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THE EFFICACY OF FORMAL CORPORATE TURNAROUND PROCESSES IN KENYA, UGANDA, NIGERIA AND SOUTH AFRICA

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ACKNOWLEDGEMENT

INSOL International is pleased to present this new technical paper, "The Efficacy of Formal Corporate Turnaround Processes in Kenya, Uganda, Nigeria, and South Africa".

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The authors are members of the INSOL Future Leaders Technical Committee.

The paper analyses the corporate turnaround process in each country – outlining statutory options, examining court roles, reviewing notable case outcomes, assessing systemic challenges and considering the law reform process.

The authors highlight similarities and divergences, including court involvement and moratoria availability, in each of the four jurisdictions, and provide valuable practical insights and recommendations to strengthen the respective turnaround regimes.

INSOL International thanks the authors for their expertise and dedication in bringing this important cross-jurisdictional paper – in a priority region for INSOL – to fruition.

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1. Introduction

Over the past decade, insolvency reforms in Kenya, Uganda, Nigeria and South Africa have shifted focus from creditor-driven liquidations to debtor-in-possession rescues. Each jurisdiction has embedded formal turnaround mechanisms, ranging from moratoria and voluntary arrangements to administrator-led rescues, aimed at preserving going concerns, protecting jobs and improving creditor returns over traditional wind-ups.

This paper analyses the efficacy of these processes in each country – outlining statutory options, examining court roles, reviewing notable case outcomes, assessing systemic challenges and considering reforms.

While Kenya's Insolvency Act 2015 is often seen as a regional benchmark, Uganda's 2011 framework (amended in 2022), Nigeria's 2020 reforms and South Africa's established business rescue regime offer distinct perspectives.

A comparative approach highlights similarities and divergences, including court involvement and moratoria availability, culminating in cross-cutting lessons and recommendations to strengthen turnaround regimes across the four jurisdictions.

2. Kenya

2.1 Introduction

Kenya's 2015 insolvency reforms, through the Insolvency Act No. 18 of 2015 (IA 2015) and the Companies Act, shifted the country's insolvency policy from liquidation and limited receivership towards corporate rescue.

The IA 2015 introduced company voluntary arrangements (CVAs), administration and, later, pre-insolvency moratoria (PIM), administered by independent insolvency practitioners to give viable companies temporary protection from creditor action while restructuring. Receivership remains available for pre-2015 floating charges, though proposals exist to integrate it fully into the IA framework.

Economic headwinds, from a slow COVID-19 recovery and global shocks to political instability, have heightened demand for effective turnaround options. These processes mark a departure from creditor-centric enforcement, prioritising the preservation of enterprise value and jobs and offering better outcomes for the collective creditor body than immediate liquidation.

This section assesses the effectiveness of Kenya's rescue framework over the past decade, examining formal turnaround options, judicial involvement, practical outcomes and existing gaps. The IA 2015 provides three main procedures: PIM, CVAs and administration. Unlike the pre-2015 regime, directors or creditors can now initiate restructurings for the benefit of all stakeholders, with court oversight varying by process.

- ***PIM***

  Introduced in 2021 via an amendment to section 643 of the IA 2015, PIM provide an initial 30-day stay, extendable once, on creditor enforcement for eligible companies, excluding regulated sectors. Directors apply to the court with the consent of a licensed insolvency practitioner acting as monitor, who must opine on the company's financial position and viability. Directors retain operational control, but certain actions require the monitor's approval. The court can extend or terminate the PIM, replace the monitor or resolve disputes over their conduct. The moratorium's value lies in providing urgent breathing space to devise a viable rescue plan, making swift judicial action essential to its success.

- ***CVAs***

  A CVA is a statutory composition or arrangement between a financially distressed company and its creditors, proposed by the company's directors or an administrator if the company is already in administration. Introduced by the IA 2015 and modelled on the UK Insolvency Act 1986, a CVA sets out a plan to satisfy or restructure debts over time – for example, by reducing amounts owed, extending maturities or converting debt to equity.

A licensed insolvency practitioner acts as nominee at the proposal stage, reporting to court on whether creditor and shareholder meetings should be convened. If approved by at least 75% in value of creditors and by shareholders, and sanctioned by the court, the CVA becomes binding on all creditors in the affected classes. A supervisor, often the nominee, oversees implementation.

In Kenya, a CVA only takes effect once approved by the court. The court may replace a nominee or supervisor, receive meeting reports and adjudicate creditor challenges. Where a CVA is approved for a company in liquidation or administration, the court may stay those proceedings. Creditors may challenge an approved CVA within a set time if they believe they are unfairly prejudiced. Supervisors can seek court directions or apply for administration or liquidation if the arrangement fails. While essentially a debtor–creditor agreement, Kenya's CVA process is ultimately court-centred, with the judiciary acting as the overarching guardian of legality and fairness throughout the process.

In comparison, a CVA in Kenya is far more court-intensive than Nigeria's largely out-of-court CVA process under CAMA 2020.

- ***Administration***

  Administration is Kenya's primary corporate rescue procedure under the IA 2015, designed to save a company as a going concern. It involves appointing an independent administrator to take over management from the board. An appointment may be made by court order – on application by the company, its directors or creditors, by a qualifying floating-charge holder out of court, or by the company or its directors by filing a notice at court.

  The statutory objectives of administration, in order of priority, are to rescue the company as a going concern, to achieve a better outcome for creditors than immediate liquidation, or, failing both, to realise assets for secured or preferential creditors. Administration triggers an automatic moratorium on creditor claims and enforcement. Without court or administrator consent, no asset can be attached or sold, landlords cannot distrain, and no proceedings may commence or continue. This prevents asset stripping and provides a stable platform for restructuring.

  Administrators assume the directors' powers, exercising those powers in the collective interests of all creditors. Courts may direct on any matter, grant leave to lift the moratorium, receive reports from creditor meetings and remove or replace administrators. An administration may end by court order, conversion to liquidation or by administrator application when the objectives of the administration are achieved or unattainable.

  Administration is a court-enabled process run by insolvency practitioners. Success depends on swift court action and balanced oversight. Compared with South Africa's business rescue, which starts with a board resolution, Kenya's process relies more on court orders, though out-of-court appointments offer flexibility similar to the UK. The collective approach and moratorium represent a shift from receivership, which prioritised a single secured creditor. Administrative receivership is now largely phased out for new security interests in favour of administration.

2.2 Judicial intervention: a curse or a blessing?

Kenya's courts play a central role in PIM, CVAs and administration. On the positive side, the judiciary resolves disputes, interprets legislation, creates precedent and oversees office holders, directors and stakeholders. This inspires confidence, ensures transparency, deters misconduct and protects rights. Judicial approval legitimises outcomes, and discretion can add flexibility, for example by allowing creditor actions that ultimately benefit the estate.

However, the judiciary faces systemic challenges, including case backlogs and resource constraints. Urgent turnaround timelines can be undermined by delays, eroding value and creditor goodwill. Kenya's litigious business culture encourages frivolous claims that must still be heard, further slowing processes. A lack of specialisation in insolvency can also lead to inconsistent or cautious decision-making.

Courts have shown both support and obstruction. In *Equity Bank Kenya Ltd v Kenya Airways PLC* (2017), the court rejected an attempt to halt a restructuring, affirming the law's pro-rescue stance. Yet many administrations face litigation over appointments and claims, increasing time and costs. Reforms such as a dedicated insolvency bench and expedited procedures are needed. Ultimately, the judiciary is indispensable to turnarounds, but its impact will depend on efficiency, expertise and procedural streamlining.

2.3 Success stories: Kenya's wins at turnaround in 10 years

A decade after the IA 2015 came into force, Kenya's formal turnaround record is mixed. There have been some notable successes where the rescue mechanisms produced better results than liquidation. Two often-cited cases illustrate the framework's potential when stakeholder cooperation and skilled execution align.

- ***Athi River Mining (ARM) Cement Ltd***

  ARM Cement, a publicly listed cement manufacturer, fell into financial distress in 2016 under the weight of heavy debt. In August 2018, it entered administration. The High Court appointed administrators who explored restructuring options, including seeking strategic investors, selling non-core assets and raising fresh capital. Operations continued under the moratorium while negotiations took place.

A full rescue proved unviable, so the administrators pursued the secondary statutory objective, asset realisation. Between 2019 and 2020, major assets in Kenya and Tanzania were sold to competitors, generating about KSh 6.2 billion (USD 52 million), covering roughly 52% of secured creditor claims. This exceeded typical pre-2015 recoveries in Kenya more generally, where secured creditors often realised less than 30% and unsecured creditors nothing.

The case showed that even without saving the business, administration can improve recoveries compared to piecemeal liquidation, while offering lessons on handling cross-border assets.

- *Kaluworks Limited*

  Kaluworks, a cookware manufacturer, faced receivership after loan defaults. Shareholders sought to avoid liquidation by injecting new capital if creditors agreed to restructure. The receivership converted into a CVA, with directors proposing a plan involving debt reductions averaging 70% and extended repayment terms. The plan, supported by creditors and approved by the High Court, was binding on dissenters and ended the receivership.

  Kaluworks preserved operations, jobs and supplier relationships. Creditors accepted haircuts because the CVA offered better returns than liquidation, coupled with potential future business. The case demonstrated the flexibility of Kenya's regime and the importance of converging stakeholder interests, with the court's approval ensuring enforceability and halting enforcement actions.

2.4 Key gaps and what is not working

1. ***Rescue finance is missing in action***

   Turnarounds stall for lack of post-commencement funding. Plans, whether in administration, CVA or PIM, need working capital to trade and implement fixes, yet Kenya has no debtor in possession style priority and lenders hesitate to fund distressed debtors without clear repayment protection. In practice, funding is left to existing lenders who are disinclined to double down on exposure, so otherwise viable filings run out of cash and fail for liquidity, not viability. There is no State-backed rescue fund or incentive scheme to bridge that gap.

2. ***Judicial capacity and delay***

   Heavy court dependence collides with congested lists and uneven insolvency expertise. Statutory clocks, for example the 30-day PIM period, are hard to meet when urgent hearings queue behind non-insolvency matters, value leaks during delay, and outcomes become unpredictable across different judges. A specialised insolvency forum is needed to hear routine relief quickly and build consistent jurisprudence. Until that arrives, delay remains a built-in risk premium that depresses rescue uptake.

3. ***Litigious stakeholder behaviour***

   Shareholders and junior creditors often file overlapping applications and appeals during administration, driving cost and delay. Abusive filings for tactical leverage deter investors and erode cash runways, yet the IA 2015 lacks firm filters against frivolous applications. Without tools like security for costs or structured ADR channels, disputes sprawl in court and the moratorium becomes an expensive waiting exercise.

4. ***Thin professional bench***

   Only about 44 licensed insolvency practitioners serve the market. Scarcity and uneven depth on complex mandates hinder plan design, stakeholder management and information quality, and the same capacity gaps appear on the bench, where few judges have sustained insolvency exposure. The learning curve for all actors remains steep given the novelty of PIM, CVAs and modern administrations.

5. ***Stigma and late entry***

   Formal rescue is still read as failure, so boards try informal fixes until cash is gone, then file at the cliff edge. Creditors approach proposals with suspicion rather than value analysis, which depresses constructive engagement and narrows the feasibility window that a moratorium can realistically protect.

6. ***PIM design, fragile in practice***

   The PIM process was created to avoid formal insolvency, preserve director control under a monitor, trigger a wide moratorium, and run on tight (30 day, extendable once) timelines. In practice, court dependence for entry, extensions and monitor issues, together with eligibility limits, makes the instrument brittle if lists are congested. Fast court handling is a design assumption. When it fails, the PIM under-delivers.

7. ***Receivership still outside the tent***

   Legacy receiverships persist for pre-2015 security, and proposals exist to integrate receivership fully into the Insolvency Act. Until that is done, enforcement and rescue operate in parallel silos, which complicates coherent case management and end game design, even though creative outcomes are possible, for example Kaluworks' conversion from receivership to a CVA.

2.5 Recommendations to improve outcomes

1. ***Establish a specialist forum, speed as the norm***

   It would be beneficial to constitute a specialised insolvency bench or tribunal with short standard timetables, a duty judge for urgent relief and template orders for common applications (such as convening meetings, moratorium extensions, monitor directions and administrator directions). Concentration of cases will deepen expertise, improve predictability and preserve value by making the moratorium a productive window rather than a holding pattern.

2. ***Channel disputes out of court, deter abuse***

   Consideration should be given to hardwiring mediation, or introducing targeted arbitration for plan, class and claim disputes, with quick court sanction for resulting settlements, and requiring security for costs from repeat or high stakes objectors to discourage tactical filings. This trims the litigation tail without denying access to justice.

3. ***Make new money possible, safely***

   The IA 2015 should be amended to recognise a capped, court supervised priority for post-commencement finance that funds wages, utilities and critical suppliers, discloses terms up front and allows limited security over unencumbered assets. This should be paired with a Government-backed rescue facility or guarantee scheme so lenders can price risk. Without oxygen, the moratorium buys time, not viability.

4. ***Grow and lift the IP cadre***

   Expanded training and accreditation for practitioners and judges, revisiting licensing criteria to grow the pool responsibly and encouraging team-based appointments on larger files so that financial, operational and legal skills sit at the same table would be ideal. Mentorship could also be used on flagship cases to accelerate learning.

5. ***Structure cooperation, reduce repeat fights***

   Creditor committees should be established early and simple cooperation protocols and disclosure packs should be published, so that trade-offs are negotiated once, not litigated piecemeal. This also improves investor confidence in CVAs and administrations.

6. ***Fine-tune statute and rules for speed and coherence***

   The integration of receivership into the IA 2015 should be completed, so that enforcement and rescue sit in one code. Pre-pack administrations should also be authorised, with notice, valuation and fairness safeguards to enable fast going concern transfers, and to clarify timeline and moratorium ambiguities.

7. ***Make PIM work as intended***

   Director control with monitor oversight should be retained, but with the adoption of fast, template-driven entry and extension orders, explicit monitor reporting milestones and a short viability statement with a 13-week cash flow on day 1, so the 30 to 60 day window stabilises, not drifts.

8. ***Normalise early entry***

   There should be a public education push and safe harbour-style guidance for directors who file early. Creditors should also be encouraged to judge proposals against liquidation value and feasibility, not stigma. This shifts behaviour towards value preservation.

2.6 Conclusion

The Insolvency Act 2015 moved Kenya from a receivership and liquidation default to a rescue-oriented framework. Pre-insolvency moratoria, company voluntary arrangements and administration now give viable companies statutory routes to stabilise, negotiate and restructure. The courts have been central to this shift. They have enforced moratoria, policed creditor meetings and clarified administrators' powers. The outcomes in ARM Cement and Kaluworks illustrate that, where filings are timely, stakeholder engagement is disciplined and operational fixes are credible, the framework can preserve going concern value compared with a break-up. By contrast, retail collapses such as Nakumatt show the limits of the law when liquidity is exhausted, supply chains fracture and stakeholder trust evaporates.

There are a number of constraints in the new regime introduced by the Insolvency Act 2015. The first primary constraint is finance. Many filings arrive with no cash runway, no committed interim funding and no clear path to new money, and Kenya's law does not give true super priority to rescue finance. This means that lenders are reluctant, suppliers demand cash on delivery and the moratorium buys time without buying viability.

A second key restraint is process capacity. In Kenya, commercial lists are congested, there are interlocutory fights over class establishment and voting, contested claims consume weeks, and appeals risk freezing momentum. This results in the leaking of critical working capital, while creditor patience thins.

Third, stakeholder behaviour is also a constraint. Secured lenders default to enforcement, while landlords, revenue authorities and utilities assert hard lines. Trade creditors are also fragmented, related party creditors distort classes and directors file late, hoping the moratorium will magic away structural problems.

Fourth, practitioner depth is problematic. A small cadre carries complex work, while quality varies outside Nairobi. Further, plan design, information quality and communications discipline are uneven.

The pattern of results follows from these constraints. Many companies still end in liquidation, genuine rehabilitations remain the exception and successful cases tend to be asset-backed industrials with identifiable buyers or consolidators, not cash flow negative retailers. Where plans succeed, they combine fast stabilisation, credible cost resets, targeted asset sales and negotiated lender concessions that reflect liquidation baselines, along with early, frequent and accurate disclosure that keeps classes aligned.

Targeted reforms and practice improvements along the lines suggested in section 2.5 above would raise the "hit" rate considerably, and ensure a stronger rescue and rehabilitation culture in Kenya.

3. Uganda

3.1 Introduction

Uganda's insolvency landscape has evolved significantly since the turn of the century, with a decisive shift towards corporate rescue coming in 2011. In that year, Uganda enacted the Insolvency Act No. 14 of 2011, replacing antiquated, liquidation-centric laws. The 2011 Act (as amended in 2022) was consolidated into the Laws of Uganda Revised Edition as Chapter 108 (Cap. 108), titled the Insolvency Act.

The Insolvency Act and the accompanying Insolvency Regulations introduced modern business rescue procedures intended to rehabilitate struggling companies, influenced by international best practices (notably the UK and South Africa). The new framework created formal mechanisms such as company arrangements and administration, concepts that were novel in Uganda's context, alongside traditional processes like receivership and liquidation. Additionally, the Companies Act 2012, also amended in 2022 (becoming Chapter 106 in Volume 5 of Uganda's Revised Red Volumes), provides for court-sanctioned compromises or arrangements with creditors (a scheme of arrangement under section 230 of the Companies Act), which can achieve similar restructuring ends outside of insolvency proceedings.

These changes were driven by a policy recognition that preserving viable businesses as going concerns would yield greater economic and social benefits – saving jobs and maximising creditor returns – than the old regime of asset break-up and piecemeal recoveries.

However, over a decade later, Uganda's corporate rescue culture remains nascent, and the efficacy of these formal turnaround processes is under scrutiny. Many companies have continued to collapse or be wound up without attempting formal rescue. By the time of the COVID-19 pandemic, there were growing calls to reinvigorate use of the Insolvency Act's rescue provisions. The pandemic itself, which hit Ugandan businesses hard via lockdowns and lost revenues, underscored the need for effective turnaround options.

3.2 Formal turnaround options in Uganda

Under Ugandan law, the main formal business rescue mechanisms for companies in financial distress are: (1) compromises or arrangements with creditors under the Companies Act; and (2) administration proceedings under the Insolvency Act.

The Insolvency Act also retains receivership as a process where a secured creditor may appoint a receiver / manager to enforce its security. However, receivership in Uganda is generally viewed as an enforcement tool for a single creditor rather than a collective rescue procedure. Below, we focus on the rescue-oriented processes in detail.

3.2.1 Compromise or arrangement (Companies Act)

Section 230 of the Companies Act allows a company to make a compromise or arrangement with its creditors (or members). This is a court-sanctioned scheme wherein a plan – for example, creditors agreeing to accept a percentage of their debts or to reschedule payments – is proposed and becomes binding on all affected stakeholders if it is approved by a supermajority of creditors (typically 75% in value of each affected class) and then sanctioned by the High Court.

This mechanism is analogous to the scheme of arrangement in other Commonwealth jurisdictions. It remains contractual in nature but attains binding effect through court approval. Companies that are approaching insolvency (or that are already insolvent) can use this route to restructure debts consensually as an alternative to formal insolvency proceedings. Notably, because it is pursued under company law rather than insolvency law, it carries less "stigma" of insolvency, which may be more palatable to businesses.

A limitation, however, is that, absent any formal insolvency proceeding, there is no automatic moratorium on creditor actions while a scheme is negotiated and approved. This means that creditors must voluntarily hold off, or the company must seek an injunction to prevent hostile actions during the process.

3.2.2 Administration (including provisional administration)

Administration is the marquee corporate rescue process introduced by the Insolvency Act. Uganda's administration framework has a two-stage structure. First, a provisional administration phase (Part VI of the Insolvency Act, covering sections 139-161) and, if a plan is agreed, a formal administration effected through an administration deed (sections 162-174) signed by the company and creditors. Part VI of the Insolvency Act is expressly titled "Provisional Administration", reflecting the initial rescue period.

A company may enter provisional administration out of court. Typically, the board of directors resolves that the company is or is likely to become insolvent and passes a resolution to appoint an interim insolvency practitioner as the provisional administrator. In legal terms, the criterion is that the company is unable, or likely to become unable, to pay all its debts as they fall due. Under the current law, as amended in 2022, certain creditors can also initiate the process. For instance, a qualifying secured creditor (such as the holder of a floating charge) may appoint a provisional administrator out of court, a mechanism that did not exist in the original 2011 Act.

Further, the High Court has the power to appoint an administrator on application (for example, by a creditor, shareholder or the company itself), which provides a court-supervised entry route into administration. Once provisional administration commences, an automatic statutory moratorium takes effect by operation of law. This moratorium stays all creditor enforcement actions and legal proceedings against the company or its assets, except with court permission (or consent of the administrator).

The provisional administrator's task is to assess the company's financial position and work with management and creditors to develop proposals for rescue. The provisional administration period is time-limited by statute. It lasts for an initial 30 days, unless extended. The Insolvency Act permits extensions of this provisional period either by order of the court or with the consent of a majority of the company's creditors. During the provisional administration, the provisional administrator will typically convene at least one meeting of creditors to decide on the way forward – usually, to vote on whether to proceed with an administration deed or to end the process (which could result in liquidation or other actions if rescue is not viable).

If the stakeholders agree that rescuing the company (or some part of its business) is feasible, the company and the requisite majority of creditors will execute an administration deed, essentially a contract that codifies the reorganisation plan. The deed, which is generally overseen by a named administrator (often the same individual who served as provisional administrator), sets out the terms of the restructuring. For example, it may provide for compromises of debts (haircuts), rescheduling of payment terms, injection of new capital, business turnaround measures or the sale of certain assets.

Once the deed is executed (with approval of the required creditor majorities and, usually, confirmation by the court), the company formally enters administration and the provisional phase ends. The administrator then manages the company in accordance with the deed's terms. The goal is to implement the deed and ultimately return control of the company to its directors once the deed's obligations have been fulfilled and the administration is successfully concluded. If no agreement is reached during the provisional administration phase, such as creditors failing to approve a plan, the provisional administration will lapse. In that event, the likely outcome is liquidation (or a creditor could pursue receivership or another enforcement), since the moratorium protection ends when provisional administration is terminated.

Uganda's administration framework was designed as a collective proceeding that takes priority over individual creditor actions, similar to the rationale for administration in the UK. The law sets out objectives for administration that mirror the UK model:

(a) primarily, to rescue the company as a going concern;

(b) if that is not achievable, then to achieve a better result for creditors as a whole than would likely be achieved by immediate liquidation; and

(c) if that is not possible, then to realise the company's assets and distribute the proceeds in a manner that better serves secured and preferential creditors.

A key benefit of administration is the statutory moratorium that shields the company while the process is ongoing. This stay binds even secured creditors (during the provisional period and administration) and prevents them from enforcing their security without consent or court leave. Notably, however, under Ugandan law, a secured creditor is not automatically bound by the eventual administration deed unless it actively opts in at the creditors' meeting. In other words, a secured lender can choose to stay outside the deed and not be bound by its terms (though such a creditor would still be unable to enforce during the moratorium period).

3.3 Judicial intervention in Ugandan turnarounds

Uganda's judiciary holds a central role in the functioning of these formal turnaround processes, similar in intent to Kenya's framework but with some differences in emphasis.

By statute, insolvency proceedings in Uganda fall under the jurisdiction of the High Court (usually the Commercial and Civil Divisions of the High Court). The court's role includes appointing administrators (when a court-initiated administration is sought), sanctioning schemes of arrangement under the Companies Act, enforcing the statutory moratorium by halting other legal actions, resolving disputes among creditors or involving the insolvency practitioner, and generally supervising the conduct of the insolvency proceedings through applications for directions to ensure compliance with the law.

In practice, because Uganda's rescue framework was new in 2011 and saw little use initially, the courts had relatively few opportunities to interpret the provisions until several years after enactment. A milestone opportunity came with Uganda Telecom Limited (UTL) in 2017, which was the first large company to truly test the administration process.

In early 2017, UTL, a major telecom operator, became insolvent. The High Court approved moving UTL into provisional administration (and later formal administration under a deed) as a means to attempt its rescue or at least an orderly resolution. This made UTL the first large company, with State interest, in Uganda to undergo administration under the 2011 Act. The court appointed an administrator to take charge of the company, replacing one that had been appointed under the administration deed. Over the next few years, UTL's administration was extended multiple times by court orders, illustrating the judiciary's discretion to accommodate practical realities.

The UTL administration gave the administrator and the courts an opportunity to firm up the law on applications for court directions under the Insolvency Act, which are integrated as a tool for administrators and other insolvency practitioners to involve the court in determining issues related to the exercise of their duties, such as the treatment of unique creditor claims and the ranking of similar claims. Over nine critical decisions came out of the UTL administration that forever reshaped the way administration proceedings, and by extension insolvency proceedings, will be managed in Uganda.

Ugandan courts have generally shown a supportive stance towards rescue efforts, recognising the objectives of the Insolvency Act. In the UTL matter, for example, the High Court granted multiple extensions of the administration (beyond the initial 12-month limit set by the Insolvency Act for implementing an administration deed) as the Ugandan Government sought investors to revive the telecom. The judiciary's flexibility in that instance indicated a willingness to give the company every chance at survival.

The courts have also been involved in compromises under the Companies Act, though their role there is more straightforward, ensuring proper procedure at meetings and that the scheme is fair before approving it. Because such schemes are often consensual and unopposed, they have produced less reported case law compared to contested administration matters.

One structural challenge is that Uganda, like Kenya, does not have a specialised insolvency court. Insolvency cases are heard by the Civil and Commercial Divisions of the High Court. Judges in these divisions handle a broad range of commercial disputes, and only a few have developed deep expertise in insolvency matters. As complex cases like UTL's came before the courts, judges essentially had to navigate uncharted territory and learn by doing. Early cases thus set important precedents. So far, there have been no major mis-steps in judicial interpretation. Courts have largely adhered to the rescue-friendly intent of the law. But capacity constraints remain. If multiple large administrations or complex arrangements were filed in a short period, the limited number of judges familiar with insolvency could become a bottleneck.

In sum, Ugandan courts have been essential enablers of the turnaround processes, stepping in to clarify uncertainties (such as which creditors are stayed or bound by a deed) and to facilitate outcomes (by approving extensions of time and sanctioning plans. They have echoed the dual nature seen within Kenya's judiciary – on the one hand, extremely helpful when actively using their powers to support restructurings, but on the other hand subject to resource and backlog issues. Whether judicial involvement is ultimately a boon or bane in Uganda's turnarounds can be seen in the UTL case. The court protected the company from a disruptive creditor action (a boon), but the overall process stretched over years in part because only the court could authorise certain key steps (which some view as a bane in terms of efficiency).

3.4 Success stories and a notable case in Uganda

Uganda's experience with formal corporate turnarounds is still limited in terms of the number of cases, and thus true "success stories" are few. What constitutes a "successful" rescue can be defined in various ways – such as preservation of the business as a going concern, avoidance of liquidation, or an improved payout to creditors.

Below, we provide further insight into the UTL matter, which sheds light on the effectiveness of Uganda's rescue framework and its potential limitations.

UTL was the first major test of Uganda's insolvency and administration framework. The company, Uganda's legacy telecommunications provider, was placed under provisional administration (and later administration) in May 2017 following severe financial distress, which was exacerbated by the withdrawal of a key investor (Libya's UCOM, owning 69% of UTL's shares). At the time, UTL's liabilities were around UGX 900 billion (approx. USD 250 million), far exceeding its assets. The Ugandan Government, which held a 31% stake and was one of UTL's largest creditors (due to unpaid taxes and other debts), played a crucial role throughout the process. Under the court-appointed administrators, UTL continued to provide essential telecom services, a critical national interest, while efforts were made to find a strategic investor or formulate a restructuring plan.

Between 2017 and 2019, several potential investors came forward. Notably, Mauritius Telecom submitted a bid of about USD 45 million in 2018 but failed to consummate the deal. Another Nigerian-led consortium was briefly selected by the Government in late 2018 but also defaulted on its obligations. The High Court granted extensions of the administration to accommodate these ongoing negotiations and to prevent the collapse of services during talks. In January 2020, the court appointed a new administrator by the name of Ruth Sebatindira SC of Ligomarc Advocates (replacing the previous one) to steer the final phase. Eventually, the Ugandan Government itself, through a newly formed entity (Uganda Telecommunications Corporation Ltd), decided to take over UTL's assets. In November 2022, UTL's assets were transferred to this Government vehicle with court approval. The administration is still ongoing, with the administrator following up on a few pending items before the administration can be formally concluded.

Was UTL's case a success? In terms of a classic turnaround, UTL did not return to solvency as a private company. It ended up being taken over by the State and ceased operations under its original identity. However, the administration achieved a number of important outcomes. First, it averted a disorderly shutdown of a vital company, maintained continuous telecom services for the public throughout the process (thanks to the moratorium preventing creditor enforcement), and preserved a substantial number of jobs. The Ugandan Government, by injecting funds, effectively served as a "white knight" to keep the business alive. Creditors, on the other hand, did not fare well financially, as the sale or investment plans did not yield enough to repay the huge debt stock.

In that sense, UTL's administration demonstrates the limitation of the law that even an extended process cannot guarantee a positive outcome if no investor is willing to fully rehabilitate the company. Nonetheless, the case contributed significantly to Ugandan insolvency jurisprudence (clarifying how the moratorium and deed operate, as discussed) and demonstrated the flexibility of the law. For instance, the court was able to accommodate an outcome (a Government takeover via a new company) that is not explicitly described in the statute but was achieved through the court's broad powers to approve plans in an administration. It also highlighted the importance of stakeholder cooperation, to the extent that without the Government's support (as shareholder and creditor), UTL would likely have been liquidated in 2017, causing a chaotic loss of services and jobs. Thus, UTL's administration can be seen as a qualified success – successful in preserving continuity of service and achieving some social objectives, though not successful in restoring the company to sector health or in fully repaying creditors.

3.5 Ambiguities and gaps affecting turnaround

With the 2022 amendments now integrated into the revised Insolvency Act, the regime has yet to be tested by a turnaround on the scale of UTL, and some provisions still require attention, as they may affect the efficiency of formal turnaround proceedings in Uganda.

1. Lack of a pre-insolvency moratorium

The Insolvency Act contains no provision for a standalone moratorium or temporary stay on creditor actions before a formal insolvency proceeding. Companies seeking breathing space must commence provisional administration to get protection. This gap means there is no quick "timeout" procedure for companies that just need a short window to negotiate with creditors, an issue recognised in proposals to introduce such a mechanism in Uganda (similar to the recent reforms in the UK and Kenya). How courts might use inherent powers to grant temporary stays outside the Insolvency Act remains an open question, leading to uncertainty for companies in need of immediate relief.

2. Secured creditor opt-out

Under section 169 of the Insolvency Act, secured creditors are not bound by an administration deed unless they consent. This can enable a secured creditor to hold out from the restructuring plan, potentially undermining a rescue if that creditor's enforcement action merely resumes after the administration. The law does not provide a clear cram down mechanism to bind dissenting secured creditors in an administration. It remains ambiguous how far a court can go in approving a deed that affects a secured creditor's rights without its consent. This area may require judicial interpretation or legislative refinement, as successful turnarounds often depend on dealing with secured debt effectively.

3. Duration of administration deed implementation

The Insolvency Act implicitly envisions that an administration deed should be implemented within 12 months (with a possible extension of up to 6 months in certain cases). In practice, as seen in the UTL case, courts allowed the administration to continue far beyond this period through successive extensions. However, the legislation is not explicit about whether multiple or indefinite extensions are permitted for an administration deed's duration. This ambiguity could affect creditors' and investors' confidence. Clarification either by statute or precedent would be beneficial.

4. Post-commencement claims and priorities

The Insolvency Act does not clearly differentiate or prioritise post-commencement debts or rescue financing during administration. There is no explicit provision granting super-priority to new money lent to a company under administration (debtor-in-possession financing). Additionally, while the Insolvency Act (by inference from case law) treats many post-commencement liabilities as provable debts, it does not spell out which expenses of the administration must be paid ahead of creditor claims. This lack of clarity on the treatment of new obligations and rescue finance in administration could deter potential financiers, and creates uncertainty about how such claims would be handled if the company fails to turn around.

5. No specialised insolvency forum

Although not a gap in the black letter law per se, the absence of a dedicated insolvency division in the High Court means the Insolvency Act's provisions may not be applied with consistent expertise. Complex issues (like those above) may be decided differently by judges with varying levels of insolvency experience. This is more a structural gap affecting how the law is interpreted and is an issue flagged for potential reform – for example, by having specialised judges or guidelines for insolvency cases.

3.6 Recommendations and conclusion

Uganda's introduction of the Insolvency Act in 2011 (now Cap. 108) laid a foundation for a more rescue-oriented insolvency regime. In theory, Ugandan companies in distress have at their disposal a range of formal turnaround tools, from court-approved compromises to administrator-led reorganisations, that were absent in earlier decades.

However, the experience of the past 10-plus years reveals a gap between the law on the books and outcomes on the ground. Usage of the rescue procedures has been sporadic, and many distressed businesses still slide into liquidation or informal workouts rather than invoking formal administration or company arrangements. The reasons are multifaceted: limited awareness and expertise, cultural aversion to insolvency processes, gaps in the law (such as the absence of a quick pre-insolvency moratorium) and practical difficulties (such as the cost and time of court proceedings).

To improve the efficacy of formal corporate rescue in Uganda, several measures could be considered. Further legal reforms might introduce a simpler standalone moratorium or interim rescue procedure (to give companies breathing space before formal administration) and provide clearer provisions for rescue finance. Strengthening institutional capacity is also key – for instance, designating specialist judges for insolvency matters and providing them with training, as well as encouraging the development of a cadre of professional insolvency practitioners.

Continued efforts to destigmatise business rescue are also important. Directors and creditors should view insolvency not as terminal failure but as a potential rehabilitation process. The Uganda Registration Services Bureau (which oversees insolvencies) has been active in public awareness and training programs, and these should continue in collaboration with industry associations.

In short, the law has the tools to facilitate corporate turnarounds, but those tools must be refined and used more frequently. With targeted improvements and increased stakeholder buy-in, Uganda's rescue framework could result in more companies being saved and higher recoveries for creditors, realising the objectives that motivated the 2011 reforms in the first place.

4. Nigeria

4.1 Introduction

Nigeria, Africa's largest economy, historically lacked a robust corporate rescue framework, with insolvency law tilted heavily towards liquidation and creditor enforcement. The Companies and Allied Matters Act 1990 (CAMA 1990) offered only limited reorganisation options, mainly court-sanctioned schemes of arrangement, and relied on receivership for secured creditors.

This changed in August 2020, with the enactment of the Companies and Allied Matters Act 2020 (CAMA 2020), which repealed and replaced CAMA 1990. For the first time, formal corporate rescue mechanisms, including company voluntary arrangements (CVAs) and administration, were introduced. These reforms were aligned with Nigeria's Ease of Doing Business Agenda and were aimed at modernising insolvency practice to save viable businesses and jobs. At the same time, sector-specific legislation such as the Banks and Other Financial Institutions Act 2020 (BOFIA 2020) introduced special resolution tools for financial institutions.

The reforms drew upon UK insolvency law, South Africa's business rescue regime and Kenya's 2015 reforms. Before 2020, distressed Nigerian companies often relied on informal workouts or receivership, which usually resulted in asset stripping, unsecured creditors receiving nothing, and the collapse of the business. The new framework seeks to reverse this pattern by enabling rehabilitation in which all creditors may fare better than in liquidation. Although the provisions are recent, early cases such as Nigeria's first CVA in 2021 and its first court-ordered administration in 2022 show stakeholders are beginning to test these tools. However, challenges persist, including limited familiarity with the processes and systemic judicial inefficiencies.

4.2 Formal turnaround options in Nigeria

CAMA 2020 provides two main formal rescue procedures: CVAs and administration. These exist alongside older mechanisms such as schemes of arrangement and receivership, although the "administrative receiver" role is largely superseded by administration.

A CVA, set out in Chapter 17 of CAMA 2020, is a debtor-led agreement with creditors, supervised by an insolvency practitioner. Directors, or an administrator or liquidator if appointed, can make a proposal to unsecured creditors, which may involve reduced payments, extended payment terms or debt-for-equity swaps. A nominee reviews the plan and seeks a court order to convene meetings of creditors and shareholders. Approval requires 75% in value of creditors voting in favour, and a simple majority of shareholders if their rights are affected. Once approved, the CVA binds all unsecured creditors. Secured and preferential creditors are unaffected unless they consent to modifications of their claims.

Nigeria's CVA is primarily out-of-court after the initial court directive to hold meetings, with the court's role limited to resolving disputes or sanctioning specific terms. This reduces procedural burden and delay. However, there is no automatic moratorium when a CVA is proposed, leaving creditors free to enforce their claims before approval is obtained. This can undermine the process and the potential for a successful rescue outcome.

Once approved, the CVA allows the company to continue trading under board control, monitored by a supervisor. The first CVA, in 2021, involved the Tourist Company of Nigeria Plc (TCN), enabling it to avoid liquidation through debt reduction and rescheduling.

Administration, governed by Chapter 18 of CAMA 2020, involves the appointment of an insolvency practitioner as administrator to take control of the company. The primary objective is to rescue the company as a going concern. If that is not possible, the aim is to achieve a better result for creditors than immediate liquidation, or to realise assets for secured and preferential creditors. Administrators can be appointed by court order, by a secured creditor with a qualifying floating charge, or by the company or its directors through court filing. A statutory moratorium applies immediately, halting all legal actions and enforcement against the company without consent. Banks and insurance companies are excluded from administration under CAMA, falling instead under BOFIA 2020.

The administrator has wide management powers and must present a proposal to creditors within eight weeks. This can lead to a CVA, a scheme, a sale of the business or liquidation. Nigeria's first court-ordered administration, Moorhouse Properties (Moorhouse) in 2022, involved the turnaround of a boutique hotel in Lagos. The court showed initial caution but ultimately appointed an administrator and oversaw the process.

4.3 Judicial intervention in Nigerian turnarounds

CAMA 2020 sought to limit court involvement to essential oversight. In CVAs, the court facilitates the process at the outset and intervenes only if disputes arise. This differs from Kenya's CVA, which requires full court sanction. In administration, court involvement depends on how the process begins. Out-of-court appointments may see no court activity unless challenges arise or approvals are sought.

In the TCN CVA, the Federal High Court approved the process and emphasised that CVAs are intended to be seamless and less cumbersome. Justice Lifu noted that the lack of detailed procedural rules should not impede implementation. On the other hand, in court-ordered administrations, such as Moorhouse, judges require evidence that the company is insolvent or likely to be and that administration will likely achieve its purpose. Early cases show some judicial caution but also a willingness to support the rescue objectives of the CAMA 2020.

The Federal High Court has exclusive jurisdiction over insolvency, centralising cases in commercial centres such as Lagos, Abuja and Port Harcourt. While this can aid consistency, there is no specialist insolvency list, and judicial training remains necessary. Past experiences, such as the Skye Bank / Polaris Bank resolution under banking law, demonstrate the court's capacity to facilitate regulator-driven rescues.

So far, courts have responded positively, but as case numbers grow, efficiency and consistency will be tested. Training and sensitisation will be essential to prevent delays and unnecessary procedural burdens.

4.4 Success stories and early case studies in Nigeria

Nigeria's formal turnaround processes under CAMA 2020 are recent. While only a few cases are available for review, these cases are still important indicators of how the system operates. The most notable are the TCN CVA, the first of its kind, and the Moorhouse administration, one of the first administrations. The restructuring of Arik Air under the Asset Management Corporation of Nigeria (AMCON) is also relevant, as it shows how the new framework interacts with existing state-led interventions.

4.4.1 TCN

TCN owns the Federal Palace Hotel in Lagos, a leading hospitality and gaming business. By 2020, it faced severe financial distress from unsustainable debt and the impact of COVID-19 on tourism. The board chose a CVA instead of liquidation, making TCN the first Nigerian company to use this process. Two insolvency practitioners were appointed as nominees, and in November 2021 they obtained a Federal High Court order to convene creditor and shareholder meetings.

Over 75% of creditors by value approved the CVA, which included debt write-downs, rescheduled payments and a capital injection from the controlling shareholder. Secured creditors were handled separately, with the main secured bank agreeing not to enforce its security if TCN complied with the plan. The CVA was formalised in early 2022, allowing the hotel to remain open and gradually recover.

The TCN case is widely regarded as a landmark for Nigeria's rescue culture. It showed that a publicly listed company could restructure transparently and preserve value for creditors and shareholders. It also demonstrated the importance of early creditor engagement and the role of consensual arrangements with secured creditors. The CVA's ultimate success will depend on full compliance, but as of late 2022 TCN was meeting its obligations and considering early exit through refinancing.

4.4.2 Moorhouse

Moorhouse owns a boutique luxury hotel in Ikoyi, Lagos. In 2022, its creditors applied to the Federal High Court for an administration order, making this one of Nigeria's first administrations. The court appointed an experienced insolvency practitioner after finding that administration could yield a better outcome than liquidation.

The administrator convened the initial creditors' meeting within the statutory 42 days and proposed a conditional rescue plan. This included shareholder funding for renovations and debt settlement, with the option to sell the hotel if funding was not provided. Creditors approved the plan and the administrator retained authority to sell the property if conditions were not met. The process remains ongoing, but it has so far demonstrated the benefits of the moratorium, which prevented piecemeal enforcement and preserved the hotel's value.

Moorhouse illustrates how administration can be used to preserve value in single-asset operating companies and how the judiciary can support rescues when credible plans are presented. It also revealed procedural gaps, as practitioners had to rely on CAMA 2020's provisions and UK precedents due to the absence of detailed Insolvency Regulations.

4.4.3 *Arik Air and AMCON interventions*

Arik Air, Nigeria's largest airline, was taken over in 2017 by AMCON under a receivership arrangement, before CAMA 2020 came into force. AMCON maintained operations, reduced liabilities and sought investors, but the airline remained in distress. The case highlights a dual system, with AMCON using its special powers for large, systemic cases while CAMA 2020 governs most corporate rescues. Coordination between the two regimes remains limited.

A more positive AMCON-led example is Polaris Bank, created from the failing Skye Bank, which was later sold to private investors. While conducted outside CAMA 2020, it reflected rescue principles similar to those in formal administration.

TCN's CVA and the Moorhouse administration have provided early proof that Nigeria's new rescue tools can preserve businesses and improve creditor returns. These cases have built confidence among practitioners and the judiciary, though challenges remain in harmonising CAMA 2020 processes with AMCON interventions and sector-specific frameworks.

4.5 Key gaps and challenges in Nigeria's turnaround framework

Nigeria's rescue mechanisms are promising, but several gaps could limit their effectiveness if unaddressed.

1. ***Lack of automatic moratorium for CVAs***

   CAMA 2020 does not provide an automatic moratorium during a company voluntary arrangement. Creditors can initiate enforcement while negotiations are ongoing, potentially destabilising the process. In the TCN case, cooperation by major creditors allowed the CVA to succeed. However, in less cooperative scenarios, a single creditor could garnish bank accounts or commence liquidation before the CVA concludes. Other jurisdictions, such as the UK, offer a short moratorium or allow companies to apply for a stay. In Nigeria, companies may resort to initiating administration to gain a moratorium before proposing a CVA, adding cost and complexity.

2. ***Secured creditor resistance***

   Secured creditors are not bound by a CVA without consent. They wield significant influence in the administration process, including via the ability to appoint administrators. This can lead to pressure for liquidation rather than rescue. Although some creditors, as in the Moorhouse case, have supported rescues, the absence of cram down provisions means obstinate secured creditors can block reorganisations.

3. ***Unclear treatment of multiple creditor classes***

   CVA voting treats unsecured creditors as a single class and administration provisions do not clearly address cross-class cram downs. Complex capital structures involving banks, bondholders and trade creditors remain untested, creating uncertainty in large restructurings.

4. ***Insolvency practitioner capacity***

   The pool of qualified insolvency practitioners remains small, and the licensing framework is still developing. Limited expertise increases the risk of poor case management and conflicts of interest. While some practitioners have international training, scaling capacity is essential for Nigeria's market size.

5. ***Judicial familiarity and speed***

   Early cases have benefited from proactive judges, but inconsistent familiarity and court delays could undermine rescues. There are no dedicated insolvency courts and outcomes may vary.

6. ***Parallel regimes and regulatory overlap***

   Entities under AMCON or sector-specific regulators may bypass formal insolvency processes. Without alignment, significant cases, particularly in strategic sectors, may remain outside the formal rescue framework.

7. Cultural stigma

Directors often view insolvency as failure and creditors may mistrust the process. Greater public awareness and visible success stories are needed to change perceptions.

8. Legislative gaps

Technical issues, such as the treatment of preferential debts in CVAs and the absence of cross-border insolvency provisions, remain unresolved.

Nigeria's CVA and administration procedures under CAMA 2020 mark significant progress, with early cases showing potential to preserve value for creditors, employees and shareholders. However, procedural gaps, creditor resistance, limited practitioner capacity and cultural barriers need to be addressed. Strengthening the framework through targeted legislative reform, capacity building and better integration with existing regulatory regimes is essential to establish a credible and sustainable rescue culture.

4.6 Recommendations to enhance the efficacy of turnaround processes in Nigeria

To build on the gains of Nigeria's new insolvency regime and address the challenges identified, several measures are advisable.

1. Amend CAMA 2020 to introduce a CVA moratorium

A minor legislative change should provide for an automatic moratorium when a CVA is proposed, or at least allow the company to apply for a short stay on creditor actions. This could follow the UK's interim moratorium model. Even a 30-day freeze, extendable under nominee oversight, would greatly improve the viability of a CVA. Courts should also be empowered to order a stay when convening a CVA meeting.

2. Strengthen creditor participation and consent mechanisms

Secured creditor issues could be addressed by clarifying that if they vote in favour of a CVA or administration plan, they are bound by its terms, and by encouraging early engagement. Legislators could consider introducing a restructuring plan procedure, similar to the UK's Part 26A, allowing court-approved cram down of dissenting classes where fair and supported by at least one impaired class.

3. Develop insolvency rules and guidelines

The Corporate Affairs Commission and judiciary should fast-track detailed Insolvency Proceedings Rules to cover timelines, forms, notices, creditor meetings and reporting. Clear rules will reduce disputes and delays. In the interim, courts could adopt practice directions to expedite key applications.

4. Build capacity for practitioners and judges

The Business Recovery and Insolvency Practitioners Association of Nigeria should expand training on CVAs and administration under CAMA 2020. Partnerships with international bodies could deliver best practice insights. For judges, targeted workshops would improve familiarity with rescue concepts and expedite hearings.

5. Facilitate rescue financing and priority claims

Post-commencement funding should be encouraged through super-priority status and regulatory forbearance. The Central Bank could issue guidelines to support lending to companies under formal rescue. AMCON could also be repurposed to provide turnaround financing as its current mandate winds down.

6. Align AMCON and sectoral interventions with formal processes

AMCON and sector regulators should, where possible, use CAMA 2020 procedures rather than parallel approaches. Regulatory frameworks should protect key assets such as licences during restructuring to enable effective rescues.

7. Promote public awareness and remove stigma

Government and private stakeholders should publicise successful rescues to build confidence and encourage early intervention. Educational initiatives should be directed at directors, advisers and the public.

8. Monitor and refine the framework

Regulators should track CVA and administration outcomes, identify reasons for failure, and address abuses. The law should evolve in line with practical experience.

4.7 Conclusion

CAMA 2020 shifted Nigeria from fragmented receiverships and liquidation towards a rescue toolkit built around company voluntary arrangements, administration and refreshed scheme mechanics. Early signals are encouraging. TCN's court-supervised CVA shows the procedure can stabilise operations and align creditor recoveries with going concern value when proposals are credible and disclosure is disciplined. Administration, with its statutory moratorium on proceedings and enforcement, can arrest value leakage long enough to test a plan and, where used promptly and run transparently, has the capacity to outperform break up outcomes. Schemes of arrangement now sit alongside these tools and, importantly, CAMA introduced a time-limited moratorium in the scheme context to protect the process pending court sanction, which closes one of the historical gaps in Nigerian restructuring practice.

However, material constraints still limit the regime's hit rate. CVAs carry no automatic moratorium, so unless a company pairs the proposal with court protection or moves into administration, hostile enforcement can derail a viable plan, especially in creditor concentrated capital structures. Secured creditors retain significant leverage and receivership remains the default reflex for many lenders, so consensus often hinges on a single bank's risk appetite and timing.

Further, practitioner capacity is uneven, authorisation rules remain in flux and outside Lagos and Abuja, there are few teams with the depth to run time critical turnarounds.

Parallel public actors complicate the field. AMCON's powerful resolution mandate and sector regulators' intervention powers can collide with court guided restructurings, creating sequencing and jurisdictional frictions that sap momentum.

Additionally, court bandwidth is finite in the Federal High Court, while interlocutory disputes over notices, classes and votes can consume weeks, and appeals threaten to freeze already tight cash runways. Taken together, these frictions keep many cases on a path to liquidation, with true rehabilitations still rare.

The path to a reliable rescue culture is concrete. First, breathing space should be made to be predictable, either by grafting a short, court monitored moratorium onto CVAs for companies that file a basic viability statement and a 13-week cash flow, or by providing a streamlined protective order with hard timetables and creditor notice standards, so that tactical ambushes are deterred and genuine proposals get air.

Second, new money should be de-risked, by recognising narrowly framed, court supervised priority for working capital advanced during CVAs and administrations, capped and subject to a fairness test. This would enable enders to price risk while protecting existing creditors.

Third, practice directions should be issued on disclosure packs, class formation, voting reports and meeting timetables, so disputes narrow and are heard within days, not months.

Fourth, interfaces should be clarified, with guidance on how AMCON and sector regulators dovetail with court processes – including standstills, information sharing and the handoff from regulatory stabilisation to court supervised restructuring.

Fifth, capacity should be deepened, by accelerating licensing and CPD for insolvency practitioners, supporting regional panels beyond Lagos and building specialist lists within the Federal High Court for urgent restructuring work.

If Nigeria executes on these points, the legal architecture CAMA 2020 supplied will translate into more going concern rescues, higher creditor recoveries and fewer value destructive liquidations, with practice evolving in a distinctly Nigerian way rather than as a copy of foreign templates.

5. South Africa

5.1 Introduction

South Africa offers a more mature corporate rescue framework than the other countries reviewed. The Companies Act 71 of 2008 (Act), effective from May 2011, introduced business rescue under Chapter 6, replacing the ineffective judicial management system. Drawing on US Chapter 11 and Commonwealth models, the regime is adapted to local conditions, emphasising speed and practitioner-led solutions.

Business rescue is similar to administration: a financially distressed company is placed under the supervision of an independent business rescue practitioner and a moratorium on claims is imposed to provide breathing space. The practitioner collaborates with management and creditors to develop and implement a business rescue plan to restore solvency or, if full rescue is not possible, to deliver a better outcome for creditors than immediate liquidation. Uniquely, the process can begin voluntarily by board resolution without court approval, or through a court application by an affected party such as a creditor, shareholder or employee. This accessibility has led to significant use since 2011.

High-profile companies in sectors from aviation to retail have entered business rescue, with objectives extending beyond creditor recovery to job preservation and maintenance of going concerns. By mid-2022, around 4,370 companies had filed for business rescue, demonstrating substantial uptake. Outcomes, however, are mixed: only about 19% resulted in full implementation of a rescue plan. Many cases converted to liquidation or ended when financial distress ceased, sometimes due to refinancing or stabilisation.

This section examines the South African framework in detail, considering its legal structure, judicial interpretation, and notable case studies such as South African Airways, Edcon and Comair. Strengths include a comprehensive moratorium and a cadre of specialised practitioners. Weaknesses include a relatively low success rate, procedural delays and high costs. The analysis will compare South Africa's practitioner-driven approach with Kenya's more court-centric model, identify reasons for underperformance and propose targeted reforms to improve outcomes. Lessons from South Africa's experience will be drawn for application in other jurisdictions.

5.2 Formal turnaround processes in South Africa

South Africa's corporate turnaround process is centred on business rescue under Chapter 6 of the Companies Act 2008. The Act also provides for compromises or arrangements with creditors under section 155, similar to schemes of arrangement, though these are used far less often than business rescue proceedings.

5.3 Business rescue

A company qualifies if it is financially distressed, meaning it is reasonably unlikely to pay its debts in the next six months or is likely to become insolvent on a balance sheet basis within that period. The process can be initiated voluntarily by board resolution, provided liquidation has not begun, or involuntarily by court application from an affected party such as a creditor, shareholder or employee. On commencement, by filing with the Companies and Intellectual Property Commission (CIPC) or by court order, three immediate effects follow:

1. Appointment of a business rescue practitioner (BRP) to supervise the company.
2. A broad moratorium on creditor enforcement, legal proceedings and financial-related employment terminations.
3. Transfer of management powers to the BRP, with directors retaining office but acting under the BRP's authority.

The primary aim is to return the company to solvency. If that is not possible, the objective becomes achieving a better outcome for creditors than liquidation. The BRP must convene the first creditors' meeting within 10 business days and publish a rescue plan within 25 business days, although this is almost always extended by creditor consent. The plan must detail the company's background, restructuring proposals and projected returns compared to liquidation. Approval requires 75% in value of creditors' voting interests and 50% of independent creditors. If rejected, the process usually converts to liquidation unless the court orders otherwise or dissenting creditors are bought out.

The regime emphasises practitioner control to avoid management-driven delays. Post-commencement financing is allowed and ranks ahead of unsecured pre-commencement debt and in some cases, just after existing secured debt with court or creditor approval.

5.4 Compromise with creditors

This allows a company, even if not financially distressed, to propose an arrangement to creditors, requiring 75% in value approval per class and court sanction. Unlike business rescue, there is no automatic moratorium. It is used mainly for balance sheet restructuring or after a failed rescue. The Steinhoff case used section 155 for a global settlement as the operating companies were not insolvent.

5.5 Judicial intervention

Although designed for minimal court involvement at the start, the judiciary has played a central role in shaping business rescue. If an affected party applies for rescue, courts require proof of financial distress and a reasonable prospect of rescue, as established in Oakdene Square Properties (2013). This threshold is lower than a probability test, requiring only a credible, sensible plan. Courts have rejected rescues where no going concern exists or where the process is a delaying tactic.

During rescue, courts hear disputes on practitioner conduct, powers and interpretation of the Act. For example, in *Caterpillar Financial v Microstone* (2016), the court held that the moratorium does not extinguish third party property rights, affecting how BRPs handle leased assets. Courts can replace practitioners for good cause, approve post-commencement finance with enhanced priority, and in rare cases, cram down a rejected plan if just and equitable.

Notable cases illustrate the court's influence. In *Koen v Wedgewood Village* (2012), the court held that the reasonable prospect test is deliberately low to avoid premature liquidation. In *New City Group* (2014), the Supreme Court of Appeal stressed that rescue is justified if it can deliver any meaningful improvement over liquidation. In *Fintech v Panda Trading* (2017), the court terminated a rescue where no progress was made.

While litigation can delay proceedings, courts generally expedite hearings and uphold the law's pro-rescue purpose, as seen in South African Airways (SAA), where multiple challenges were resolved in a way that preserved the rescue effort.

The South African model combines broad moratoria, strong practitioner powers and supportive judicial oversight. Weaknesses include a relatively low success rate, procedural delays and costs. Nonetheless, it remains the most developed turnaround regime in Africa, offering valuable lessons for other jurisdictions.

5.6 Success stories and case studies in South Africa

South Africa's business rescue docket includes both notable successes and high-profile failures, offering rich lessons on factors that influence outcomes.

5.6.1 SAA

One of the most prominent cases was the business rescue of SAA, the state-owned national airline. SAA had been loss-making for years and ran out of cash in late 2019. In December 2019, SAA's board voluntarily placed the airline into business rescue, the first time a large state enterprise underwent this process. Two practitioners were appointed and took on the herculean task of restructuring a legacy airline under intense political and public scrutiny.

SAA's business rescue involved extensive stakeholder negotiations, including with trade unions due to planned workforce reductions, aircraft lessors, lenders and the Government as shareholder and key lender. During rescue, all flights were grounded by September 2020, partly due to the COVID-19 impact, and the practitioners had to formulate a plan to radically downsize the airline and source new capital. The turning point was when the Government agreed to provide R10.3 billion, about USD 700 million, in funding to support the rescue plan. The final business rescue plan, approved by creditors in mid-2020, included cutting roughly 80% of jobs, with severance packages financed by the Government funding, and settling or compromising debts to creditors at a few cents on the rand except certain secured debt. The plan also called for finding a strategic equity partner to invest in the relaunched airline.

After 17 months in rescue, in April 2021 the practitioners filed a "substantial implementation" notice indicating that the plan had been implemented to a point where SAA could exit business rescue and resume normal operations under new management. The airline was handed back to its board and resumed limited flights later in 2021. Subsequently, the Government announced a deal in 2021, still in progress as of 2025, to sell 51% of SAA to a private consortium to recapitalise and run the airline going forward.

SAA's case can be regarded as a qualified success of business rescue. Notably:

1. The company was not liquidated, which would have meant total shutdown, massive job loss and creditors getting near-zero.
2. With Government backing, SAA managed to restructure its balance sheet and significantly reduce its cost base.
3. Creditors took haircuts but received some return and critically, if SAA returns to profitability under new owners, some instruments gave them potential upside.
4. Out of approximately 4,000 employees, about 1,000 were retained in the new SAA, so while 75% lost jobs, core employment, the brand and operations were preserved.

The success hinged on substantial Government financial support, a unique factor not present for most private rescues. It underscores that when fresh funding is available to address legacy debt and provide working capital, the chances of rescue rise significantly.

5.6.2 *Edcon Limited*

Edcon Limited, once South Africa's largest non-food retailer and owner of Edgars, Jet and CNA stores, went through business rescue in 2020. Edcon had been struggling for years, and the COVID-19 lockdowns pushed it over the edge. In April 2020 it filed for business rescue. The practitioners decided that a full turnaround, saving Edcon as an intact company, was unviable given its R6.7 billion debt. Instead, the rescue plan was essentially an orderly breakup: Edcon's viable parts would be sold to new owners.

The rescue plan, approved by creditors in June 2020, led to:

1. The sale of the Jet chain, a discount clothing retailer, to The Foschini Group for R480 million.
2. The sale of parts of the Edgars department store chain to a competitor, Retailability Limited.
3. Closure of remaining unprofitable stores and liquidation of some subsidiaries.

This strategy allowed the Edcon business, though not the company Edcon itself, to continue in some form. Jobs were largely preserved in the sold stores as the new owners took on those operations. From creditors' perspective, the sale proceeds combined with inventory liquidation generated some payout, although not significant. Secured lenders got a portion of their claims, and unsecured creditors very little.

The South African Unemployment Insurance Fund (UIF), which had lent Edcon R2 billion in a prior out-of-court restructuring, received partial repayment through the rescue. The rescue, while not saving Edcon, saved many jobs via transfer to new owners.

Edcon's rescue can be seen as successful in a broader economic sense: it prevented a chaotic collapse during the pandemic that would have destroyed about 20,000 jobs and flooded the market with unpaid creditor claims. Instead, through business rescue, major parts of the business were transplanted into healthier companies, and about 12,000 jobs survived while creditors got at least something. The Edcon case illustrates that "rescue" need not mean saving the entity. It can mean saving the business value for the economy and getting a better outcome for creditors than liquidation.

5.6.3 *Comair Limited*

Not all cases end well. Comair Limited, an operator of British Airways in Southern Africa and low-cost Kulula airline, entered business rescue in May 2020 after COVID-19 grounded flights. Initially, it showed promise: a rescue plan was approved in September 2020 with new investors injecting R500 million to restart operations. Comair resumed flights in late 2020 and early 2021. However, by mid-2022, Comair ran into cash flow problems again as investor funding commitments faltered amidst slow pandemic recovery and high fuel prices. The practitioners suspended flights in May 2022 in search of further funding but could not secure any. In June 2022, they reported no reasonable prospect of rescuing Comair, and the rescue converted to liquidation.

Comair's failure underscores some common pitfalls in turnaround attempts:

1. Over-optimistic assumptions, with the plan relying on a faster travel rebound and stable costs.
2. Insufficient funding, with the R500 million inadequate to sustain operations until profitability.
3. Pre-existing structural weaknesses such as an ageing fleet and stiff competition.

This case has been cited in debates about business rescue's success rate. It shows that even a formal rescue with an initially approved plan can ultimately collapse, meaning the effort only delayed the inevitable. Creditors in Comair's case ended up worse off for the delay because, by liquidation, additional debts had accrued, though employees kept jobs for an extra two years, which is a social benefit.

5.7 Recommendations to improve formal turnaround outcomes in South Africa

To strengthen the performance of South Africa's business rescue regime and address key shortcomings, the following measures are recommended.

1. ***Encourage early intervention***

   The Act should be amended to require directors to consider business rescue when clear financial distress indicators are present and record reasons for not filing. Incentives should be introduced such as temporary tax relief or targeted Government support for companies that file early. The CIPC could monitor financial distress signals from annual returns and encourage timely intervention. Acting sooner preserves value and improves success rates.

2. *Enhance access to post-commencement funding*

A Rescue Financing Fund should be created, possibly through the Industrial Development Corporation or a public-private partnership, to provide debtor-in-possession loans to approved rescues. Partial Government guarantees should be offered to reduce lender risk. The priority of this financing should be clarified in law, potentially granting super-priority above existing security with court approval. Legislated creditor payment holidays or interest standstills during rescue should also be considered, as should encouraging banks to develop "rescue lending" products supported by favourable regulatory treatment when linked to credible plans.

3. *Improve practitioner regulation and support*

Oversight of BRPs should be strengthened by creating a statutory Insolvency Practitioners Board or empowering SARIPA with regulatory authority. Certification levels should be introduced for different case complexities and require new practitioners to gain experience under senior supervision. Multidisciplinary teams should be mandated for large rescues, allowing the cost to be treated as recoverable administrative expenses.

4. *Reduce costs and bureaucracy for SMEs*

A simplified rescue option should be introduced for small businesses, modelled on the UK's "small company moratorium." A short moratorium should be allowed based on an accountant's certification while negotiations take place, with light supervision and minimal court involvement. Plans should be made binding if approved by a simple majority of creditors without objections. Practitioners' fees should be capped or scaled in proportion to company size.

5. *Bolster creditor confidence and engagement*

More frequent progress updates should be required from practitioners, ideally monthly, and the role of creditors' committees should be formalised in large cases. Consideration should be given to allowing court-approved cram downs of secured creditors if they receive at least liquidation value and a majority of all creditors by value approve the plan.

6. *Judicial process improvements*

Specialised commercial courts should be expanded, and judges should be trained in complex insolvency, with fast-track appeals in rescue matters. Interim judicial relief that allows rescues to proceed while disputes are resolved later should be encouraged.

7. *Public sector involvement*

Protocols with SARS and other Government creditors should be established to support viable rescue plans, including authority to compromise certain statutory claims. Accepting modest losses can yield long-term revenue if the company survives.

8. *Data and continuous improvement*

A national database of rescue outcomes should be maintained, tracking timelines, returns to creditors, jobs saved and reasons for failure. Annual analysis should be used to identify effective practices, guide reforms and address sector-specific challenges.

Implementing these measures would increase rescue success rates, particularly by unlocking finance and improving professional capacity. Aligning the interests of creditors, employees and the State through clearer rules and cooperative practices will also reduce friction.

5.8 Conclusion

Chapter 6 shifted South Africa from liquidation first to rehabilitation minded, and it has been used across the spectrum, from SMEs to SAA and Edcon, to preserve jobs and stabilise critical services. The framework matters in normal cycles and in crises, because the moratorium, the court supervised process and practitioner-led planning can arrest value leakage, create a breathing space for deals and coordinate stakeholders who would otherwise race to enforce.

Outcomes remain mixed. Only a minority of filings end in fully implemented plans, many still convert to liquidation, often because filings come late, working capital is exhausted, disclosures are thin, and the operational fix is unclear. Practitioner quality is uneven, court lists are heavy and adversarial behaviour by key stakeholders, including landlords, tax authorities and major lenders, can slow or derail momentum. The reported success rate also depends on what you measure. Counting only fully implemented plans misses the sale of business outcomes and better than liquidation recoveries that still preserve value, so headline statistics should be read with caution.

The practical lessons are consistent. Timing is decisive. Companies that file while there is still a core franchise, cash runway and bargaining chips have a chance, while companies that file on the courthouse steps do not.

Liquidity is oxygen – and accordingly, post-commencement finance must be identified early, documented cleanly and linked to concrete milestones. Without it, the moratorium buys time but not viability.
Competence and candour matter, and credible, data backed plans, clear operational resets and disciplined communication keep classes aligned. Weak plans, late numbers and shifting narratives destroy trust. Aligned incentives, realistic liquidation baselines and credible alternatives to liquidation are what move votes, not rhetoric.

Targeted improvements would raise the hit rate without rewriting the statute. Encouragement of earlier filings is therefore important, for example by strengthening director safe harbour guidance for timely entry and by signalling that late, tactical filings will attract cost and oversight consequences.

Improved access to post-commencement finance, clearer guidance on ranking and security for new money and standardised court orders that recognise priority within the statutory scheme are also important, as is narrow credit support for short-term working capital in systemic cases.

Streamlined procedure, published time standards for urgent rescue applications along with short, standardised disclosure packs before meetings, tightened rules on class formation and related party voting and specialist rolls to hear rescue matters promptly would also help.

Lifting professional standards, strengthening gatekeeping on appointments, expanding continuing professional development, publishing anonymised case postmortems so lessons compound, and using proportionate sanctions for misconduct or abuse should also be explored. Clarifying interfaces with sector regulators and public entities and setting expectations for information sharing and standstills will help ensure regulatory action and business rescue reinforce rather than collide.

With earlier, better prepared entries, predictable funding mechanics, stronger practitioner discipline and faster court handling, South Africa can convert more filings into genuine turnarounds. That would consolidate the policy shift from a creditor centric default to a regime that balances liquidation avoidance with stakeholder value preservation and in doing so, would strengthen economic resilience.

6. Cross-cutting lessons and recommendations

1. Law and rescue culture

All four systems have modern statutes, yet statute without culture under-delivers.

Early, non-stigmatised entry must become normal board behaviour. Directors need clear safe harbour signals for timely filings, creditor bodies need consistent messaging that early rescue protects value and regulators should reinforce the norm that waiting until cash is exhausted is a breach of duty, not prudence.

2. Courts, oversight with speed

Each jurisdiction mixes court control with practitioner management, but backlogs and uneven insolvency experience slow outcomes. The fix is procedural. Specialist lists, short timetables by default, template orders for common relief, early triage of plainly unviable cases, active case management to narrow issues and a standing expectation that interlocutory fights are heard quickly on affidavits, not months later on sprawling records, should be actively pursued.

3. Breathing space that actually breathes

Rescue needs a predictable standstill. South Africa's business rescue and Kenya's administration provide automatic moratoria. Uganda's provisional administration does as well, while schemes in all four and Nigeria's CVA do not. Each system should codify the scope of the stay, including secured enforcement, crystallisation, set off and tax and labour proceedings. A clear leave to proceed test should be set, attaching costs or sanctions for violations to deter tactical pressure.

4. Secured creditors, consent and principled cram down

Secured lenders carry decisive weight everywhere. Where the law gives them an absolute veto, viable plans die. Where it allows limited cram down, courts need tools to protect collateral value and fairness. The recommendation is narrow and principled. Allow cram down only where the dissenting secured creditor receives at least liquidation value, where the plan is feasible on credible numbers and where adequate protection is provided – for example replacement liens, cash payments or equity style participation. Valuation guidance should be published and independent expert reports should be required, so fights are about numbers, not noise.

5. ***Funding without a plan fails***

All four regimes struggle to fund trading and implementation. South Africa recognises post-commencement finance with statutory preferences, but lenders still hesitate. Kenya, Uganda and Nigeria lack clear, court-supervised super priority for rescue funding. A capped, tightly supervised priority should be introduced for new money that pays wages, utilities and critical suppliers. Disclosure of terms should be required, while allowing limited security over unencumbered assets. This should be paired with practical public support where systemic risk is present – for example tax time to pay, targeted guarantees or utility standstills tied to milestones.

6. ***Practitioner capacity and regulation***

Results track capability. There should be larger, better trained panels, requiring continuing professional development with rescue specific modules. Fit and proper and conflict rules should be enforced and team-based appointments on larger files should be encouraged so financial, operational and legal skills sit at the table. Anonymised post-mortems should be published on major cases, so lessons compound and poor practice is not repeated.

7. ***Measure what matters, not just headlines***

Consistent metrics should be defined and published on time to filing, time under moratorium, plan confirmation rate, plan implementation rate, distributions by class, going concern transfers, jobs preserved and professional costs as a share of estate value. Without data, policy chases anecdotes.

With data, courts and ministries can refine rules – for example class voting thresholds, disclosure packs and timelines, to where the bottlenecks actually are.

8. ***People and place align rescue with labour and industrial policy***

Turnarounds impose costs on workers and suppliers. Rescue should be linked to retraining and redeployment programmes. Wage support or short time arrangements should be provided where jobs are plausibly preservable, and there should be coordination with industrial policy for sectors that are strategic or export facing. Clear communications to employees, tax authorities, landlords and local authorities should be provided to reduce friction and litigation risk during the standstill.

In conclusion, across Kenya, Uganda, Nigeria and South Africa, the law has moved from liquidation first to rescue capable. The pattern is consistent. Where companies file early, secure working capital, present credible numbers and are led by competent practitioners under firm, speedy judicial supervision, rescues can beat break up.

Where filings are late, cash is gone, disclosure is weak and stakeholders fight by reflex, and proceedings drift into liquidation. The next gains will come less from rewriting whole statutes, and more from sharpening procedure, clarifying funding priorities, raising practitioner standards and normalising early entry.

If those practical levers are pulled, corporate rescue can become a mainstream, reliable option that preserves value for creditors, protects viable jobs and strengthens economic resilience.

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