

## Insolvency & Restructuring - Nigeria

### Progress of insolvency law reform

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### Introduction

World Bank reports on the observance of standards and codes principles and guidelines for effective insolvency and creditor rights systems, published in October 2007, identified the following weaknesses in Nigerian insolvency law:

- a lack of efficient means by which debtors can rearrange their affairs and preserve a potentially viable entity;(1)
- from creditors' point of view, no credible legal threat to recalcitrant debtors;
- no provisions for insolvency practitioners to be qualified, regulated, licensed or bonded; and
- a substantially under-resourced court system, which is susceptible to corruption and substantial delay.

In 2011 the [Business Recovery and Insolvency Practitioners Association of Nigeria \(BRIPAN\)](#)(2) decided to pursue a legislative reform agenda to improve Nigerian insolvency law. BRIPAN is a private sector-driven association of insolvency practitioners comprised of lawyers, accountants and bankers. Its objective is to develop a body of knowledge in business recovery and insolvency in Nigeria, and ensure that its members retain such knowledge and conduct their insolvency and business recovery work professionally. BRIPAN was firmly of the view that Nigerian insolvency law was due for review to bring it into line with international best practice.

This update gives an overview of the progress made in the last two years and the various strategies adopted in the efforts towards modernising Nigerian insolvency law through private sector initiative. It also assesses whether private sector effort alone could result in the successful pursuit of a legislative agenda.

### International exposure and participation

Pursuant to its objective of legislative reform, BRIPAN established a Legislative Agenda Committee. It also pursued international exposure for its members through increased participation in INSOL and United Nations Commission on International Trade Law (UNCITRAL) meetings, conferences and fellowships, and active engagement of its leaders with international experts. It also inaugurated its own international conference. BRIPAN achieved observer status at UNICITRAL Group V on Insolvency in 2012. The result of these efforts was improved access to materials and knowledge on international best practice related to insolvency. Through training workshops and seminars, BRIPAN ensured that this knowledge percolated downwards to its members. Eventually, its Legislative Agenda Committee issued an insolvency bill that was drafted solely by BRIPAN members. The draft was informed by international best practice.

### Bringing in the public sector

BRIPAN involvement with INSOL's annual African roundtable from 2011 greatly influenced the course of reform in Nigeria. A reoccurring theme at all INSOL African

roundtables thus far has been the need for national associations such as BRIPAN to engage with the public sector in the pursuit of their reform agenda. Thus, BRIPAN implemented a strategy of engagement with the public sector, encouraging various ministries and institutions to become involved locally and internationally with insolvency. BRIPAN focused specifically on involving the Ministry of Industry, Trade and Investment and the attorney general in attending UNCITRAL meetings. BRIPAN was granted an audience with the ministry and attorney general and obtained authorisation for its staff to attend international insolvency events. The same strategy was pursued with the Securities and Exchange Commission, the Nigerian Import and Export Bank and the Corporate Affairs Commission. Before long, BRIPAN had acquired partners at different levels of the public sector. During the Nigeria-Canada Business Forum in April 2013, the minister of industry, trade and investment urged BRIPAN to issue a working document for insolvency reform. This coincided with finalisation of the BRIPAN legislative committee's work. The committee was therefore able to publish the first draft of its insolvency bill on May 14 2013 at a joint roundtable on insolvency organised by BRIPAN and the Nigerian Institute of Advanced Legal Studies.

### **Engaging government and public institutions locally**

The success of the Nigerian Institute of Advanced Legal Studies/BRIPAN roundtable directly translated into more active interaction between BRIPAN and government policy makers, and particularly the Ministry of Industry, Trade and Investment. In that regard, BRIPAN leaders paid courtesy visits to the attorney general, the minister of justice and the minister of industry, trade and investment, which afforded it the opportunity to make private presentations and engage with these decision and policy makers regarding the bill.

The bill was presented to the Attorney General's Office, the Ministry of Justice and the Office of the Minister for Industry, Trade and Investment on July 2 2013. It was formally received by the minister of industry, trade and investment on July 15 2013 at a delegation led by BRIPAN President Dele Odunowo and former President Anthony Idigbe. The result has been strong support and a commitment to partner with BRIPAN in promoting a friendlier business rescue and insolvency environment in Nigeria. The understanding from this interaction was that the Ministry of Industry, Trade and Investment would lead the process as the supervising ministry, while the Attorney General's Office would provide legal drafting support.

### **Successful sale of reform process**

The Ministry of Industry, Trade and Investment adopted the bill as an executive initiative and held a two-day stakeholders' retreat on September 10 and 11 2013. The retreat was funded by the UK Department for International Development (DFID) under its initiative for engaging with legal reform to promote commerce and competitiveness. Justice for All (a DFID consultant) organised the retreat on the ministry's behalf, in conjunction with BRIPAN General Secretary CVC Ihekweazu.

The aim of the workshop and objective of government was to bring together all stakeholders involved with business recovery and insolvency to discuss the draft bill to ensure that it meets their expectations. Representatives from the Ministry of Industry, Trade and Investment, the Ministry of Justice and the Ministry of Finance, the financial services sector and market regulators (eg, the Central Bank of Nigeria, the Nigerian Deposit Insurance Corporation of Nigeria, the Asset Management Corporation of Nigeria, the Securities and Exchange Commission, the National Insurance Commission, the Nigerian Institute of Advanced Legal Studies and the Corporate Affairs Commission) attended the retreat. In addition, private professional associations, the judiciary and members of the National Assembly were invited. The retreat was interactive, with oral submissions and memoranda made available to the retreat for further improvement on the bill.

Sub-groups conducted close review of several parts of the bill in sessions that lasted for two days. The provisions on personal insolvency, corporate insolvency, business rescue, liquidation, regulation of the profession, cross-border insolvency, the scope of application of general insolvency law and potential derogation for certain industries were also thoroughly examined. Working with Justice for All and BRIPAN, the Ministry of Industry, Trade and Investment collated all submissions and reports of rapporteurs for each of the breakout groups.

### **Follow-through**

A committee has been set up by the Ministry of Industry, Trade and Investment to work with its legislative drafting department and the Ministry of Justice to improve the bill and hopefully pass it as an executive bill for consideration by the National Assembly within the year. BRIPAN's general secretary – a key member of the technical committee – has been assigned to continue driving the reform process. The committee recently released the amended draft bill for comment by stakeholders. It is hoped that the final draft, which takes into consideration the input of stakeholders, will soon be submitted to the Federal Executive Council for approval before it is forwarded to the National Assembly.

## Reflections

One of the many issues that emerged from the stakeholders' retreat was the extent of the role to be given to private professional bodies in the regulation of insolvency in Nigeria – particularly the extent of regulatory support functions to be given to BRIPAN regarding existing institutions (eg, the Federal High Court, the Corporate Affairs Commission, the Official Receiver and the Ministry of Industry, Trade and Investment). Further, while the draft bill seeks to minimise receiverships and other private traditional modes of enforcement available to creditors that presently constitute the bulk of Nigerian insolvency practice, there seems to be a misunderstanding of the concept of 'administration' by many participants. Moreover, even though Nigerian jurisprudence seems to protect against dispossession of debtors, stakeholders and particularly lenders were divided on whether to adopt a modified US debtor-in-possession approach, as opposed to the UK administration (insolvency practitioner in possession) approach, in view of the perceived high incidence of corruption in the system. Creditors' experience seems to be that Nigerian debtors have a highly recalcitrant attitude towards repayment of debt. This suggests that a debtor-friendly insolvency framework would exacerbate the situation, rather than improve it. Perhaps it is for this reason that the BRIPAN committee, after a thorough comparative study, adopted the UK creditor-friendly administration system in the insolvency bill.

## Comment

The experience in Nigeria so far suggests that effective legislative reform is a collaborative learning process. The traditional perception that law reform can be also initiated and sustained only by public sector institutions (eg, the Nigerian Law Reform Commission) no longer holds water. As seen by BRIPAN's effort, the private sector can also initiate law reform. However, credence must be given to the advice of INSOL that successful reform requires public sector cooperation and participation. Thus, the challenge in Nigeria for any reform-minded institution or group is to focus its efforts on cultivating public-private partnerships. BRIPAN's success so far in setting and pursuing a legislative agenda has been spurred by its appreciation of its limitations and effective engagement of the public sector for follow through.

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## Endnotes

(1) Limited progress has been made since that report with the passage and implementation of the Asset Management Company of Nigeria Act, which set up the Asset Management Corporation of Nigeria to absorb the toxic assets of licensed banks. Progress is limited because this was a sector-specific reform.

(2) BRIPAN is the Nigerian affiliate of INSOL.

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