



Navigating Winding-Up Procedures Under CAMA 2020:

**A Comprehensive Overview of Modes,
Procedures, and Stakeholder Considerations**

Introduction

Winding-up signifies the structured conclusion of a company's operations, involving the liquidation of assets and equitable distribution of proceeds to creditors and shareholders. Whether initiated voluntarily or involuntarily, the process adheres to legal guidance, ensuring fairness and transparency. Winding-up is governed by specific laws to guarantee an orderly cessation of operations while safeguarding the interests of all stakeholders.

Understanding winding-up procedures is crucial for various stakeholders in the corporate realm. This knowledge ensures legal compliance and adherence to regulatory frameworks, aligning corporate governance practices with established laws. For shareholders and creditors, a clear comprehension of these procedures safeguards their interests during the winding-up process, allowing for active participation in decision-making and protecting their investments. Company executives benefit from understanding these processes as it enables strategic decision-making, aiding in the evaluation of options and the selection of the most suitable winding-up type.

Additionally, an accurate understanding minimizes legal risks, contributes to efficient financial issue resolution, and preserves the company's reputation during the wind-down. Creditors, too, can maximize debt recovery opportunities by navigating the winding-up process effectively. Overall, a comprehensive understanding of winding-up procedures contributes to economic stability, instils confidence in the market, and facilitates an orderly and equitable resolution of corporate affairs.

The Laws relating to the Procedure of Winding up of Companies in Nigeria include:

- Companies and Allied Matters Act, 2020
- Companies Winding up Rules.
- Companies Proceeding Rules
- Federal High Court (Civil Procedure) Rules 2019
- Federal High Court (Amendment) Act, 2005
- Companies' Regulation 2021, etc

However, for the purpose our discourse, we shall focus mainly on the procedure for winding up of a company under the provisions of Companies and Allied Matters Act, (CAMA) 2020.





The Companies and Allied Matters Act (CAMA) 2020 introduced significant reforms to the corporate landscape in Nigeria, particularly in the realm of winding-up procedures. Winding up a company is a complex process that involves crucial decisions affecting both shareholders and creditors. This write-up aims to delve into the intricacies of winding-up under CAMA 2020, shedding light on the various modes of winding-up and their procedures. In addition, it will explore the impact of these procedures on the stakeholders, drawing comparisons between voluntary winding up and court-ordered winding up, and addressing the possibility of concurrent application. The harmonization of interests between shareholders and creditors will be a focal point, alongside procedures for resolving disputes and differences that may arise during the winding-up process. Notably, the discussion will extend to the court's role in determining the preference for the appointment of a liquidator, weighing the interests of creditors against those of shareholders and the company itself. This comprehensive exploration seeks to provide clarity on the nuanced aspects of winding-up under CAMA 2020 and offer valuable insights for corporate entities navigating through these procedures.

Modes Of Winding-up Under CAMA 2020

The modes of winding-up under CAMA 2020 can be summarised as follows:



Voluntary Winding-up

Voluntary winding-up is a deliberate and self-initiated dissolution of a company, authorized by the decision and approval of its shareholders to cease operations. This process is activated through a resolution within the company, circumventing the need for a court petition.

The Companies and Allied Matters Act (CAMA)¹ outlines the circumstances under which a company may undergo voluntary winding-up. Firstly, it can occur when the predetermined period of the company's duration, as specified in its articles, comes to an end, or when a stipulated event triggering dissolution, as per the articles, takes place. In such cases, a resolution passed during a general meeting of the company may call for voluntary winding-up. Secondly, voluntary winding-up can also be initiated if the company, through a special resolution, resolves that winding up is necessary.

1. Section 620 (1) (a) and (b) CAMA 2020

Upon the passage of a resolution for voluntary winding-up, a company must, within 14 days, publish the resolution through advertisement in the Federal Government Gazette or two daily newspapers, as well as inform the Corporate Affairs Commission.² A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution for voluntary winding-up³.

The impact of voluntary winding-up on the company's operations is significant. Upon the initiation of voluntary winding-up, the company is required to halt its regular business activities, except to the extent necessary for the beneficial completion of the winding-up process. It is crucial to understand that, despite any provisions in the company's articles, the corporate status and powers of the company persist until the formal dissolution takes place. This ensures that the company can continue to function to the extent required for the winding-up proceedings, maintaining its legal existence until the process is complete.⁴

Under CAMA, voluntary winding-up proceedings can be sub-categorized into 2 (two), Members Voluntary Winding up and Creditors Voluntary Winding up.

Members Voluntary Winding Up

The procedure for members voluntary winding up can be summarised as follows.



Resolution for Winding-up

The process of members voluntary winding up commences with the members of the company passing a resolution at a general meeting indicating the intent to wind up the company voluntarily.⁵



Statutory Declaration of Solvency

Thereafter, the directors, or the majority in case of more than two directors make a statutory declaration of solvency to the effect that they have made a full inquiry into the affairs of the company and that, having done so, they have formed the opinion that the company will be able to pay its debts in full within a period, not exceeding 12 (twelve) months from the commencement of the winding-up.⁶ However, for this declaration to be valid, it must be made within 5 (five) weeks before the resolution for winding up, and both the declaration and resolution need to be submitted to the Corporate Affairs Commission (“CAC or the Commission”) for registration within 15 (fifteen) days after passing the resolution.⁷

The declaration must also include a statement of the company's assets and liabilities as of the latest practicable date before making the declaration. A director making a false declaration under this section regarding the company's ability to pay its debts within a specified period during voluntary winding-up may face a fine or imprisonment for up to three months.⁸

2. Section 621 CAMA 2020
3. Section 622 CAMA 2020
4. Section 623 CAMA 2020
5. Section 620 (b) CAMA 2020

6. Section 625 (1) CAMA 2020
7. Section 625 (2) (a) CAMA 2020
8. Section 625 (3) CAMA 2020



Appointment of Liquidator

During this process, members of the company shall appoint a liquidator, an accredited insolvency practitioner, who shall be responsible for overseeing the winding-up process, realizing assets, and distributing proceeds.⁹



Publication and Notification to the Corporate Affairs Commission (CAC)

The resolution appointing the liquidator is required to be published in the Federal Government Gazette or at least two national newspapers, circulating in areas where the company is headquartered.¹⁰

Thereafter, the company notifies the CAC within 14 (fourteen) days of passing the resolution¹¹, submitting the statutory declaration of solvency. If default is made in complying with this requirement, the company and each officer of the company who is in default shall be liable to a penalty in such amount as the Commission may specify in its regulations and for the purposes of this subsection the liquidator of the company shall be deemed to be an officer of the company¹².



Commencement of Liquidation

The liquidator commences the liquidation process, notifying the CAC of the appointment and, if necessary, other relevant agencies. An interim account may be prepared. It is important to note that a voluntary winding-up commences upon the passing of the resolution.¹³

9. Section 627 CAMA 2020
10. Section 621 CAMA 2020
11. Section 621 (1) CAMA 2020

12. Section 621 (2) CAMA 2020
13. Section 622 CAMA 2020



Realization & Distribution of Assets

The liquidator realizes company assets, possibly disposing of some assets, and distributes the remaining proceeds to members according to their shareholding ratios. Where the winding-up extends beyond 1 (one) year, the liquidator is required to convene a general meeting of the company annually, starting from the first year of the winding-up. This meeting should be held within 3 (three) months from the end of each year, or a longer period as permitted by the Commission. During the meeting, the liquidator must present an account of their actions, dealings, and the conduct of the winding-up in the preceding year. The account must be sent to all members at least 14 days before the meeting. Failure by the liquidator to comply with this requirement may result in a penalty specified by the Commission in its regulations¹⁴.



Final Account and Final Meeting

Upon the completion of the company's winding-up, the liquidator must prepare an account detailing the conduct of the winding-up and the disposal of the company's property. A general meeting of the company is then convened for the purpose of presenting the account and providing explanations¹⁵. The Notice of the meeting is published in the Federal Government Gazette and 2 (two) newspapers in Nigeria, circulating in the relevant locality, at least one month before the meeting.¹⁶

Within 7 (seven) days after the meeting, the liquidator must send a copy of the account to the Commission and provide a return detailing the meeting's holding, date, and other relevant information. Failure to comply with these requirements may result in a penalty determined by the Commission's regulations, accruing for each day of default.¹⁷

Upon receiving the account and return, the Commission registers them. After (3) three months from the registration of the return, the company is considered dissolved. However, the Court has the authority to defer the dissolution date upon application by the liquidator or any other interested party. In such cases, the person making the application must deliver a certified true copy of the court order to the Commission within seven days, failing which incurs a penalty for each day of default. If the liquidator neglects to call the required general meeting, they are subject to a penalty specified by the Commission's regulations.¹⁸

14. Section 630 (1) and (2) CAMA 2020

15. Section 631 (1) CAMA 2020

16. Section 631 (2) CAMA 2020

17. Section 631 (3) CAMA 2020

18. Section 631 (4), (5) and (6) CAMA 2020



Completion of Exercise

The liquidator ensures all necessary steps are completed, including the publication of minutes in newspapers and notification to the CAC, concluding the voluntary winding-up process.

Upon the completion of the company's winding-up, the liquidator is obligated to prepare final accounts detailing the conduct of the winding-up, trading results during the company's business period, and the disposition of its property. These final accounts must be sent to every member of the company. Subsequently, the liquidator must convene a general meeting to present and explain these accounts.¹⁹

Within 28 days after this meeting, the liquidator is required to send copies of the accounts, along with a statement of the meeting's holding and date, to the Commission for registration.²⁰



Creditors' Voluntary Winding Up

Another aspect of voluntary winding-up is the Creditors' Voluntary Winding-up. The procedure for this is quite distinct and is outlined as follows:



Meeting of the Company and Creditors (Resolution for Winding up)

Under this process, the company is required to convene a meeting of its Creditors on the same day or the day following the meeting where the resolution for voluntary winding-up is to be proposed. Notices for the creditors' meeting must be sent by post simultaneously with the notices for the company's meeting. This ensures that creditors are informed about the proceedings and can participate in the decision-making process related to the winding-up resolution.²¹

However, where the company's meeting for the resolution on voluntary winding-up is adjourned and later passed at the adjourned meeting, any resolution passed at the creditors' meeting is considered effective as if it had been passed immediately after the initial company resolution.²²

19. Section 633 (3) CAMA 2020

20. Section 633 (4) CAMA 2020

21. Section 635 (1) CAMA 2020

22. Section 635 (5) CAMA 2020



Publication of Notice

The company is mandated to publish a notice of the creditors' meeting. This notice must be published once in the Federal Government Gazette and at least once in two daily newspapers printed in Nigeria and circulating in the district where the company's registered office or principal place of business is located. This ensures that creditors receive adequate and widespread notification about the upcoming meeting.²³ It is also imperative that the company notify the CAC within 14 days of passing the winding-up resolution.



Appointment of Liquidator

The creditors and company may at their respective meetings nominate a liquidator for winding up the company's affairs and distributing its assets. If the nominees differ, the liquidator nominated by the Creditors takes precedence. In the absence of a creditor-nominated person, the company's nominee becomes the liquidator. However, if there are conflicting nominations, any director, member, or creditor can, within 7 (seven) days of the creditors' nomination, apply to the Court. The application is to seek an order either confirming the company's nominee as the sole liquidator or appointing someone else as liquidator, either instead of or jointly with the creditors' nominee.²⁴



Cessation of Directors powers

Upon the appointment of a liquidator, all the powers of the directors shall cease, except there is a Committee of Inspection, or if there is no such committee, the creditors shall sanction the continuance²⁵.



Committee of Inspection

The Creditors, at their meeting, can establish a Committee of Inspection with a maximum of five members. The company, either during the meeting for voluntary winding-up or in a subsequent general meeting, may appoint individuals (not exceeding five) to the committee. Creditors have the option to resolve that certain persons appointed by the company should not be committee members. If such a resolution is passed, those individuals are disqualified unless the Court directs otherwise. The Court, if necessary, may appoint other individuals to the committee in place of those mentioned in the resolution.²⁶

The process: The process must follow the pattern for voluntary winding up except the fact that the creditor must follow a statutory hierarchy of payment in distributing the assets of the company before it is finally wound up.

24. Section 636 (1) CAMA 2020

25. Section 636 (2) CAMA 2020

26. Section 637 (1) CAMA 2020



General Meeting.

Where the winding-up surpasses one year, the liquidator must hold general meetings for both the company and creditors. These meetings should occur at the end of each year or within three months thereafter, or as extended by the Commission. The liquidator presents an account of their activities and the winding-up's progress during the previous year at these meetings.²⁷



Final Meeting and Dissolution

Once the company's affairs are fully wound up, the liquidator is required to prepare an account of the winding-up. Subsequently, the liquidator calls a general meeting for both the company and creditors to present the account and provide explanations. Notices for these meetings are published in the Federal Government Gazette and two newspapers in Nigeria, at least one month before the meetings.²⁸

Within 7 (seven) days after the meetings, the liquidator sends a copy of the account and returns to the Commission. Failure to do so results in a daily penalty specified by the Commission's regulations. If a quorum is not formed at the meetings, the liquidator can make a return stating the meeting was duly summoned but lacked a quorum.²⁹

Upon receiving the account and returns, the Commission registers them. After 3 (three) months from registration, the company is deemed dissolved. However, the Court can, upon application by the liquidator or any interested person, defer the dissolution for a period it deems fit. The person obtaining the Court order must deliver a certified true copy of the order to the Commission within 7 (seven) days, failing which incurs a daily penalty as specified in the regulations.³⁰

In the voluntary winding-up of a company, it's crucial to recognize that the right of any Creditor or Contributory to have the company wound up by the Court is not precluded. However, if the applicant for winding-up is a Contributory, the Court will only grant the order if it is convinced that the rights of Contributories would be prejudiced by the members' or creditors' voluntary winding-up, as applicable.³¹



27. Section 640 (1) CAMA 2020
28. Section 641 (1) and (2) CAMA 2020
29. Section 641 (3) CAMA 2020

30. Section 641 (4) and (5) CAMA 2020
31. Section 648 CAMA 2020

Compulsory Winding-up Process



Winding up by the Court.

Pursuant to Section 570(1)³², the court with the authority to wind up a company is the Federal High Court situated within the jurisdiction where the registered office or head office³³ of the company is located.

There are certain instances where a company may be wound up by the court, such as if the company has by special resolution resolved that the company be wound up by the Court; default is made in delivering the statutory report to the Commission or in holding the statutory meeting; the number of members is reduced below two in the case of companies with more than one shareholder; the company is unable to pay its debts; the condition precedent to the operation of the company has ceased to exist; or the Court is of opinion that it is just and equitable that the company should be wound up.³⁴

A company is considered unable to pay its debts if: a creditor, to whom the company owes more than ₦200,000, has served a demand for payment, and the company neglects to pay, secure, or compound for the debt to the creditor's reasonable satisfaction within three weeks; execution or other legal process based on a court judgment, act, or order in favour of a creditor is returned unsatisfied, either wholly or partially; or the Court, considering any contingent or prospective liabilities of the company, is satisfied that the company is incapable of paying its debts.³⁵

An application for the winding-up of a company can be made through a petition presented by:

 <p>The company or a director;</p>	 <p>A creditor, including a contingent or prospective creditor of the company;</p>	 <p>The official receiver;</p>	 <p>A contributory;³⁶</p>
 <p>A trustee in bankruptcy to, or a personal representative of, a creditor or contributory;</p>	 <p>The Commission under section 366 of this Act;</p>	 <p>A receiver, if authorized by the instrument under which he was appointed; or</p>	 <p>All or any of those parties, either together or separately.³⁷</p>

32. CAMA 2020

33. Section 570 (2) CAMA defines "registered office" or "head office" to mean the place which has longest been the principal place of business of the company during the six months immediately preceding the presentation of the petition for winding-up.

34. Section 571 CAMA 2020

35. Section 572 (a)-(c) CAMA 2020

36. Section 572 (2) (a) and (b); a contributory is ineligible to file a winding-up petition unless the number of members falls below two (for companies with multiple shareholders) or the shares were allotted or held in their name for at least six months within the 18 months preceding the winding-up or were acquired through the death of a previous holder.

37. Section 573 (1) CAMA 2020

In relation to the commencement of winding up by the Court, if a resolution for voluntary winding-up is passed by a company before the presentation of a winding-up petition to the Court, the winding-up is considered to have commenced at the time of passing the resolution.³⁸ All proceedings in the voluntary winding-up are deemed valid unless the Court, upon proof of fraud or mistake, directs otherwise. In any other case, when the Court presents the winding-up petition, the winding-up of the company is deemed to commence at that time.³⁹

The procedure for the winding-up of a company by the Court can be summarised as follows:



Petition to the Court

The winding-up process is initiated by filing a petition with the court. The petition can be filed by the company, creditors, members, or regulatory authorities. The petition is to contain a concise statement of the nature of the claim made and the relief sought and attached to the petition is an affidavit of non-multiplicity of action on the same subject matter. The petition is to be served not less than 7 days before the day fixed for hearing of the petition.



Court Hearing

The court will schedule a hearing to consider the petition. If the court is satisfied that grounds for winding up exist, it may issue a winding-up order.

Upon hearing a winding-up petition, the Court has the authority to dismiss it, adjourn the hearing, or issue any interim or other order it deems appropriate. The Court cannot refuse a winding-up order solely because the company's assets are mortgaged to an amount equal to or greater than their value or because the company has no assets.⁴⁰ In the case of a petition by contributory members seeking relief through winding-up on just and equitable grounds, the Court shall grant the order unless it deems that other remedies are available, and the petitioners are acting unreasonably.⁴¹

If a petition is based on default in delivering the statutory report or holding the statutory meeting, the Court may, instead of issuing a winding-up order, direct the delivery of the statutory report or the holding of a meeting. The Court can also order the costs to be borne by the individuals responsible for the default.⁴²

On the making of a winding-up order, a copy of the order shall immediately be forwarded by the company, or otherwise as may be prescribed, to the Commission, which shall make a minute thereof in its books relating to the company.⁴³

Upon the winding-up order, the court may appoint the Official Receiver or a Liquidator to take charge of the winding-up process. The Official Receiver or Liquidator must notify the CAC of the winding-up order within 14 days.⁴⁴

38. Section 578 (1) CAMA 2020

39. Section 578 (2) CAMA 2020

40. Section 574 (1) CAMA 2020

41. Section 574 (2) CAMA 2020

42. Section 574 (3) CAMA 2020

43. Section 579 CAMA 2020

44. Section 654 (1) CAMA

Winding-up by Supervision of The Court

This occurs when a company resolves to voluntarily wind up and petitions the court to oversee the process.⁴⁵ The procedures for voluntary winding up apply, but the court can appoint an additional liquidator.⁴⁶ Winding up subject to the supervision of the court does not equate to winding up by the court for the purposes outlined in the Twelfth Schedule of the Companies and Allied Matters Act. However, beyond these specified provisions, an order for winding up subject to supervision is treated as an order for winding up by the court for all other purposes.⁴⁷

The liquidator, in every mode of winding up, shall, within 14 days of their appointment, publish a notice in the Federal Government Gazette or in two daily newspapers and submit the notice to the Commission for registration, using a form approved by the Commission. Failure to comply attracts penalties from the Corporate Affairs Commission (CAC).⁴⁸



Comparison, Similarities and Differences between the Modes of Winding-up.

Having examined the diverse methods of winding up outlined in CAMA 2020 and their respective procedures, it becomes crucial to draw comparison among these winding-up approaches. This involves assessing the impacts of these procedures on stakeholders (creditors, shareholders, members etc) investigating the potential simultaneous application of these methods and delving into the court's responsibility in determining the preference for appointing a liquidator. This assessment should consider balancing the interests of creditors with those of shareholders and the company, all while acknowledging the role of the court in this decision-making process.

45. Section 649 CAMA 2020

46. Section 652 (1) CAMA 2020

47. Section 653 (2) CAMA 2020

48. Section 654 (1) CAMA 2020



Comparison

Comparison



Members' voluntary winding-up can be initiated even while the company is solvent, and the shareholders resolve to cease operations. This is activated through a resolution passed at a general meeting.



Directors are required to make a statutory declaration of solvency, expressing that the company can pay its debts in full within 12 months. The declaration, made within 5 (five) weeks before the resolution, and the resolution are submitted to the Corporate Affairs Commission (CAC) within 15 (fifteen) days.



Members appoint a liquidator, publish the resolution, and inform the CAC. The liquidator commences the process, realizing assets and distributing proceeds based on shareholding ratios.



Annual general meetings are held, and a final meeting, accompanied by the liquidator's account, concludes the process.



The company is dissolved 3 (three) months after CAC registration, with the court having the authority to defer dissolution.

Creditors' Voluntary Winding Up

Members' voluntary winding-up can be initiated even while the company is solvent, and the shareholders resolve to cease operations. This is activated through a resolution passed at a general meeting.

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Notices are sent simultaneously to both groups (members and creditors), with the Creditors' meeting held on the same or following day. The notice is published in the Federal Government Gazette and newspapers, notifying creditors.

A liquidator, nominated by either creditors or the company, oversees the process. However, where there is a conflicting nomination, the liquidator nominated by the Creditors takes precedence unless the Court decides otherwise.

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A Committee of Inspection can be formed, and general meetings, annual and final, are conducted. The liquidator's account is presented at the final meeting, and after CAC registration, the company dissolves after three months unless the court defers it.

Winding Up by the Court:



Winding up by the court is compelled when a company is insolvent or unable to meet its statutory obligations.



The process is initiated by a petition presented to the court by various parties, including the company, creditors, or regulatory authorities.



The court may issue a winding-up order after a hearing, appointing the Official Receiver or a liquidator. The court may also dismiss, adjourn, or issue interim orders based on the circumstances.



Unlike voluntary winding-up, where members or creditors decide, the court takes charge, considering just and equitable grounds. The court order is forwarded to the CAC, and the court-appointed liquidator notifies the CAC within 14 days. The court process is more formal, with legal proceedings determining the company's fate.



Similarities



Liquidator Appointment:

In all forms, a liquidator is appointed to oversee the winding-up process.



Publication Requirements:

Notices, petition and resolutions must be published in the Federal Government Gazette and newspapers.



CAC Involvement:

The Corporate Affairs Commission plays a role in registration and compliance in all processes



Differences

Initiation:

Members' voluntary winding-up can be initiated by solvent companies and members of the company; creditors' voluntary and winding up by the court are for insolvent companies or companies that have failed to fulfil certain statutory obligations.



Creditor Involvement:

Creditors play a substantial role in creditors' voluntary winding-up and winding up by the court, but not in members' voluntary winding-up.



Declaration Requirement:

Members' voluntary winding-up requires a director's declaration of solvency; others may not.



Decision-Making Authority:

Members or creditors decide voluntarily; the court decides compulsorily.





An intriguing commonality among the diverse winding-up procedures lies in the necessity for publication. Vital notices, petitions and resolutions are mandated to be published in the Federal Government Gazette and newspapers. The question arises: Why is this act of publication deemed so significant?

In *Gbedu v. Itie* [2020] 3NWLR (Pt. 1710) 104 with respect to the purpose of advertising petition for winding up of company, the court held as follows:

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Under the Companies and Allied Matters Act (CAMA), advertisement of a petition for compulsory winding up is mandatory. The purpose of advertising a petition for winding up is to inform all those interested in the assets and the continued existence of the company, either as contributories, members, directors, and creditors, in advance of the proposals to wind up the company so that they can file their claims, if they so wish. Santana v. Ajede (2000) WRN 35 referred to.] (Pp. 131-132, paras. H-A)

Additionally, in *Chief Cornelius Okeke Ezenwa V. Josiah Cornelius Limited & 3 Ors.* [1994] 7NWLR (Pt 356) Pg. 298. (P. 311, paras. D-E). The Court held that:

“

The object of advertisement of a petition for winding up of a company is to put creditors of the company on notice of the petition while the object of proceedings for winding up of a company is to terminate the life of the company. Therefore, as in the instant case, an order made in respect of one cannot be validly substituted for the other.



Balancing Stakeholder Interests: Evaluating Effects, Feasibility, and Court Preferences in Company Dissolution Procedures.

Another crucial aspect of our discourse is to evaluate the effects of these procedures on various stakeholders such as creditors, shareholders, and members. Simultaneously, we will explore the feasibility of applying these methods concurrently while also delving into the court's role in determining the preference for appointing a liquidator. This assessment aims to strike a balance between the interests of creditors, shareholders, and the company, all the while recognizing the court's pivotal role in guiding the decision-making process.

Regarding the concurrent or simultaneous application of the methods of winding-up, CAMA generally outlines distinct procedures for the different modes of winding up, and they are often undertaken separately. However, the Act doesn't explicitly prohibit concurrent or simultaneous application of certain winding-up methods. The feasibility of applying these methods concurrently may depend on the specific circumstances and legal interpretations.

For Members Voluntary Winding-up, this is initiated by the shareholders, and the focus is on the solvency of the company. Creditors are generally not involved in the decision-making process. Thus, it may proceed independently without interference from other winding-up methods.



However, in the event that it is discovered during members voluntary winding up that the company is insolvent contrary to the declaration of solvency by the directors, the process may be converted to Creditors' Winding-up. Section 629 CAMA 2020 provides that if during a winding up, the liquidator at any time is of the opinion that the company will not be able to pay its debts in full within the period stated in the declaration under Section 625 (Declaration of Solvency) of this Act, he shall immediately summon a meeting of the creditors and lay before the meeting a statement of the assets and liabilities of the company. This serves to transform a members' voluntary winding-up into a creditors' voluntary winding-up. This shift indicates that the company is no longer solvent. In such a scenario, the paramount interests lie with the creditors, and they are obliged to take control to ensure that the company undergoes a winding-up process that maximizes benefits for them. If a liquidator neglects to convene a meeting under these circumstances, they commit an offence and can be subjected to a penalty as the Commission may prescribe.

Also, the creditors' winding-up involves the creditors in the decision-making process. While it primarily addresses the company's insolvency, it can theoretically occur concurrently with members voluntary winding-up if the company is facing both solvency and insolvency issues.

In relation to winding-up by the Court, this is usually initiated based on specific grounds such as the inability to pay debts, just and equitable winding-up, etc. This process may involve investigations into the company's affairs by the Official Receiver or a Liquidator. Thus, concurrent application with voluntary winding-up methods may be challenging due to potential conflicts and different legal processes involved.

With respect to winding-up by the supervision of the court, this process involves the court overseeing the voluntary winding-up initiated by the company. It may allow for the appointment of an additional liquidator by the court. Ideally, the procedure for voluntary winding-up applies and winding-up by the supervision of court does not equate to winding up by the court for the purposes outlined in the Twelfth Schedule of the CAMA. However, beyond these specified provisions, an order for winding up subject to supervision is treated as an order for winding up by the court for all other purposes.

Another key issue to consider will be how to resolve conflicts between creditors, shareholders, and the company during the winding up process. Some of these conflicts maybe involve appointment of liquidator(s), balancing interests of creditors and the company, among others.

A key similarity between all the modes of winding-up is the appointment of Liquidator. Unfortunately, CAMA 2020 does not define the term “Liquidator”, Section 868 which is the interpretation section is silent on this.

In **Gbedu v.Itie [2020] 3NWLR (Pt. 1710) 109** the Supreme Court defined the term as follows:

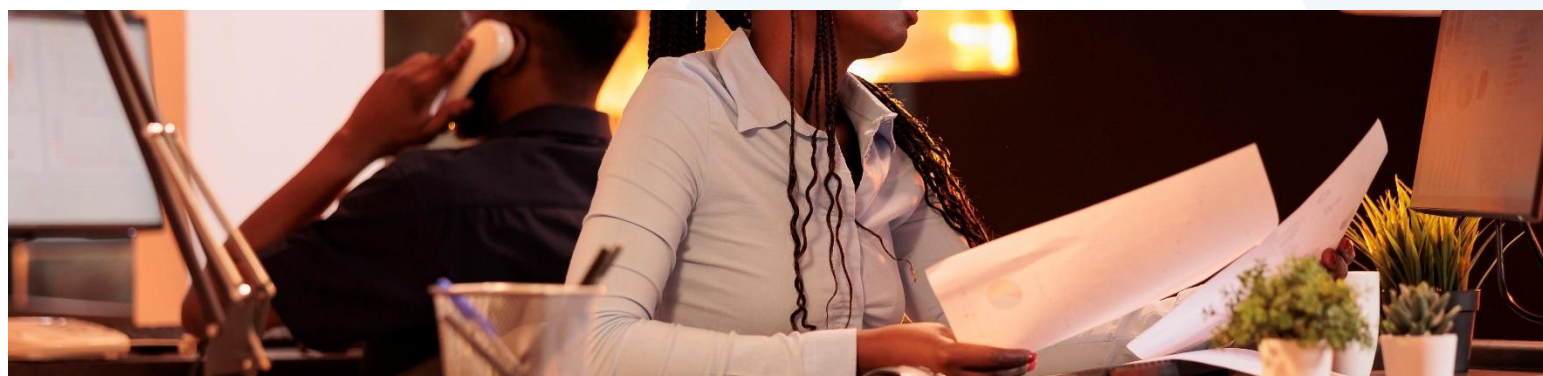


“A liquidator is a person appointed to wind up business affairs, for example, by selling off its goods. Liquidation is the act or process by the liquidator of converting assets into cash, especially to settle debts. Once an order of compulsory winding up a company is made, the Board of Directors seizes (sic) to function. The Directors no longer have powers. All their powers are taken over by the liquidator. The Managing Director and all employees of the company are dismissed, and the dismissal takes effect from the date the winding up order was made by the court.”

In basic terms, A liquidator refers to an officer who is specially appointed to wind up the affairs of a company when the company is closing—typically when the company is insolvent. The assets of a company are sold by the liquidator and the resulting funds are used to pay off the company's debts.

Liquidators assume a critical role in the post-insolvency phase, extending beyond financial resolution. Their responsibilities include delving into company affairs, investigating potential director misconduct, and ensuring a fair resolution to challenges posed by insolvency. As affirmed by the Nigerian Companies and Allied Matters Act 2020 (CAMA 2020) and legal precedents.

The appointment of liquidators depends on the type of winding-up: compulsory or voluntary. In Nigeria, CAMA 2020, Sections 585 and 627 outline the appointment process. Liquidators wield extensive powers, as delineated in Section 588 CAMA, encompassing the ability to bring legal proceedings, carry on the company's business, and compromise with creditors.



Powers Of A Liquidator



General Powers (Section 588(1) CAMA 2020)



Legal Proceedings:

The liquidator can bring or defend legal actions on behalf of the company.



Business Continuation:

The liquidator can carry on the company's business as necessary for its beneficial winding-up.



Professional Assistance:

The liquidator can appoint legal practitioners or other professionals to assist in duties.



Payment to Creditors:

The liquidator can pay specific classes of creditors in full.



Compromises and Arrangements:

The liquidator can make compromises or arrangements with creditors.



Calls and Liabilities:

The liquidator can compromise calls, debts, and liabilities.





Additional Powers (Section 588(2) CAMA 2020)



Property Sale:

The liquidator can sell company property by auction or private contract.



Financial Instruments:

The liquidator can draw, accept, make, or endorse bills of exchange or promissory notes



Legal Acts:

The liquidator can execute deeds, receipts, and documents on behalf of the company.



Fundraising:

The liquidator can raise money on the security of company assets.



Debts Proofs:

The liquidator can prove, rank, and claim in the bankruptcy of a contributory.



Legal Actions:

The liquidator can take legal actions, including obtaining letters of administration for deceased contributories.



Delegation of Powers (Section 616 CAMA 2020)

The court can delegate certain powers and duties to the liquidator, such as holding meetings, settling lists of contributories, requiring the delivery of property, making calls, and fixing time for proving debts.



Custody and Vesting (Sections 586 and 587 CAMA 2020)

- The liquidator shall take custody of company property (Section 586).
- The court may direct the vesting of company property in the liquidator's name (Section 587).



Avoidance of Transfers (Section 624 CAMA 2020)

The liquidator can void transfers of shares made after the commencement of voluntary winding-up, except those sanctioned by the liquidator.



Delegation of Certain Powers (Section 616 CAMA 2020)

The court may enable the liquidator to exercise certain powers and duties, subject to court control.



Duties During Members' Voluntary Winding-up (Section 633 CAMA 2020)

The liquidator must keep proper records and accounts during members' voluntary winding-up.

Section 636(1) CAMA 2020 paints a scenario where there could be conflicting nominations of a liquidator by the creditors and the company during the creditors' voluntary winding up. If the nominees differ, the liquidator nominated by the Creditors takes precedence unless the court decides otherwise. This raises some potential legal issues as follows:

01

In the scenario of conflicting nominations for a liquidator during Creditors' Voluntary Winding-Up, what leads to such disagreements between the creditors and the company, and why does the liquidator nominated by the creditors take precedence over the company's nominee?

02

When there's an application challenging the appointment of a liquidator, what factors should the court take into account in deciding whether to confirm the company's nominee as the sole liquidator, appoint someone nominated by the creditors, or select an entirely different person to act in the winding-up process?

In the context of Creditors' Voluntary Winding-Up, conflicts in the nomination of a liquidator may arise due to divergent interests between creditors and the company. Creditors often seek a liquidator who can effectively represent their interests in the distribution of assets. The preference for the creditors' nominated liquidator taking precedence is likely rooted in ensuring fairness and protecting the financial interests of those to whom the company owes debts. This arrangement aims to prevent undue influence by the company in the winding-up process.

To address this issue, it is key to understand the purpose of appointing a liquidator. The purpose of the appointment is for the liquidator to take control of the company; collect its assets; pay its debts; and distribute any surplus among the members in accordance with their rights. This amounts to "conducting the proceedings in winding-up a company".⁴⁹ Additionally, it is in the interest of both sides to litigation that a liquidator be appointed for a wound-up company to gather the assets of the company together and distribute to those entitled.⁵⁰

Flowing from the above, the preference for the liquidator nominated by Creditors taking precedence in Creditors' Voluntary Winding-Up is rooted in ensuring fairness, protecting financial interests, and preventing undue influence by the company, thereby facilitating an impartial and balanced distribution of assets. This aligns with the fundamental purpose of appointing a liquidator, which involves taking control of the company, managing its assets, settling debts, and distributing surplus among members in accordance with their rights.



However, the appointment of a liquidator does not preclude creditors and contributors to a company, which is being wound up from taking necessary action or steps to protect their interest in the company from being dissipated.⁵¹

Balancing shareholder and creditor interests in winding-up requires equitable asset distribution. Shareholders' equity and creditors' debt claims must be harmonized through the liquidator and the Court, and CAMA 2020 provides safeguards for both interests in the winding-up process.

To ensure transparency and accountability, CAMA mandates the liquidator to maintain auditable records covering their actions, the winding-up process, and financial transactions. The law further emphasized the need for periodic meetings and accounting. Contributors hold the right to request a comprehensive audit of the liquidator's account enabling scrutiny and potential court adjudication on alleged interests.

Also, the Act, establishes the principle of equal treatment⁵² in the distribution of a company's property during the winding-up process. CAMA provides for equal satisfaction of liabilities by providing that the property of a company, upon winding-up, be used to satisfy its liabilities equally (*pari-passu*) unless the Act specifies preferential payments. Additionally, after settling liabilities, unless the articles of the company state otherwise, the remaining assets are distributed among the members based on their respective rights and interests in the company. In essence, this provision ensures fairness and equality in the treatment of creditors and members during the distribution of a company's assets in the winding-up process.

49. *Nig. Dep. Ins. Corp. v. Obende* [2001] 5 NWLR 185

50. *C.A.C. v. Davis* (2008) 1 NWLR (Pt. 1067) 60

51. *Pefi (Nig.) Ltd. v. Utuk* (2023) 17 NWLR (Pt. 1913) 245: S.C

52. Section 643 CAMA 2020

Another way which the interest of stakeholders can be balanced during winding-up is through preferential payments. CAMA outlines a systematic hierarchy for settling debts in a winding-up process. Priority is given to specific obligations, including local rates, taxes, and employee-related payments. Debts rank equally after covering winding-up expenses, with priority over debenture holders. The prompt discharge of debts is mandated if assets suffice, emphasizing the importance of timely settlement. Secured creditors take precedence over all other claims, and the "relevant date" determines payment priority. In essence, the provision ensures a structured settlement approach, prioritizing employee and statutory obligations, clarifying the status of secured creditors, and emphasizing equal ranking of debts after necessary expenses.⁵³

One of the innovations under CAMA 2020 is the provision on **“Moratorium on Creditors' Voluntary Winding-Up in a Scheme of Arrangement”**. Section 717 CAMA 2020 established a 6 (six) month moratorium on winding-up petitions or enforcement actions by creditors, both secured and unsecured, against a company involved in an arrangement and compromise with its creditors. To benefit from this protection, the company must provide specific documents to the court, including the proposed arrangement terms, a statement of its financial status, and any other information requested by the court. The company must express its desire for protection from winding-up during the arrangement process.

The implication of this innovation is that Creditors are prohibited from initiating winding-up actions for six months, allowing the company to pursue an arrangement and compromise with creditors without the threat of immediate liquidation. However, the company must submit comprehensive documents outlining the proposed arrangement, financial details, and any additional information required by the court.

Also, a secured creditor can seek the court's permission to bypass the six-month moratorium under specific circumstances, including when the asset to be enforced is not part of the arrangement or if it involves perishable goods. Nevertheless, if the company consents to a secured creditor enforcing its rights within the moratorium, it must file a subsequent affidavit updating the court on the dissipation of the asset.

This provision aims to provide companies engaged in arrangement and compromise proceedings with a temporary shield against winding-up actions by creditors, fostering an environment for constructive negotiations and resolutions. The exception for secured creditors ensures flexibility in situations where immediate enforcement is warranted due to specific asset characteristics or circumstances.

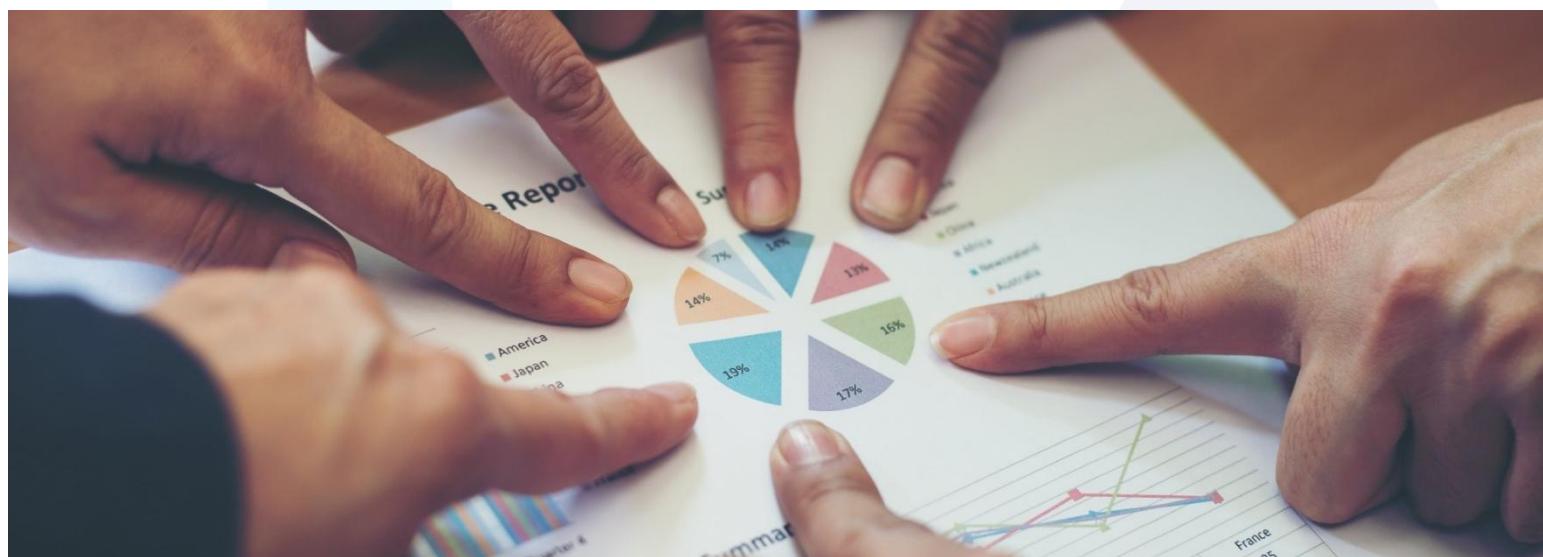
Overall, this provision seeks to strike a balance between protecting companies in the restructuring process and recognizing the legitimate interests of secured creditors. It encourages a more orderly and structured approach to debt arrangements, allowing companies the space needed for negotiations while addressing situations where swift enforcement may be justifiable.



In the final analysis, addressing disputes between the company, shareholders, creditors, and liquidators during the winding-up process involves navigating conflicts and finding resolutions among the involved stakeholders. While CAMA does not prescribe a specific procedure for harmonizing such disputes, certain provisions within the Act offer guidance to the parties involved. Initially, the liquidator plays a pivotal role by assessing and verifying the claims of creditors, shareholders, and other stakeholders, with a focus on identifying and valuing assets and liabilities to understand available resources for distribution.

Additionally, meetings, especially those involving creditors, serve as a platform for discussions on the company's financial status and the proposed distribution of assets. Stakeholders, including creditors and shareholders, may participate in voting procedures that influence the winding-up process. In cases of persistent disputes, the CAMA, under Section 646, provides the option for stakeholders to seek court intervention. The liquidator, contributory, or creditor can apply to the court to resolve questions or exercise powers related to the winding-up process.

When conflicts arise in the appointment of liquidators, particularly when creditors and shareholders choose different individuals, the Insolvency Regulation 2021, specifically Regulation 10 (4), provides clarity. According to the provisions of the regulation, the liquidator appointed by the creditors takes precedence, unless, within seven days, a director, member, or creditor applies to the court. This application seeks an order to appoint the person nominated by the company as the liquidator, either solely or jointly. Essentially, in cases of divergence in liquidator appointments, the person chosen by creditors assumes the role, with a provision for stakeholders to petition the court within a seven-day timeframe for an alternative appointment based on the company's nomination. This legal framework ensures a defined process for resolving conflicts in the selection of liquidators during winding-up proceedings.



Conclusion

In conclusion, our discussions on the various modes of winding up, procedural considerations, and the delicate task of balancing the interests of stakeholders underscore the intricate nature of corporate dissolution. Examining voluntary and compulsory winding-up procedures, we have explored the nuanced roles of liquidators, the importance of assessing claims, and the avenues for resolving disputes among companies, shareholders, creditors, and the court. The absence of a specific harmonization procedure in the Companies and Allied Matters Act (CAMA) 2020 emphasizes the need for a careful examination of relevant provisions to navigate conflicts effectively. Ultimately, these insights underscore the significance of a well-defined legal and procedural framework to safeguard the interests of all stakeholders involved in the winding-up process.

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