

**AN EXAMINATION OF COMPANY RESCUE THROUGH
COMPANY VOLUNTARY ARRANGEMENT UNDER THE
COMPANIES AND ALLIED MATTERS ACT 2020**

Aisha Ali Tijjani*

Emmanuel Oluwafemi Olowononi**

Asma'u Sulaiman Muhammad***

Precious A. N. Ahiamunnah****

Abstract

The Companies and Allied Matters Act 2020 (CAMA 2020) introduced the Company Voluntary Arrangement (CVA) as a formal tool for corporate restructuring in Nigeria. This reform marks a shift from liquidation-focused insolvency practices toward a more structured rescue approach. This article provides a doctrinal analysis of CVA under sections 434-442 CAMA 2020. It explores the theoretical basis of statutory compromise, examines the procedural framework of CVA, and highlights structural weaknesses, such as the lack of a statutory voting threshold and no standalone moratorium. By comparing developments under the UK Insolvency Act 1986 and subsequent reforms, the article concludes that while CVA aligns with modern creditor collectivism theory, its long-term success depends on purposeful judicial interpretation and legislative improvements.

* Nigerian Law School, Kano Campus, Bagauda, Kano State

** Corresponding author, Emmanuel Oluwafemi Olowononi, Ph.D, Council of Legal Education, Nigerian Law School, Abuja Headquarters. E-mail address: immafemi@yahoo.com

*** Nigerian Law School, Kano Campus, Bagauda, Kano State

**** Ph.D, Nigerian Law School, Kano Campus, Bagauda, Kano State

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1.0 INTRODUCTION

For much of Nigeria's corporate history since independence, insolvency law has focused on liquidation. According to the Companies and Allied Matters Act 1990, the main approaches to financial trouble were winding up and receivership.¹ Liquidation ended the company's existence, while receivership emphasised the enforcement of secured creditors. Institutional frameworks for structured rehabilitation were not a primary focus.

The enactment of the Companies and Allied Matters Act 2020 signified a major normative change.² CAMA 2020 incorporated administration and Company Voluntary Arrangement (CVA), integrating corporate rescue mechanisms into Nigeria's legal framework.

CVA functions as a flexible compromise tool allowing a financially troubled company to reorganise its debts while keeping management in charge. Unlike administration, which transfers control to an administrator,³ CVA maintains the authority of the directors. In contrast to schemes of arrangement, which need court approval at the decision stage,⁴ CVA mainly relies on creditor meetings with minimal judicial supervision.

This article advances three propositions:

¹ Companies and Allied Matters Act 1990 (Nigeria).

² Companies and Allied Matters Act 2020 (Nigeria) ('CAMA 2020').

³ *ibid* s 501.

⁴ *ibid* ss 710–715.

- a. CVA under CAMA 2020 is based on the principles of creditor collectivism and an efficiency-oriented rescue approach.⁵
- b. Its statutory design includes structural ambiguities that could weaken its practical effectiveness.
- c. Clarifying the voting thresholds and implementing proportionate moratorium protections would greatly enhance the regime's strength.

2.0 THEORETICAL FOUNDATIONS OF COMPANY VOLUNTARY ARRANGEMENT

2.1 Insolvency as a form of collective debt enforcement.

Modern insolvency scholarship views insolvency law as a collective debt-collection system aimed at preventing destructive creditor races.⁶ When a debtor is unable to satisfy all claims, individual enforcement may reduce the overall value. Therefore, the law prioritises centralising claims resolution.

Statutory compromise mechanisms enable majority of creditors to impose decisions on dissenters, preventing hold-out tactics.⁷ Section 436(2) of CAMA 2020 reflects this by stating that, once approved, a CVA binds the company and all unsecured creditors eligible to vote.⁸ The binding effect transforms CVA from private negotiation into a statutory collective resolution.

⁵ Thomas H Jackson, *The Logic and Limits of Bankruptcy Law* (Harvard University Press 1986).

⁶ *ibid*

⁷ Roy Goode, *Principles of Corporate Insolvency Law* (5th edn, Sweet & Maxwell 2018) 7–12.

⁸ CAMA 2020 s 436(2).

2.2 Debtor-in-Possession Governance

CVA demonstrates a debtor-in-possession approach. According to CAMA 2020, directors may propose a restructuring plan and continue managing operations throughout the process.⁹

This method reflects aspects of Chapter 11 of the United States Bankruptcy Code, where management usually remains in control during reorganisation.¹⁰ The reasoning is practical: directors have the operational expertise needed to maintain the company's ongoing value. However, governance continuity should be balanced with safeguards to prevent abuse. That is why the law mandates the appointment of a nominee to evaluate viability and procedural adherence.¹¹

2.3 Majority Rule and Minority Protection

The predominant binding force raises concerns about minority prejudice. The law permits a creditor or member to contest approval within 28 days if they believe there is unfair prejudice or a significant irregularity.¹²

The idea of unfair prejudice has been thoroughly developed in English case law under the Insolvency Act.¹³ In *Re T&N Ltd*, the court highlighted that the key issue is whether the arrangement unfairly damages the applicant's interests relative to others in the same group.¹⁴ Nigerian courts are expected to find this legal reasoning influential.

⁹ *ibid* s 434.

¹⁰ 11 USC § 1107

¹¹ CAMA 2020 s 435.

¹² *ibid* s 438.

¹³ Insolvency Act 1986 (UK) s 6.

¹⁴ *Re T&N Ltd* [2004] EWHC 2361 (Ch).

3.0 STATUTORY PROCEDURE OF CVA UNDER CAMA 2020

3.1 Initiation of Proposal

A voluntary arrangement may be proposed by:

- i. The directors of the company;
- ii. The administrator; or
- iii. The liquidator.¹⁵

The directors' ability to initiate CVA promotes early restructuring, aligning with a policy that favours intervention before reaching full insolvency. If the company is already under administration or winding up, a CVA maintains flexibility for restructuring.

3.2 Proposal and Statement of Affairs

The proposal should include a statement of the company's affairs, covering assets, liabilities, and financial position.¹⁶

Disclosure is fundamental to informed creditor decision-making. Inadequate disclosure may amount to a material irregularity within the meaning of section 438.

3.3 Nominee's Report (Section 435)

The nominee must report to the Federal High Court within 28 days of receiving the proposal to determine if meetings should be held.¹⁷

The nominee assesses:

- i. Viability of the proposal;
- ii. Compliance with statutory requirements;
- iii. Likelihood of approval.

¹⁵ CAMA 2020 s 434(1)

¹⁶ Ibid. s 435.

¹⁷ Ibid. s 435(3)

If the nominee does not report within 28 days, the court may replace him.¹⁸ Consequently, the nominee acts as a procedural gatekeeper.

3.4 Meetings and Approval

Separate meetings for creditors and members are required.¹⁹ The proposal can be approved with or without changes, but secured creditor consent is needed if their rights are impacted.²⁰ Once approved, the arrangement is binding on the company and on unsecured creditors with voting rights.²¹

3.5 The Voting Threshold Lacuna

CAMA does not specify the percentage majority required for approval. By contrast, the UK Insolvency Act requires approval by 75 per cent in value of creditors present and voting.²² The lack of clarity in CAMA 2020 creates uncertainty. Courts may be required to decide whether a simple majority suffices or whether a supermajority should be implied purposively. Legislative clarification would enhance certainty and align Nigeria with comparative standards.

3.6 Secured Creditors and the Structural Limits of CVA

A key structural aspect of CVA under CAMA 2020 is the safeguarding of secured creditors' rights. CAMA states that a voluntary arrangement cannot impact a secured creditor's right to enforce their security without their approval.²³

¹⁸ Ibid. s 435(3)

¹⁹ Ibid. s 435(8)

²⁰ Ibid. s 436(1).

²¹ Ibid. s 436(3)

²² Insolvency Act 1986 (UK) s 4(1).

²³ CAMA 2020 s 436(3).

This provision embodies traditional insolvency principles: security interests are treated as proprietary and receive priority.²⁴ Unlike unsecured claims arising from contractual obligations, secured claims are based on proprietary rights in specific assets.

From a doctrinal perspective, this protection is expected. Insolvency law generally upholds pre-insolvency rights unless explicitly changed by statute.²⁵ Although CAMA maintains doctrinal orthodoxy, it also limits the flexibility of restructuring.

4. PRACTICAL IMPLICATIONS

In modern corporate finance, secured creditors, especially banks and institutional lenders, typically constitute most of the debt exposure. When secured claims make up the bulk of the capital structure, restructuring them without approval could render the CVA ineffective. A secured creditor unwilling to compromise may enforce its charge, appoint a receiver, or begin asset realisation.²⁶ This can cause the enterprise's value to fragment, potentially jeopardising the aim of a CVA rescue.

5. COMPARATIVE DEVELOPMENTS

The UK's restructuring landscape has moved beyond the traditional CVA model. To address restrictions on secured creditors' independence, the UK enacted restructuring plans under the Companies Act.²⁷ These plans allow for cross-class cram-down with judicial approval, which can oblige a dissenting class, including secured creditors, in specific cases.

²⁴ Roy Goode, *Principles of Corporate Insolvency Law* (5th edn, Sweet & Maxwell 2018) 73–75.

²⁵ *ibid*

²⁶ CAMA 2020 s 491.

²⁷ Companies Act 2006 (UK) pt 26A.

Nigeria's CVA framework is relatively conservative, as it lacks a mechanism for mandatory restructuring of secured claims. This structural limitation does not undermine CVA; instead, it restricts its practical use to scenarios in which secured creditors cooperate or in which unsecured debt is the majority.

6.1 The Challenge Mechanism: Unfair Prejudice and Material Irregularity

A creditor or member may request a court review within 28 days of approval if they cite unfair prejudice or a material irregularity as grounds.²⁸ This challenge mechanism acts as a corrective safeguard within the majority-binding structure of CVA.

6.2 Unfair Prejudice

While CAMA 2020 does not define "unfair prejudice," the concept has been widely interpreted in English case law under the Insolvency Act.²⁹ In *Re T&N Ltd*, the court held that the key issue is whether the arrangement unfairly prejudices the applicant's interests relative to other creditors in the same class.³⁰ The court highlighted that mere dissatisfaction is not enough; the prejudice must be significantly unjustifiable.

Similarly, in *Re Cancel Ltd*, the court emphasised that commercial fairness, not perfection, is the applicable standard.³¹ Nigerian courts are likely to adopt comparable reasoning. The inquiry will focus on:

- i. Whether creditors within the same class are treated equally;

²⁸ CAMA 2020 s 438(1).

²⁹ Insolvency Act 1986 (UK) s 4(1).

³⁰ *Re T&N Ltd* [2004] EWHC 2361 (Ch)

³¹ *Re Cancel Ltd* [1995] BCC 1133.

- ii. Whether there has been misrepresentation or concealment;
- iii. Whether the proposal is commercially reasonable.

6.3 Material Irregularity

Material irregularity concerns procedural defects, including:

- i. Inadequate notice of meetings;
- ii. Incorrect calculation of voting values;
- iii. Failure to disclose material financial information;
- iv. Improper classification of creditors.

Disputes over calculation methods may arise under this provision because there is no statutory guidance on voting thresholds.

6.4 Judicial Powers

The court may revoke or suspend approval or require additional meetings.³² The court's remedial discretion allows CVA to stay flexible while maintaining fairness.

Importantly, the challenge mechanism does not transform CVA into a court-driven process. Judicial intervention remains supervisory rather than constitutive.

7.0 THE MORATORIUM GAP: ENFORCEMENT VULNERABILITY IN CVA

Perhaps the most significant structural weakness of CVA under CAMA 2020 is its lack of a standalone moratorium.

7.1 Contrast with Administration

A company in administration automatically gains a moratorium.³³

During this period:

- i. No legal proceedings may be commenced or continued without consent or leave;

³² CAMA 2020 s 438(3).

³³ CAMA 2020 s 480.

- ii. No step may be taken to enforce security without permission. CVA contains no equivalent protection.

7.2 Practical Consequences

The absence of moratorium protection introduces enforcement vulnerability:

- i. A secured creditor may enforce security during negotiations;
- ii. An unsecured creditor may present a winding-up petition;
- iii. Litigation may disrupt restructuring discussions.

This undermines the premise of collective negotiation in CVA.

8.0 THE MORATORIUM DEFICIT: STRUCTURAL ANALYSIS AND SYSTEMIC CONSEQUENCES

The absence of a standalone moratorium within the CVA framework represents the most significant structural weakness of CAMA 2020. While the administration benefits from automatic protection against creditor enforcement,³⁴ CVA leaves the company exposed during proposal formulation and negotiation.

8.1 Collective Compromise Requires Enforcement Stability

CVA relies on creditor collectivism, where the approval of the majority of unsecured creditors binds dissenters. However, this collective approach assumes a certain degree of enforcement stability. If creditors can still proceed with execution, appoint receivers, or file winding-up petitions during negotiations, their motivation to cooperate decreases. Insolvency theory highlights that a rescue depends on temporarily centralizing claims.³⁵ Without enforcement restraint, individual incentives might threaten the collective recovery process.

³⁴ CAMA 2020 s 480.

³⁵ Thomas H Jackson, *The Logic and Limits of Bankruptcy Law* (Harvard University Press 1986) 10–19.

8.2 Strategic Behaviour and Incentive Distortion

The absence of moratorium protection creates perverse incentives:

- i. A secured creditor may accelerate enforcement to avoid restructuring exposure.
- ii. A dissenting creditor may threaten winding-up proceedings to extract preferential treatment.
- iii. A minority creditor may challenge voting methodology in anticipation of post-approval litigation.

This kind of strategic behaviour brings back the coordination failure that CVA aims to resolve.

8.3 Structural Asymmetry within the Rescue Framework

Since administration provides moratorium protection but CVA does not, directors confronting creditor hostility might choose administration even when CVA is more appropriate. This structural imbalance can skew usage patterns and weaken the legislative purpose.

9.0 COMPARATIVE REFORM: LESSONS FROM THE UNITED KINGDOM

The United Kingdom's experience shows how reforms evolve in response to enforcement challenges. Although CVA was initially established under the Insolvency Act 1986, practical challenges arose over time. In reaction to economic instability and fragile restructuring processes, the Corporate Insolvency and Governance Act 2020 introduced a separate moratorium specifically under Part A1 of the Insolvency Act 1986.³⁶

Key features of the UK moratorium include:

- i. An initial 20-business-day protection period;

³⁶ Corporate Insolvency and Governance Act 2020 (UK).

- ii. Extension mechanisms with creditor or court approval;
- iii. Restrictions on creditor enforcement;
- iv. Safeguards allowing relief where creditors suffer unfair harm.

The UK reform acknowledges through legislation that negotiations need room to breathe.

Nigeria's CVA framework does not currently provide equivalent protection.

10.0 NORMATIVE CONSIDERATIONS: PROPERTY RIGHTS AND RESCUE POLICY

Critics of broad moratoria frequently cite the need to safeguard secured creditor rights, as security interests are proprietary rights protected by the constitution.

Insolvency law has long acknowledged that property rights can be temporarily controlled to aid in collective resolution.³⁷ A moratorium doesn't cancel security interests; rather, it delays enforcement to enhance overall recovery.

The normative balance lies in proportionality:

- i. Duration must be limited;
- ii. Creditors must retain access to judicial relief;
- iii. Abuse must be prevented through oversight.

A well-calibrated moratorium can improve restructuring efficiency without undermining credit markets.

10.1 Proposed Reform Model for Nigeria

To enhance CVA while maintaining doctrinal integrity, Nigeria might implement a structured reform model that includes the following components:

³⁷ Roy Goode, *Principles of Corporate Insolvency Law* (5th edn, Sweet & Maxwell 2018) 96–101.

10.2 Automatic Short-Term Moratorium

Once a CVA proposal and nominee certification are filed, a 30-day automatic moratorium may commence. This would:

- i. Stay of commencement or continuation of legal proceedings;
- ii. Limit the enforcement of security without leave;
- iii. Suspend winding-up petitions.

10.3 Extension Mechanism

The court may prolong the moratorium if there is evidence that:

- i. The proposal has reasonable prospects of approval;
- ii. The company remains viable as a going concern.

10.4 Relief-from-Stay Provision

Secured creditors can request relief from the moratorium if they show significant prejudice or a danger of asset dissipation.

10.5 Clarified Voting Threshold

At the same time, section 436 ought to be revised to require a 75 percent approval by the value of creditors present and voting. This change would align Nigerian practice with international standards and help lower legal disputes.

Legislative refinement must be accompanied by institutional development.

10.6 Insolvency Practitioner Competence

The Insolvency Regulations 2022 set qualification standards for insolvency practitioners, emphasising that professional competence is essential to the development and execution of credible proposals.³⁸

³⁸ Corporate Affairs Commission, Insolvency Regulations 2022.

10.7 Judicial Development

Federal High Court Judges will influence CVA case law through their initial rulings on interpreting:

- i. Unfair prejudice standards;
- ii. Voting methodology;
- iii. Supervisory accountability.

A strong reliance on English authorities like *Re T&N Ltd* and *Re Cancel Ltd*³⁹ is probable, due to their structural similarities.

10.8 Creditor Culture

Restructuring success relies on creditor cooperation, as financial institutions need to understand that a collective compromise can lead to better recovery than liquidation.

11.0 COMPLETING THE RESCUE PROCEDURE

CVA operates alongside administration and schemes of arrangement within CAMA 2020. Each mechanism serves a distinct function:

- i. Administration offers moratorium protection and managerial displacement;
- ii. Schemes of arrangement provide class-based compromise with court sanction and
- iii. CVA offers a flexible compromise with minimal judicial intrusion.

For CVA to function effectively within this ecosystem, structural gaps, particularly the absence of a moratorium and ambiguity in the voting threshold, must be addressed.

12.0 CONCLUSION

The introduction of the Company Voluntary Arrangement under CAMA 2020 marks a key milestone in Nigerian insolvency reform.

³⁹ *Re T&N Ltd* [n. 30]

CVA promotes modern creditor collectivism, enables early intervention, and helps maintain managerial continuity.

However, structural coherence requires completion.

Two principal deficiencies threaten its effectiveness:

- i. Absence of a standalone moratorium; and
- ii. Silence regarding approval thresholds.

Comparative experience shows that successful rescue frameworks combine binding authority with enforcement stability. By employing deliberate judicial interpretation and specific legislative changes—such as implementing a carefully measured moratorium and clarifying voting thresholds—Nigeria can strengthen CVA as an effective tool for corporate rehabilitation. Without such refinement, CVA may seem conceptually appealing but could be fragile in practical application.