journal,* 174.
[36] R Parry, *Corporate Rescue* (3rd edn, Sweet & Maxwell 2008) 112–19.
[37] UNCITRAL Model Law on Cross-Border Insolvency (1997); UNCITRAL Guide to Enactment and Interpretation (2004); see also P.R Wood (n 34) 230–35.
[38] O O Onakoya, 'Corporate Rescue as Sustainable Mechanism for Strengthening Companies in Nigeria?' (2022) 118 *JL Pol'y & Globalization* 54.
[39] C C Ojimba, 'An Appraisal of indispensability of Arbitration and its Contribution to corporate Disputes Resolution in Nigeria' (2024) 18(1) *UNIZIK Journal of Educational Research and Policy Studies,* 391-398.

materially affect the restructuring calculus; arbitration's finality and enforceability can be helpful where clarity on discrete legal points is required.[40]

Other mechanisms include early neutral evaluation; an expert assessment that helps parties calibrate settlement positions and expert determination on technical valuation questions. Hybrid or staged procedures (for example, mediation followed by binding arbitration for residual disputes) can reconcile party autonomy with the need for enforceable outcomes. Where collective action is essential, ADR outcomes can be given legal effect through court-sanctioned compromise procedures or incorporation into statutory rescue plans, thereby extending the benefits of consensual settlement to dissenting classes where legally permissible.[41]

4.2 Benefits of ADR in Business Rescue

ADR offers several advantages, particularly well aligned with the objectives of business rescue. First, ADR can drastically reduce time-to-resolution, a critical factor when operational continuity and asset values are at stake.[42] Second, ADR tends to be cost-efficient, lowering the transactional and litigation costs that erode estate value. Third, ADR preserves commercial relationships and reputational capital, an important consideration for going-concern restructurings where future trade and supply relationships matter.[43]

Fourth, ADR provides flexibility; bespoke procedures, confidentiality protections, and creative remedies (debt-equity swaps, staged repayments, operational covenants) that courts may be ill-placed to fashion. Fifth, neutrals with sector expertise (finance, oil & gas, telecoms) can bring technical insight, speeding fact-finding and making valuation disputes more tractable. Finally, ADR may relieve overloaded courts, allowing judicial resources to be channelled to matters requiring adjudicative resolution.[44]

4.3 Challenges and Limitations of Embedding ADR in Insolvency

Despite the advantages, integrating ADR into insolvency regimes faces material obstacles. Insolvency law is collective in character; it protects the rights of the creditor body as a whole and relies on statutory priority rules. Purely consensual settlements negotiated between a debtor and a

[40] See generally the use of arbitration for discrete contractual disputes in insolvency in R Parry (n36) 154–56; C C Ojimba, 'Comparative Analysis between the United States of America (USA) and Nigeria in Resolution of Corporate Dispute' (2024) 18(3) *UNIZIK Journal of Educational Research and Policy Studies*, 452-551.
[41] P.R Wood (n 34) 201–08; see also practice in the UK where mediated compromises are often subsumed into court-approved compromise procedures: Insolvency Act 1986 (UK).
[42] R Parry (n 36) 22–24.
[43] O O Onakoya (n 38).
[44] P R Wood (n 34) 210–15.

subgroup of creditors risk prejudicing unsecured creditors or undermining statutory ranking unless the settlement is structured and sanctioned to bind dissenters.[45]

Enforceability is another concern. An ADR-mediated settlement that is not court-sanctioned may be vulnerable to attack by other stakeholders or administrators seeking to avoid antecedent transactions. This legal uncertainty can discourage parties from committing to settlements unless statutory routes for recognition (court approval or incorporation into rescue plans) are available.[46]

Power asymmetries between large secured creditors and small trade creditors or employees also pose fairness risks. Without procedural safeguards, ADR may simply replicate bargaining imbalances and produce inequitable outcomes. Moreover, multi-party ADR is logistically complex and can become costly if many classes of creditors participate; co-ordination across numerous interests demands skilled facilitation and clear rules of engagement.[47]

Cross-border and jurisdictional issues complicate matters further. An agreement reached in one jurisdiction may lack recognition in another, particularly where parallel insolvency regimes apply. The absence of a uniform framework for recognition may limit ADR's utility in multinational restructurings. Finally, insolvency practitioners and courts must balance the desire for swift consensual solutions with statutory duties to challenge antecedent transactions and protect the collective pool, which may constrain the scope of negotiable outcomes.[48]

4.4 Designing ADR to Fit Statutory Insolvency Processes: Safeguards and Practical Measures

To harness ADR effectively, it must be embedded within a carefully designed procedural and statutory architecture. Key design features include:

1. Statutory Recognition and Court Sanctioning. Legislation should expressly recognise ADR outcomes and provide a clear mechanism for court-sanctioned enforcement thereby allowing mediated compromises and restructuring plans to bind dissenting creditors where statutory thresholds (e.g., creditor majority or fairness review) are met.[49]

[45] Eric Posner & E. Glen Weyl, 'A Solution to the Collective Action Problem in Corporate Reorganization' (Coase-Sandor Institute for Law & Economics Working Paper No. 653, 2013) 5

[46] ibid; see also practice notes recommending court sanction for mediated settlements to achieve binding effect (UK practice).

[47] S Bromley, 'Multi-Party Mediation in Restructuring: Practical Challenges' (2018) 12 *Journal of Corporate Rescue* 44.

[48] UNCITRAL Legislative Guide on Insolvency Law (2004) Ch 8.

[49] See the model of court-sanctioned compromise in Insolvency Act 1986 (UK) s 4A (scheme of arrangement procedure); comparative discussion in R Parry (n 36) 172–78.

2. Collective Procedures and Voting Rules. Rescue frameworks may build in procedures that enable mediated settlements to be converted into formal compromise instruments (equivalent to schemes of arrangement) so that agreements attain collective effect without circumventing priority rules.[50]
3. Timetabling and Early Referral: Insolvency rules should encourage early referral to ADR potentially through mandatory pre-appointment mediation sessions or court-directed settlement conferences to capture value early and avoid erosion of assets.[51]
4. Neutral Appointment and Expertise: ADR neutrals in insolvency matters should possess both dispute-resolution skills and sectoral or insolvency expertise. Accreditation and rosters of insolvency mediators/arbitrators improve quality and confidence among stakeholders.[52]
5. Transparency and Safeguards for Vulnerable Parties: Procedural rules should protect weaker stakeholders' provision for legal representation, disclosure obligations, and independent advisors so that settlements are not procured through coercion or informational asymmetry.[53]
6. Cross-Border Recognition Mechanisms: Where multi-jurisdictional claims exist, adoption of international instruments (for example, the UNCITRAL Model Law on Cross-Border Insolvency) or bilateral recognition protocols can facilitate enforceability of ADR outcomes across borders.[54]
7. Role of Insolvency Practitioners: Administrators and practitioners should be trained to act as ADR facilitators, identifying settlement opportunities early, preserving confidentiality for negotiations, and preparing plans for court approval. Professional regulation and ethical standards for insolvency ADR will bolster trust.[55]
8. Hybrid Procedures and Sequencing. In complex disputes, hybrid approaches (mediation followed by binding arbitration on residual legal issues) and staged processes for valuation

[50] ibid.
[51] E Onyema 'The Multi-door Court House (MDC) Scheme in Nigeria: A Case Study of the Lagos MDC' (2013) 2 (7), *Apogee Journal of Business, Property & Constitutional Law*, 96-130.
[52] M Beg, 'Bridging the Broken Bench Insolvency Mediation- An Emerging Trend for Fast-Track Solutions across Borders'. https://gurinderpartners.com/publication/pdf/1729749337_a7fd2ba3516cf5bd13a7.pdf
[53] S Eaton 'Mandatory Mediation and Summary Jury trial: Guidelines for Ensuring Fair and Effective Processes' (1990) 103 *Harvard Law Review* 1087 .
[54] UNCITRAL Model Law on Cross-Border Insolvency (1997); UNCITRAL Legislative Guide (2004).
[55] O K Omoregie, 'Business Rescue and Insolvency Regulation and Practice In Nigeria: The Imperatives of Globalization' (2019) *7*(3) *Archives of Business Research* 87–104.

and legal questions can combine the strengths of consensual settlement and final determination.[56]

When these design elements are implemented, ADR can become a reliable complement to statutory rescue processes preserving value, speeding outcome, and protecting stakeholder interests while respecting the collective norms and safeguards intrinsic to insolvency law.

5. Comparative Insights

A comparative perspective provides useful guidance for strengthening Nigeria's nascent framework on corporate insolvency and business rescue, particularly regarding the integration of alternative dispute resolution (ADR) into stakeholder claims management. Jurisdictions with more mature rescue regimes, such as South Africa, the United Kingdom, and the United States, offer valuable lessons that could inform Nigeria's reform process.

In South Africa, the Companies Act of 2008 introduced business rescue proceedings designed to rehabilitate financially distressed companies while balancing the interests of stakeholders. A striking feature of this regime is the statutory recognition of negotiation and mediation between creditors and debtors as part of the business rescue plan. This process not only reduces the caseload of overburdened courts but also fosters cooperation among diverse stakeholders who might otherwise engage in protracted litigation. Studies indicate that companies subjected to this model often achieve quicker settlements, thereby preserving jobs and maintaining creditor confidence.[57] Importantly, South Africa demonstrates that ADR can be institutionalised within the legal framework without undermining judicial oversight.

The United Kingdom also presents a pragmatic model through its administration procedure under the Insolvency Act 1986 (as amended). Administrators appointed to manage insolvent firms are empowered to prioritise company rescue and creditor repayment through consensual arrangements. Creditors' voluntary arrangements (CVAs), for instance, provide structured negotiations between debtors and creditors under court supervision.[58] These procedures demonstrate how hybrid mechanisms — combining statutory protection with ADR elements can encourage flexible settlements while retaining judicial safeguards. The UK's approach shows that

[56] R Parry (n 36) 160–63.

[57] Loubser A, 'Judicial management as a business rescue procedure in South African corporate law' (2004) 16(2) *South African Mercantile Law Journal* 137.

[58] Finch V, *Corporate Insolvency Law: Perspectives and Principles* (2ed, Cambridge University Press, 2009) 287.

ADR thrives when embedded into statutory rescue processes that emphasise restructuring over liquidation.

Similarly, the United States under Chapter 11 of the Bankruptcy Code has long championed reorganisation as opposed to liquidation. Chapter 11 encourages parties to negotiate restructuring plans, which may involve creditors' committees, employee representatives, and regulatory authorities. Mediation and arbitration are frequently employed in disputes relating to creditor claims, valuation disagreements, or priority ranking of debts.[59] While complex and resource-intensive, Chapter 11 demonstrates how ADR can be strategically deployed to manage diverse stakeholder disputes and balance competing interests. The emphasis on negotiated outcomes allows companies to continue as going concerns, thereby safeguarding employment and sustaining economic stability. From these jurisdictions, three central lessons emerge for Nigeria. First, statutory recognition of ADR within insolvency law is essential to ensure legitimacy and enforceability of negotiated outcomes. Second, structured participation of stakeholders through committees or supervised negotiations enhances inclusivity and reduces the adversarial tendencies typical of insolvency disputes. Third, judicial oversight must be retained to ensure that ADR processes do not devolve into private bargains that prejudice weaker parties, such as employees or minority shareholders.

These comparative insights suggest that Nigeria's business rescue framework under the CAMA 2020 would benefit from more explicit integration of ADR processes. While CAMA introduced commendable provisions on administration and rescue, it does not sufficiently highlight consensual dispute resolution as a central pillar. Learning from South Africa, the UK, and the US, Nigeria could embed mediation, arbitration, and negotiation within statutory rescue plans, ensuring that corporate insolvency mechanisms are both efficient and equitable.

6. Analysis and Discussion

The comparative lessons highlighted above raise important considerations for the Nigerian context. While CAMA 2020 has modernised aspects of corporate insolvency and business rescue, the legislation falls short in institutionalising ADR as a core mechanism for managing stakeholder disputes. This section critically analyses Nigeria's framework in light of global best practices, assessing both its potential and limitations.

[59] D Skeel, 'Rethinking the Line Between Corporate Law and Corporate Bankruptcy' (1994) 72 *Texas Law Review* 471.

6.1 Feasibility of ADR in Nigeria's Insolvency Practice

Nigeria possesses a relatively well-developed ADR culture, particularly in commercial dispute resolution. The Arbitration and Mediation Act 2023 provides a modern statutory basis for arbitration and mediation, aligning domestic practice with international standards such as the UNCITRAL Model Law and the Singapore Convention on Mediation.[60] Several institutional platforms including the Lagos Court of Arbitration, the Lagos Multi-Door Courthouse, and the Regional Centre for International Commercial Arbitration have also demonstrated capacity to handle complex disputes.[61] These developments suggest that Nigeria already has the legal and institutional infrastructure to extend ADR into insolvency and business rescue. However, insolvency disputes differ from ordinary commercial conflicts due to their multi-party nature. Claims typically involve creditors, shareholders, employees, regulators, and sometimes even communities where companies operate.[62] This complexity raises questions about whether Nigeria's ADR institutions have sufficient capacity to manage multi-stakeholder negotiations effectively. Unless ADR processes are formally recognised within CAMA, settlements reached may lack binding effect on dissenting creditors, undermining the efficacy of negotiated outcomes.

6.2 Structural and Institutional Challenges

A key structural limitation is that CAMA 2020 prioritises court-supervised procedures such as administration and liquidation, while remaining silent on consensual resolution of stakeholder claims. Unlike South Africa's business rescue model or the UK's creditor arrangements, Nigeria's framework does not mandate or encourage mediation or arbitration at any stage of rescue proceedings. [63]Consequently, disputes among creditors, administrators, and debtors are channelled to courts, resulting in delays, increased costs, and erosion of asset value.

Institutionally, Nigerian courts are still heavily congested, with insolvency matters competing alongside an already burdensome commercial docket. This undermines the rescue objective, as protracted litigation reduces the chances of reviving distressed companies. Moreover, insolvency professionals such as administrators and liquidators are not expressly mandated to employ ADR

[60] M U Onyirioha, 'An Evaluation of the Arbitration and Mediation Act, 2023 of Nigeria: An Analysis of Its Impact on Disputes Resolution in Nigeria' (2025) 6 *Orient Law Journal*, 153-162.

[61] B Faturoti, 'Institutionalised ADR and Access to Justice: The Changing Faces of the Nigerian Judicial System' (2014) 1(1), *Journal of Comparative Law in Africa* 66-89.

[62] F I Fletcher, *Insolvency in Private International Law* (2ed, Oxford University Press, 2007) 422.

[63] S C Ebeku and J C Ebubedike, 'Corporate Rescue and Restructuring in Nigeria: A Critical Analysis of the Provisions and Procedures under Companies and Allied Matters Act 2020' (2025) 9 (1) *African Journal of Law and Human Rights* (AJLHR) 20-26.

in dispute resolution. Their primary focus remains statutory compliance rather than facilitating negotiated settlements. Another institutional challenge lies in stakeholder trust. Many creditors, especially financial institutions, prefer the predictability of judicial enforcement over consensual ADR outcomes. Without adequate safeguards, creditors may perceive ADR as weakening their enforcement rights, particularly where debt recovery is urgent.

6.3 Balancing Statutory Obligations with Consensual Resolution

One of the main policy tensions in insolvency is balancing statutory obligations with consensual processes. Creditors, for example, are entitled to equal treatment under insolvency law, which may clash with ADR settlements that favour certain groups over others. Similarly, employees and minority shareholders are often vulnerable in negotiations dominated by large creditors.[64]Nigeria's framework must therefore design ADR processes that retain judicial supervision to safeguard weaker stakeholders. A hybrid model, similar to the UK's creditor arrangements, could be adapted. Under such a model, negotiated settlements would only take effect upon court approval, ensuring compliance with statutory priorities while giving parties flexibility to negotiate solutions. By embedding ADR within insolvency law in this manner, Nigeria could reduce litigation delays without compromising the rights of stakeholders.

6.4 Policy and Practical Implications

The integration of ADR into insolvency law carries significant implications. Practically, it could reduce court congestion, preserve corporate value, and enhance investor confidence in Nigeria's business environment. Policy-wise, it aligns with Nigeria's economic recovery agenda post-COVID-19, where preserving viable companies is essential for employment and economic stability. However, successful adoption requires statutory reform of CAMA to expressly recognise ADR in business rescue proceedings. This should be supported by guidelines for administrators and insolvency practitioners, requiring them to consider ADR before resorting to litigation. Training and accreditation of mediators with expertise in insolvency disputes would also be crucial, given the technical nature of such claims.

Ultimately, Nigeria's framework must strike a balance between statutory certainty and the flexibility of ADR. While litigation will remain necessary in certain contexts, particularly where

[64] Finch V *Corporate Insolvency Law: Perspectives and Principles* (2ed, Cambridge University Press, 2009) 296.

fraud or misconduct is alleged ADR offers a complementary mechanism for resolving stakeholder disputes in a manner that is quicker, less adversarial, and more cost-effective.

7. Conclusion and Recommendations

The resilience of corporate insolvency frameworks has been tested globally in the wake of the COVID-19 pandemic, as businesses across industries struggled with unprecedented financial distress. Nigeria, like many other jurisdictions, responded through reforms under the CAMA 2020, which modernised insolvency and business rescue procedures. While these reforms are commendable, the framework still lacks adequate emphasis on consensual dispute resolution among stakeholders. This omission undermines the efficiency and equity of business rescue, given the complex and multi-party nature of insolvency disputes.

The comparative insights from South Africa, the United Kingdom, and the United States highlight the value of embedding ADR into statutory insolvency regimes. In these jurisdictions, mediation, negotiation, and arbitration are not merely supplementary; they are integral to resolving creditor claims, balancing stakeholder interests, and achieving corporate rehabilitation. These experiences demonstrate that ADR can coexist with judicial oversight, creating hybrid models that safeguard statutory obligations while promoting efficiency and cooperation. For Nigeria, the analysis indicates both potential and limitations. On one hand, the Arbitration and Mediation Act 2023 and the country's growing ADR infrastructure provide a solid foundation for mainstreaming ADR in insolvency practice. On the other hand, structural weaknesses including congested courts, creditor mistrust, and lack of statutory recognition of ADR in CAMA pose significant barriers. If left unaddressed, these gaps will continue to frustrate the objectives of business rescue, leading to unnecessary liquidations, erosion of asset value, and loss of jobs. This paper recommends as follows:

1. **Statutory Reform of CAMA 2020**
    - The Act should be amended to expressly recognise ADR as part of business rescue procedures. This could include provisions mandating administrators to explore mediation or negotiation before resorting to litigation.
    - Clear statutory guidelines should be introduced, ensuring ADR outcomes are binding and enforceable once approved by the court, thereby balancing flexibility with legal certainty.
2. **Capacity Building for Insolvency Practitioners and Mediators**
    - Specialized training should be provided for insolvency practitioners, administrators, and mediators on handling complex multi-stakeholder disputes.
    - Accreditation frameworks can help ensure competence and build stakeholder trust in ADR processes.

3. **Judicial Support and Oversight**
    - Courts should be empowered to refer insolvency-related disputes to mediation or arbitration, similar to the approach under South Africa's business rescue regime.
    - Judicial oversight is necessary to safeguard vulnerable parties such as employees and minority shareholders, ensuring equitable treatment in negotiated settlements.
4. **Stakeholder Engagement and Awareness**
    - Creditors, financial institutions, and regulators must be sensitised to the benefits of ADR in insolvency, particularly in preserving company value and promoting faster recovery.
    - Public-private partnerships could support awareness campaigns and establish pilot schemes for ADR in insolvency.
5. **Comparative Adaptation of Best Practices**
    - Nigeria should not merely transplant foreign models but adapt lessons from South Africa, the UK, and the US to its peculiar socio-economic and legal realities. Emphasis should be placed on hybrid approaches that combine statutory rescue mechanisms with flexible ADR processes.

Ultimately, the integration of ADR into Nigeria's corporate insolvency regime is not only desirable but necessary. It holds the potential to transform insolvency proceedings from adversarial contests into collaborative processes that prioritise company rescue, stakeholder balance, and economic sustainability. In a post-COVID era where economic recovery remains fragile, embedding ADR within CAMA would strengthen Nigeria's insolvency framework, align it with international best practices, and foster an environment where distressed companies can be revived rather than liquidated.