

Insolvency & Restructuring - Nigeria

Restructuring and new capital: the role of government and insolvency practitioners

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[Insolvent banks](#)
[Business restructuring](#)

Insolvent banks

Although the governor of the Central Bank of Nigeria has reaffirmed the bank's resolve not to allow any deposit bank to fail, he stated that the near insolvency of certain banks, which necessitated the Central Bank's intervention in eight cases, stemmed principally from a lack of corporate governance and weak credit management practices. The Central Bank devised various strategies to protect depositors, including closer oversight by the Central Bank, as well as to enhance corporate governance and prudential guidelines in the financial industry.

The Central Bank also argued for the establishment of an asset management company to manage toxic assets held by deposit banks. The Central Bank recognized the need for legislative reform of several obsolete statutes on insolvency, creditors' rights, corporate workouts and restructurings (eg, the Companies and Allied Matters Act and the Bankruptcy Act), and credit risk issues (eg, the Dishonoured Cheques Act).

As economies and corporations begin to recover from the financial crisis, insolvency practitioners have a crucial role to play in restructuring and obtaining new capital.

Business restructuring

Support exists for the objectives of corporate finance and business restructuring: the creation of wealth and maximization of value. Where restructuring involves management, while cash remains king, value exists in profit, growth, return on investment and assets, future cash flow calculated based on value for money and the distribution thereof among stakeholders.

The Lagos Business School defines 'corporate restructuring' as "reorganizing the legal ownership, strategy, finance and operations of an organization with a view to making it more profitable and better able to achieve its present and future needs".

Companies, like people, have a lifecycle of birth, growth, maturity, decline and extinction. The aim of business restructuring is to turn ailing companies around, to minimize corporate erosion and return businesses to health. This can be achieved (i) passively (ie, trying to rescue a business after it has crossed the strategic inflection point and is close to folding or foreclosure, or (ii) actively (ie, monitoring all financial indices, even for profitability, in order to avoid erosion).

A company may be either proactive or reactive about establishing a restructuring plan. Studies have shown that the rate of failure of restructuring efforts is about 70% and that reactive companies are more likely to fail. The challenge is for a champion of the restructuring plan (usually the chief executive officer) to make other stakeholders receptive to change in order to avert failure. Positive restructuring is built on the concept of 'survival of the paranoid'.

A proactive approach is crucial to avoid insolvency. Opportunities for creativity are available even to companies that have passed the strategic inflexion point and are in distress. Aside from exercising discipline in terms of cash-flow management, the company must take advice from and follow recommendations of 'company doctors', which analyze the company, the nature of its business and the environment in which it operates and design tailored plans to reverse negative performance trends. A company's receptiveness to such an option is a major factor in the success of any restructuring exercise.

Restructuring plans may include:

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- workout programmes;
- marketing programmes for 'visible' companies;
- the transfer of toxic assets to asset management companies;
- the procurement of distressed funds (as opposed to contemplating foreclosure);
and
- the transfer of full regulatory recognition to the distressed fund investor.

Although investors that purchase insolvent companies' assets at discounted prices are seen as 'vultures', their purchasing of assets affords the insolvent company breathing space and improves its balance sheets.

Other forms of equity restructuring exist, such as the use of tracking stocks or equity carve-out and debt-to-equity swaps.

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