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A critical assessment of administration as a rescue mechanism of an insolvent corporate debtor in Uganda

Safari Edmon
School of Law Kampala International University, Uganda

ABSTRACT
Insolvency law enhances growth and alleviates financial challenges of businesses, but it can also be inefficient and delay commercial justice. This article critically evaluated Uganda's insolvent corporate debtor administration method and impacts. At the end, the article call for the bankruptcy protective order duration to be extended to at least a month in order to allow a debtor to establish payment arrangements. This period may be sufficient for the bankrupt to decide on the next steps to take to clear their debts, compared to the 14 days allowed under present insolvency law. Without increasing this term, the temporary protection order will fail since the bankrupt will still be panicked and may sell his/her business property at a loss. It is also recommended by the study for legal training to be organized for insolvency practitioners. This will ensure that only trained insolvency practitioners can practice. Finally, there is urgent need for enhanced insolvency law.
Keyword: Insolvency, Administration, Corporate debtor, Creditor, Insolvency practitioners

INTRODUCTION

An administration deed between the corporation and its creditors allows the company to reorganise. An insolvency practitioner is engaged by creditors to implement the administration deed and return the company to shareholders after completion[1]. Firm directors commence the process if they believe the firm is bankrupt or soon to become so. Several common law jurisdictions have insolvency rules that include administration. It rescues insolvent companies and lets them operate.

An administrator manages a firm for its creditors as interim chief executive officer (CEO) with custodial responsibility for its assets and obligations. The administrator can recapitalize, sell, or demerge the business into sellable parts and close the rest. Most countries distinguish voluntary (board-decided) and involuntary (court-decided) administration. Voluntary administrators are appointed by corporate directors. Courts appoint involuntary administrators[2]. The legal terms for these processes vary by nation and may overlap.

The Insolvency Act[1] introduced administration as an alternative to liquidation. It's meant to save struggling firms. Like many new laws, the Insolvency Act, leaves unanswered questions about how to implement it. The case of UTL v Ondama Sammuel[3] shows that courts and practitioners can clear up ambiguous situations. This decision clarified the Insolvency Act, 2011's definition of proven claims under administration, including future, contingent, and unascertained claims. The Insolvency Act[1] defines administration as ensuring the company's survival or better asset realisation than liquidation.

The three primary insolvency laws offered little business recovery. The Uganda Law Reform Commission (ULRC) believed that more failing enterprises may be saved if administrators were called in before a receiver was appointed or even if a company did not have a loan structure that allowed receivership upon default[4] The Uganda Law Reform Commission introduced "administration" into corporate law procedures to manage a company's business before a receiver is appointed, aiming to reorganise and restore profitability.

Two steps comprise administration. A provisional route is taken to see if enough assets are available to start insolvency proceedings, and then formal administration is entered into to administer the deed agreed upon by creditors, which lasts 30 days and requires an administration deed. By special board decision, a company's temporary administrator is appointed out of court to negotiate with creditors[1].

Instead of asset realisation, corporate rescue helps the company and unsecured creditors, not powerful security holders. In the provisional administrator notification, the appointer must attest that the company is likely to be unable to pay its debts. The provisional administrator must aim to rescue the company as a going concern, approve an administration deed, achieve a better outcome for creditors, or distribute property to secured or preferential creditors. The interim administrator manages the company's business and property[5]. An administrator may be appointed by the court, unsecured creditors, or a firm or its directors. A company administrator must serve the company's creditors.

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Once appointed, the administrator has access to all corporate records and must propose a strategy to save the company for the creditors and the company itself. The administrator must schedule a creditors' meeting and invite all known creditors, based on access to company books[1]. Only creditors who submit proof of debt by 4:PM on the day before the creditors' meeting can vote. During the creditors' meeting, the administrator must offer their proposal for voting. Debt to the creditor determines an individual's vote percentage. Creditors can vote for the proposal without changes, vote for the plan with changes or reject it. Creditors meeting decisions are final[6]. When a firm enters administration, the appointed administrator (a licenced insolvency practitioner) assumes control. The administrator's main objective is to use the firm's assets to repay creditors quickly and fully without preference. The administrator has eight weeks to deliver official administrative proposals to all bankrupt corporate creditors[7]. These proposals usually include the administrator's debt-repayment plan, firm state, and expected conclusion.

Company administration protects the company from creditors' legal activities, including winding up petitions, by placing a moratorium. This provides an indebted company time to evaluate its future without an anxious creditor filing suit. The administrator will evaluate the company's future viability, taking into account its outstanding creditors and ensuring that any future actions would maximise their profits [8].

Due to the economic slump in Uganda, people and companies struggle to pay their obligations. This leaves them unable to pay their bills, and the only way out is for them or their creditors to seek for company administration, which has serious legal consequences as this research shows. For instance, when Wavah Broadcasting Services (WBS) went bankrupt and was placed under administration by Uganda Revenue Authority (URA)[9], former workers and creditors were furious at their nonpayment. Since then, Ugandans who saw its programmes have believed its business operations were a hoax. This necessitated the present study that evaluates administration as a rescue mechanism for insolvent corporate debtor in Uganda.

1. Appointment of an administrator

The administrator must be a 'insolvency practitioner'[1]. Directors must give the administrator management of the company and its 'assets' during administration, and pays the administrator's fees. The administrator's main function is to carry out the administration's purposes[10], which is to rescue the company as a going concern, improve creditors' outcomes, and take action if the first two objectives cannot be met [11].

In Kyrris v Oldham[12], the court designated Michael Oldham as Jack Kyrris' partnership administrator. Kyrris ran 13 Burger King locations, including two in Nottingham's Angel Row and Upper Parliament Street. Mario Royle, an employee, sought a secured equitable charge from Kyrris for unpaid work. The total was £270,000. Mr. Oldham received a summary judgment, and Mr. Riley cross-appealed, arguing that he breached a duty of care and was close enough to him as an unsecured creditor. He claimed that not receiving payments was a breach of duty. Behrens J rendered summary judgment for Oldham on the duty of care point, deeming the equitable charge point sufficient for trial.

2. Administrator can be appointed in a number of ways,

Most companies hire administrators when the board of directors convene a meeting and decides by a majority to go into administration. This requires no creditor or shareholder consent. As directors can convene a meeting at short notice, this option is fast. There may be secured or unsecured creditors[1].

Application to the court

If a winding up petition has been filed, the directors or corporation must apply to the court to appoint an administrator. A court hearing will determine if this should happen[1]. Administrator applications are usually considered on the same day as winding up hearings. The court may approve the administration order, liquidate the corporation, or adjourn the hearing.

Appointment by the creditors

An appointed administrator oversees the corporation during the administration process, as stipulated in an administration deed. A corporation appoints a provisional administrator through a special board resolution and written notice on the interim protective order date. The provisional administrator notification comprises a certificate signed by the appointer indicating that the corporation cannot pay its debts. The firm appoints an administrator in a general meeting through an administration deed. The goal of placing a firm under administration is to save it or get a better return for creditors than winding it up. Administrators usually attempt to save the company. An administrator is meant to provide the company's creditors a better deal than if it were wound up.

Administrative receiver is a receiver appointed over all or nearly all of a granter's property and enterprise, or a person who would be a receiver but for the appointment of another receiver. Note that administration is a general procedure for insolvent companies, not just floating charge enforcement[13]. The administrator must rescue the company as a going concern unless it is not feasible. Bettering the company's creditors' overall outcome than if it were wound up. Thus, preserving the company as a going concern for employees is not needed if it would hurt

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creditors.

Realising property to distribute to secured or preferential creditors is a purpose the administrator may pursue only if the other two are not feasible. It's pursued so as not to hurt the company's other creditors. While the purpose of the proposed administration must be specified in court applications, it need not be limited to a single goal.

The firm, its directors, or one or more creditors can apply to the court for an administrator, or a holder of a floating charge pertaining to the company's property can apply out of court. Report out-of-court appointments to the court. If his appointment is deficient, an out-of-court administrator becomes a trespasser. In Abudalla Nabulere & 2 Ors v Uganda, the court said that a court must be convinced on the evidence that at least one administration goal is likely to be fulfilled to make an administration order. It's not just possible that such objective will be attained; the evidence must go beyond to allow the court to hold that it will more likely than not.

Provisional administration begins when an interim protective order is issued or when paperwork appointing him is registered with the official receiver and registrar of companies. The provisional administrator must call a creditor's meeting to consider his appointment, then give public notice of the appointment on every business document with his name and any transaction entered or issued by the company. In addition to persons prohibited/disqualified from acting as administrators under section 206 (a creditor of a company in liquidation, a shareholder, and director, and auditor, receiver for the previous two years or of any associated company), an administrator under section 203 must be an insolvency practitioner.

3. Duties of an administrator

Administrators are responsible for investigating the company's business, property, affairs, and finances, exercising their powers to ensure survival, approve administration deeds, and maximise asset realisation compared to liquidation. Prepare proposals for the company's future, such as an administration deed, for creditors' approval. Additionally, prepare provisional reports for the official receiver[1], including important information like liabilities.

To hold and control all corporate property. Separate firm funds from provisional administrator funds. After the administration finishes, keep full accounts and other records of all company receipts, expenditures, and other transactions for at least six years. An administrator owes the company duty of care to secure the best price possible. Millett J stated in Re Charnley Davis ltd [14] that "…an administrator owes a duty to a company he is appointed to take reasonable steps to obtain a proper price for its assets, an obligation imposed by law on anyone with a power whether contractual or statutory to sell property which does not belong to It is appropriate to try to get the greatest price possible, but not required. The creditor's meeting can be called at any moment during administration to review progress reports, change, revoke, or ratify the administration deed.

An administration document subject to creditor approval must define the proposed administrator, the company's property available to pay creditor claims, and the form and duration of any moratorium period. The company, directors, secretary, shareholders, administrator, and creditors are bound by the administration deed.

An authorised person can apply to wind up a firm. The case of Trans Africa Assurance Co. Ltd v Cimbrfa (EA) Ltd [15] involved the appellant failing to honour a performance bond for the respondent. The High Court ordered the company to be compulsorily wound up due to insolvency. Except with court permission, they cannot apply for the company's liquidation or enforce any charge over its property or start execution proceedings, legal process, or levy distress against its property. Unless otherwise stated in the deed, a secured creditor can assert a charge against company property if they voted in favour of the resolution to execute the deed.

The administrator can conduct business and handle the company's property and activities. Perform any activity and execute any powers the firm or its directors or secretary would perform without provisional administration, Fire a company director, Appoint a director to fill a vacancy or not, call a shareholder or creditor meeting[1].

4. Regulation of insolvency practitioners in Uganda.

In Uganda, the law now regulates and licences liquidators, receivers, and managers, known as Insolvency Practitioners. Previously, the law did not specify who can act as an administrator or manager, only disqualifying corporate/bankrupt entities from doing so. The present Insolvency Act [1] stipulates regulation and licencing of Insolvency Practice in Uganda. An insolvency practitioner is a person qualified to function as one under S. 203 of the function.

Section 203 defines insolvency practitioner as a receiver, provisional liquidator, administrator, liquidator, proposed supervisor of a voluntary arrangement, supervisor, and bankruptcy trustee. Section 204 (1) (a) defines insolvency practitioners as attorneys, accountants, chartered secretaries who are registered members of relevant professional bodies or any other professional bodies designated by the Minister.

Under S. 204(l)(b) of the Act, the Practitioner must have professional indemnity or assurance for properly performing their duties. Insolvency Practitioners must now report their assignments to the Official Receiver or face a prohibition order from the Court. Insolvency Practitioners must be moral and have no criminal convictions

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or disciplinary inquiries.
The law restricts age of insolvency practitioners to 25years or more. Acting as an insolvency practitioner without qualifications is illegal. This violates Articles 257 (1) and 34 (c) of the 1995 Ugandan constitution, which sets the majority age at 18 years and above. If a concerned citizen petitions the constitutional court, it may be invalidated.
Section 167 of the Insolvency Act allows creditors meeting resolutions. The resolution may be by all or some creditors. However, section 167(2) of the Insolvency Act requires the court to oversee the proceedings. See RBS v TT International [16]. This court has inherent authority to vary variance orders. Section 167(2) of the Insolvency Act [1] provides that "the court may, on the application of a creditor or administrator, cancel or confirm the variation, in whole or in part, with conditions, and make other orders."
Section 140 of the Insolvency Act[1] states that provisional administration allows insolvent companies to continue operating to stabilise their position and maximise their chances of surviving. Provisional administration helps a company survive and continue as a going concern or realise its assets more profitably than in liquidation. The technique is meant for urgent situations to protect a business's worth from unpaid creditors. An administrator is appointed to prevent action or get a memorandum. If the company cannot continue, the administrator must offer a better return for creditors and members than a quick winding up.

CONCLUSION

Insolvency law can enhance growth and alleviate financial issues, but it can also be inefficient and delay commercial justice. An administrator is appointed in an administration deed to oversee the company's administration. Company provisional administrators are appointed by special board decision and written notice on the interim protective order date. The provisional administrator notification comprises a certificate signed by the appointer indicating that the corporation cannot pay its debts. A receiver's powers are granted by the appointing document and can only sell in line with it, unless granted permission by the court. Administration benefits the company by preventing creditors from taking legal action, protecting it from compulsory liquidation or other undesirable outcomes. A licenced insolvency practitioner serves as the company's administrator. All administration activities are done in the company's and creditors' best interests. Prevents creditors' financial decline. The administrator is given time to explain the company's finances to creditors and how he plans to administer and collect debts, and ensure business continuity. Administrators can recommend business voluntary arrangements during the process. Administration also has drawbacks because directors no longer run the company.

RECOMMENDATIONS

1. There is need for enhanced insolvency law: Ugandan courts lack insolvency jurisprudence due to long periods of untested statutes. This makes lawmaking and interpretation difficult. To create a country-specific insolvency regime, capacity and knowledge must be built. Insolvency proceedings are filed occasionally, unlike other fields of law, which are filed and decided daily.
2. Unique legal training for insolvency practitioners is needed. Legal training should be necessary for insolvency practitioners. This will ensure that only trained insolvency practitioners can practice. The challenge raises concerns about insolvency miscarriage of justice. Business people are considerably more ignorant of the law and its practice. Thus, many community members sign agreements for receivership-enforced securities without understanding receivership and other bankruptcy administrations. Many people are in deep debt and are not aware they can file for bankruptcy.
3. Uganda needs further insolvency law codification. The Insolvency Act's preamble states that its main purpose was to address insolvency, but this branch of law is scattered in many other laws, including the Company's Act of 2012, which still addresses insolvency. This codification should accompany the law amendment to simplify research and practice.
4. Increase the bankruptcy interim protective order's duration. The 14days provided period is too short for a financially struggling person. The bankruptcy protective order duration should be extended to at least a month to allow a debtor to establish payment arrangements. This period may be sufficient for the bankrupt to decide on the next steps to clear their debts, compared to the 14 days allowed under present insolvency laws. Without increasing this term, the temporary protection order will fail since the bankrupt will still be panicked and may sell his/her business property at a loss.

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