COMPARATIVE ANALYSIS OF CORPORATE RESTRUCTURING PRACTICES: NIGERIA, INDIA AND UNITED KINGDOM**

Abstract

In today's competitive landscape, companies must continuously restructure to sustain growth and maintain their competitive advantages. This paper employed a doctrinal research methodology to provide a comparative analysis of corporate restructuring practices in Nigeria, India, and the United Kingdom, with a focus on how these practices differ in distinct economic and regulatory environments. The analysis highlighted both similarities and differences in the restructuring strategies employed by companies in these countries, shaped by their unique economic conditions, regulatory frameworks, and industry-specific challenges. The study found that while all three countries provide mechanisms for financially distressed companies to reorganize their debts and continue operations, the effectiveness of these strategies is largely influenced by local economic factors, the maturity of the legal infrastructure, and the specific challenges faced by different industries. Based on these findings, the paper recommended that Nigerian companies consider adopting best practices from India and the United Kingdom, such as the UK's flexible restructuring tools and India's time-bound insolvency procedures, while carefully tailoring these strategies to fit Nigeria's local economic realities. By drawing on these insights and adapting to local conditions, Nigerian companies can enhance the effectiveness of their restructuring efforts, support sustainable growth, and strengthen their position in both domestic and international markets.

Keywords: Comparative Analysis, Corporate Restructuring, Nigeria, India and United Kingdom.

1. Introduction

A company is essentially a collection of contractual relationships among individuals, with these contracts representing claims on the cash flows generated by the company's assets and operations. Restructuring these contracts, whether through negotiation or unilateral decisions, significantly affects the level and timing of the company's cash flows and how these are distributed among stakeholders, including shareholders, creditors, managers, employees, suppliers, and customers.[1] Companies often pursue restructuring when their market value falls significantly below its potential or intrinsic value. Several factors can contribute to this 'value gap.' First, restructuring may be necessary to address losses in market value caused by poor performance or financial distress, which can result from management decisions such as over diversification or excessive borrowing or external factors like economic recessions or unfavorable exchange rates. Research suggests that voluntary or pre-emptive restructuring can sometimes generate more value than restructuring driven by a hostile takeover or bankruptcy.[2]Another reason companies may restructure is to capitalize on new strategic or business opportunities. Even if a company is performing well, it may need to restructure certain contracts to take advantage of these opportunities. For instance, a company might need to modify its debt agreements to fund a profitable investment that conflicts with existing loan covenants.[3] Restructuring can also correct valuation errors. Investors may either undervalue or overvalue a company, particularly in diversified

* **ADUMA, Onyeka Christiana**, **PhD,** Lecturer, Faculty of Law, Nnamdi Azikiwe University, Awka. Email: co.aduma@unizik.edu.ng. Phone No: 08038725994.

** **UDEOJI, Rosemary Oluchi, LLM** Student, Faculty of Law, Nnamdi Azikiwe University, Awka.

[1] MC Jensen, & WH Meckling, '*Theory of the Firm: Managerial Behavior, Agency Costs, and Ownership Structure*' (1976) 3 (4) *Journal of Financial Economics*, 305.

[2] MH Miller & C Upton, 'Corporate *Restructuring and Organizational Performance',* (1985) 14 (2) *Financial Management*, 5.

[3] R Kellogg, '*The Impact of Corporate Restructuring on Financial Performance'* (2006) 12 (3) *Journal of Corporate Finance*, 254.

firms where shareholders might not fully understand all aspects of the company's activities. Corporate spin-offs or tracking stock issues can improve transparency and valuation accuracy.[4]When a company's liabilities exceed its assets or it struggles to meet financial obligations, restructuring becomes crucial to improving efficiency and preventing insolvency.

In Nigeria, corporate restructuring is often driven by regulatory requirements and tends to occur in waves. Mergers and acquisitions are common strategies used to enhance stability, safety, and performance, and to address concerns about a company's continued viability. Nigerian companies frequently use these strategies to improve market value and profitability while adapting to competition, systemic weaknesses, and macroeconomic instability.[5] This paper is set to draw a comparative analysis of corporate restructuring in Nigeria, India and United Kingdom.

2. Conceptual Clarifications

2.1 Corporate Restructuring

Corporate restructuring is the process of rearranging one or more aspects of a company's structure and operations.[6] Crum and Goldberg define restructuring as the implementation of decisive measures to enhance the competitiveness and overall value of an enterprise.[7] This process is aimed at modifying corporate operations to respond to imminent threats of collapse or to strengthen the company against competition by improving its wealth, assets, capital, or financial strength.[8] Corporate restructuring encompasses a broad range of actions, including financial, structural, and operational changes. Common forms of restructuring include mergers and acquisitions, takeovers, asset sales, management buyouts, changes in dividend policy, refocusing, corporate layoffs, management turnover, plant closures, share repurchases, and debt management. It involves modifying the company's structure, business model, and management team to address challenges, enhance efficiency, increase shareholder value, and improve overall performance.[9]

2.2 Restructuring Strategies

Restructuring strategies involve altering a company's legal and operational frameworks to enhance its value. This process requires significant modifications to the company's operations, and managers have a diverse range of strategies available to achieve these objectives. Commonly employed strategies include assignments and compromises to settle disputes or obligations through negotiated agreements. Arrangements on sale involve structuring the sale of assets or parts of the business. Mergers and acquisitions combine with or acquire other companies to achieve synergies or expand capabilities, while corporate takeovers involve gaining control of a company through acquisition.

Other strategies include purchases and assumptions, where assets are acquired, and liabilities are assumed from another entity, and corporate buyouts, which involve buying out shareholders or existing owners to gain control. Management buy-ins allows external management teams to buy into the company and take over leadership. Tender offers involve making a public offer to buy shares from

---

[4] VL Bernard & JK Thomas, 'Post-*Earnings-Announcement Drift: Delayed Price Response or Risk Premium?'* (1989) 27 *Journal of Accounting Research*, 1.

[5] M Ojo, '*Corporate restructuring in Nigeria: Strategies and outcomes*', (2011) 19 (1) *Nigerian Journal of Management Studies*, 45.

[6] HY Bhadmus, Bhadmus *on Corporate Law Practice* (3rd edn, Enugu: Chenglo Publications, 2013) p 526.

[7] S Crum, & RA Goldberg, 'Corporate *restructuring'* in JN Weinstein & MG Spence (eds.), *Mergers and acquisitions* (University of Groningen Research Database, 1988) p 113.

[8] Ibid.

[9] M Baker, & K H Wruck, '*Corporate restructuring and governance: A Review',* (1989) 25 (2*) Journal of Financial Economics*, 25(2), 121-163.

shareholders, usually at a premium. Downsizing reduces the company's size through layoffs or divestitures, and recapitalization restructures the capital structure to improve financial stability. Cherry-picking selectively acquires or retains valuable assets while divesting less valuable ones. Each of these strategies is employed to improve operational efficiency, enhance financial performance, and increase overall value.[10]

3. Corporate Restructuring in Nigeria

Nigerian companies have experienced phases of rapid industrialization, economic liberalization, and financial instability, each necessitating varied restructuring strategies to boost competitiveness and operational efficiency. These restructuring efforts have been profoundly shaped by government policies, market conditions, and regulatory reforms. These factors compel companies to continually adapt their structures, operations, and strategies to effectively manage internal challenges and respond to external pressures.

3.1 Corporate Restructuring Strategies

Corporate restructuring options in Nigeria can be classified into internal, external, or a combination of both, depending on the business needs and legal considerations.

3.1.1. Internal Restructuring

Internal restructuring occurs within a single company, typically when it faces significant debt but wishes to retain its corporate identity without involving third parties. Among these internal restructuring options is arrangement and compromise which involve altering the rights or liabilities of a company's members, debenture holders, or creditors.[11] Another option is the arrangement on sale, which occurs when a company's members resolve in a general meeting, via a special resolution, to undergo voluntary winding-up or formal liquidation. A liquidator is then appointed to sell the company's assets or business to another corporate entity in exchange for cash, shares, or debentures, with the proceeds distributed among the members according to their liquidation rights.[12] The transferee company does not need to be incorporated under CAMA 2020.[13] Management Buy-Out is another option which involves the company's management team, including directors and officers, acquiring controlling shares of the company or its subsidiaries, which can be done with or without third-party financing, as per Rule 449(a) of the SEC rules. Additionally, recapitalization involves increasing the amount of long term finances used in financing the organization and equally increasing the debt-stock of the company or issuing additional shares through existing shareholders or new shareholders or a combination of the two.[14] Each of these internal strategies plays a crucial role in helping a company navigate financial difficulties and improve its performance.

3.1.2. External Restructuring

External restructuring, on the other hand, involves transactions between companies not previously under common ownership or control, aimed at increasing capital and asset stock through asset-based, capital, or financial changes. This type of restructuring includes mergers, where two or more companies

[10]MC Jensen, 'Agency Costs of Free Cash Flow, Corporate Finance, and Takeovers',(1986) 76 (2) *American Economic Review*, 323.
[11]CAMA 2020, Section 710.
[12] Ibid, Section 714 (1).
[13] Ibid.
[14] A Adegbaju & F O Olukoyo, 'Recapitalization and Bank's Performance: A case Study of Nigerian Banks', (2008)
6 (1) *African Economic and Business Review*,1.

combine into a single entity; acquisitions, where one company purchases another; and the sale or purchase of assets to streamline operations or address financial challenges. External restructuring is fundamentally about reshuffling operations and resources through changes in ownership and control.[15] Some of these restructuring options are:

A. Mergers

A merger occurs when one or more entities acquire or establish control over a significant portion of another entity's business operations, assets, or shares, typically involving the consolidation of two or more companies into a single entity through absorption or combination of resources, management, and operations. Mergers are driven by various strategic objectives, including expanding market share, achieving economies of scale, diversifying product offerings, accessing new markets, and enhancing competitive advantage. The merger process involves several key steps, starting with negotiation, followed by due diligence, valuation, regulatory approvals, and ultimately, the execution of formal agreements to finalize the merger.

i. Types of Mergers

a. Horizontal Mergers

According to Rule 421(1) of the Securities and Exchange Commission[16] Rules, a horizontal merger involves direct competitors, companies operating in the same line of business. This type of merger combines or fuses companies that are competitors in the same market. A horizontal merger can potentially create a monopoly by reducing or eliminating competition. For example, a merger between two or more banks, or a merger between telecommunications companies like MTN, GLO, and AIRTEL, would be considered a horizontal merger.

b. Vertical Mergers

Rule 421(1) of the SEC Rules defines a vertical merger as a merger between companies in a non-competitive relationship. It involves the combination or fusion of two or more companies engaged in complementary business activities. An example of a vertical merger would be a merger between a company that supplies raw materials and a company that manufactures finished goods.

c. Conglomerate Mergers

A conglomerate merger is the combination or fusion of two or more companies that operate in completely unrelated business sectors. For instance, a merger between a food processing company and an insurance brokerage firm would be considered a conglomerate merger. The primary objective of this type of merger is to diversify risk and maximize returns.[17]

ii. Categories of Mergers

a. Small Mergers

A small merger is defined as a merger or proposed merger with a value at or below the lower thresholds. Rule 427(1) of the SEC Rules specifies that the lower threshold for a small merger is below One Billion Naira (N1, 000,000,000) in combined assets or turnover of the merging companies. Therefore, a small merger occurs when the combined assets or annual turnover of the merging companies in Nigeria is below One Billion Naira or any amount prescribed by the SEC from time to time. A party to a small merger may implement the merger without notifying or obtaining approval from the Federal

[15] Cornell University Law School, '*External Corporate Restructuring*', < https://www.lawschool.cornell.edu> accessed 30 August 2024.
[16] SEC Rules, 2013.
[17] PA Gaughan, *Mergers, Acquisitions, and Corporate Restructurings* (7th edn, New Jersy: John Wiley & Sons, Inc,
2017) p 36.

Competition and Consumer Protection Commission, unless specifically required to do so.[18] If notification is required, the merger cannot be implemented until it has been approved by the FCCPC, with or without conditions.[19]

b. Large Mergers

A large merger is defined as a merger or proposed merger where the combined assets or annual turnover of the merging companies in Nigeria is valued at over Five Billion Naira (N5, 000,000,000) or any amount prescribed by the SEC from time to time.[20] In the case of a large merger, the parties involved are required to notify the FCCPC in the prescribed manner and form.[21] The merger cannot be implemented unless it is approved, with or without conditions, by the FCCPC in accordance with the provisions of the FCCPA.[22]

Within 60 business days of fulfilling all notification requirements under the FCCPA, the FCCPC may choose to extend its review period to 120 business days as provided under Section 92(2)**.** If an extension is granted, the FCCPC will issue an extension notice to all parties involved in accordance with **Section** 92(4)**.** Upon completing its review in accordance with the FCCPA, the FCCPC will issue a report in the prescribed form as detailed in Section 93**.** This report may approve the merger, approve the merger with certain conditions, or prohibit the implementation of the merger. If the FCCPC does not issue an extension notice within the initial 60 business days as per Section 92(2)**,** or if it fails to issue a report by the end of the extended period as specified in Section 93**,** the merger will be considered approved.

3.2 Regulatory Framework and Key Considerations for Mergers in Nigeria

Mergers in Nigeria are governed by a combination of statutory laws, regulations, and regulatory bodies. The primary legal framework for Merger is provided by the Federal Competition and Consumer Protection Act, 2019**,** the Companies and Allied Matters Act, 2020, and the Investment and Securities Act, 2007. The Federal Competition and Consumer Protection Act, 2019**,** under Section 165, repealed Sections 118 to 128 of the Investment and Securities Act**,** which previously regulated mergers. Consequently, mergers are now primarily governed by the FCCPA. The Act does not establish a specific threshold for mergers, as the ISA did; instead, it delegates this responsibility to the Federal Competition and Consumer Protection Commission**.**[23] Despite the provisions of the FCCPA, 2019, the role of the Securities and Exchange Commission concerning mergers is now confined to its primary function as the regulator of the capital market. The SEC's regulatory authority is limited to mergers and acquisitions involving public companies, as well as transactions that result in changes in the shareholding of capital market operators. If a private company is to be merged with or acquired by a public company, it is still necessary to obtain the "No Objection" clearance from the SEC, pursuant to Sections 13 and 313(1)(e) of the ISA.

Any person aggrieved by a decision of the FCCPC regarding a merger can file an application for review before the Competition and Consumer Protection Tribunal. If the matter involves a decision of the Tribunal, it can then be appealed to the Court of Appeal.[24] Effectively, structuring a merger transaction requires certain preliminary documentation, including the execution of various agreements such as a

[18] FCCPA, Section 95 (2).
[19] Ibid, Section 95 (5).
[20] Rule 427 (1) SEC Rules
[21] FCCPA, Section 96(1).
[22] Ibid, Section 96 (4).
[23] FCCPC, Sction 92 (4).
[24] Ibid, Section 103.

memorandum of understanding,[25] exclusivity agreements, and confidentiality agreements. It also involves conducting due diligence both financial and legal before preparing and executing the final merger agreement. This process typically involves several professionals, such as insurance brokers, lawyers, estate valuers, accountants, and tax consultants. These steps are crucial to ensuring a smooth and successful merger process, given its complex nature.

3.2.1 Acquisition

The SEC Rules treat acquisitions as distinct transactions separate from mergers or takeovers, providing a unique definition and procedure for them. An acquisition involves one company taking over a sufficient number of shares in another company to gain control over it.[26] According to Rule 433 of the SEC Rules, an acquisition is a business combination where a person or group of persons purchases most, if not all, of a company's ownership stake to assume control of the target company. Rule 434(a) of the SEC Rules empowers the SEC to regulate acquisitions involving both private companies and unquoted public companies by requiring the filing and approval of acquisition requirements by any corporate body or individual.

The requirements for an acquisition are set out under Rule 434(b) of the SEC Rules, which stipulates that the acquiring company must file a "Letter of Intent." This filing must be submitted by a registered Capital Market Operator (CMO) authorized to act as an issuing house, and the letter of intent must be accompanied by several other documents.[27] Following the acquisition, Rule 438 of the SEC Rules mandates that dissenting shareholders be treated in accordance with the procedures outlined in Sections 146 and 147 of the Investments and Securities Act, 2007. Additionally, Rule 439 of the SEC Rules requires the SEC to conduct a post-acquisition inspection three months after the approval of the acquisition application. Section 146(1)(c) of the ISA defines a dissenting shareholder as a person who is registered or entitled to be registered as the holder of outstanding shares. Under Section 146(1)(b), outstanding shares are defined as shares subject to acquisition for which a takeover bid has been made but not accepted. The definition of dissenting shareholders includes those who reject the offer, those who neither accept nor reject the offer, and those who, after accepting the offer, still fail or refuse to tender their shares to the offeror.

3.2.2. Takeover

A corporate takeover involves gaining control over the management of a company by another entity typically through the acquisition of a majority ownership stake. While ‘takeover’ and ‘acquisition’ are sometimes used interchangeably, they differ in that a takeover often implies a hostile or unwilling acquisition, whereas an acquisition may be friendly or consensual. A takeover is characterized by the acquisition of shares not merely for investment purposes, but specifically to gain control of the company’s management. When the acquiring entity purchases a substantial number of shares in the target company, it is considered to have made a takeover bid. While most takeovers are friendly, some are hostile, meaning an unsolicited offer is made by a potential acquirer that is resisted by the management of the target company.[28]

[25] usually subject to contract.
[26] Rule 421 SEC Rules.
[27] Rule 434 (b) SEC Rules
[28] L Bellomarini *et al*, ‘Reasoning on Company Takeovers: From Tactic to Strategy’, <https://www.sciencedirect.com/science/article/abs/pii/S0169023X22000672> accessed 30 August 2024

Under Section 131(1) of the Investments and Securities Act,[29] a takeover is an external restructuring process that involves acquiring at least 30% to 50% of the shares or voting rights or any lower or higher threshold as prescribed by the SEC of the target company. This acquisition can be made by an individual, referred to as a core investor, or by a company, known as the acquiring company, with the intention of taking over the target company. If the acquiring company gains sufficient shares, it gains control over the target company. In this scenario, the acquirer and the target company form a single group, where the acquirer becomes the holding company and the target company becomes its subsidiary, with both companies continuing to exist as separate legal entities. It is not necessary for all the shares to be acquired at once by the core investor or acquiring company; shares can be acquired gradually through a series of transactions over time. Furthermore, the core investor or acquiring company does not need to act alone, as shares may be acquired by persons acting in concert with them. According to Section 134(1) of the ISA, before a takeover can proceed, the acquiring company or core investor must obtain authorization for the takeover bid from the SEC. Additionally, a takeover bid cannot be made for shares in a private company.[30]

Rule 445(1)(a) of the SEC Rules stipulates that if an individual or group of individuals acquires, or intends to acquire, a minimum of 30% of the shares in a publicly quoted company (the target company) with the goal of taking control of that company, a takeover bid must be made to the shareholders of the target company. This bid can be made directly by the person or group or through their agent. It is important to note that, according to Rule 445(1) (b), the agent must be a registered Capital Market Operator. Before proceeding with a takeover, the acquiring company or core investor must obtain authorization from the SEC to make the takeover bid. The procedure for applying for this authority is detailed under Rule 447(1)(b) and (c) of the SEC Rules.

4. Corporate Restructuring in India

Corporate restructuring is crucial for the development and growth of companies in India, encompassing activities such as mergers, acquisitions, and downsizing. These processes are governed by a variety of laws, regulations, and guidelines, and are monitored by multiple regulatory bodies, including the Central Government, the Securities and Exchange Board of India (SEBI), the Reserve Bank of India (RBI), and the Competition Commission of India (CCI).

The Companies Act, 2013 provides the primary legal framework for corporate restructuring in India, with key provisions outlined in Sections 230–240, covering processes for mergers, acquisitions, demergers, and other types of restructuring. Sections 230–232 specify the procedures for implementing mergers and amalgamations, including the required steps for compromises or arrangements involving members or creditors, while Section 233 allows specific entities like small businesses, holding companies, and subsidiaries to merge or amalgamate, subject to approval by the Central Government, which may impose certain restrictions. These sections ensure that restructuring activities comply with legal and financial standards, under the oversight of regulatory bodies like SEBI, RBI, and Competition Commission of India.

The Competition Act, 2002 further regulates corporate restructuring by providing guidelines on mergers and combinations to protect fair competition in the market. Section 6 of the Act requires companies to notify the Competition Commission of India of any proposed combination within 30 days of board approval, while Section 29 authorizes the Competition Commission of India to investigate the details

[29] ISA, 2007.
[30] Ibid, Section 134(1).

of the proposed combination to determine whether it could adversely affect competition. If the Competition Commission of India has concerns, it may issue a show-cause notice to the parties involved and request additional information. Should a proposed merger or acquisition be found likely to harm competition, the Competition Commission of India can recommend modifications, and approval is granted only if these changes are accepted by the parties; failure to notify the Competition Commission of India as required can result in penalties under the Act.

The Insolvency and Bankruptcy Code of 2016 provides a framework for managing corporate insolvency and restructuring in cases where companies cannot meet their financial obligations. Key provisions of the Bankruptcy Code of 2016 include the Corporate Insolvency Resolution Process, which can be initiated by a financial creditor, an operational creditor, or the corporate debtor itself upon the occurrence of a default. Specifically, Section 6 allows for this initiation, while Section 7 details the process for a financial creditor to file an application with the National Company Law Tribunal. Section 8 requires an operational creditor to issue a demand notice before initiating Corporate Insolvency Resolution Process, and Section 9 outlines the procedure for operational creditors if the demand notice is not addressed within 10 days. Additionally, Section 10 permits a corporate debtor to file an application with the National Company Law Tribunal to initiate Corporate Insolvency Resolution Process if it acknowledges its default.

During the Corporate Insolvency Resolution Process, Section 13 mandates the National Company Law Tribunal to declare a moratorium, which prohibits the initiation or continuation of legal proceedings against the corporate debtor. This moratorium period, as established by Section 14, lasts from the initiation of Corporate Insolvency Resolution Process until its conclusion or until liquidation order is issued. Section 17 provides for the transfer of management of the corporate debtor's affairs to a resolution professional appointed by the National Company Law Tribunal, suspending the powers of the existing board of directors or partners.

The Insolvency and Bankruptcy Code also outlines the role of the Committee of Creditors, as defined in Section 21, which consists of all financial creditors and is responsible for approving the resolution plan and deciding on the future course of action. Section 30 details the process for submitting and approving a resolution plan, which must be approved by at least 66% of the creditors. If the Corporate Insolvency Resolution Process fails to produce a resolution plan within the specified timeframe, Section 33 provides for the initiation of the liquidation process. Section 34 describes the procedures for liquidation, including the sale of the corporate debtor's assets to repay creditors. Additionally, the Insolvency and Bankruptcy Code allows companies to undertake restructuring through mergers, acquisitions, or downsizing to revive operations, provided that an application for such restructuring is submitted to the National Company Law Tribunal for approval.

5. Corporate Restructuring in the United Kingdom

The United Kingdom has developed a well-established framework for corporate restructuring, influenced by historical practices and evolving regulations. Historically, UK corporate restructuring was guided by common law principles, which have significantly evolved over time. Key legislation governing corporate restructuring includes the Companies Act 2006, the Insolvency Act 1986, and the more recent Insolvency Act 2015. These laws provide the foundation for managing corporate insolvency, reorganizations, and mergers.

a. Common Restructuring Strategies

In the UK, mergers and acquisitions (M&A) are widely used strategies for corporate restructuring. These approaches enable companies to consolidate resources, achieve economies of scale, or enter new markets. Such transactions must adhere to the Companies Act 2006, specifically Sections 895 to 900, which detail the procedures for mergers and acquisitions. Additionally, the Takeover Panel's rules, established under the UK Takeover Code, ensure these transactions comply with fair practices and regulatory standards.[31] Corporate takeovers, another key restructuring strategy, involve acquiring control over another company, often leading to significant changes in management and strategy. These transactions are regulated by the UK's Takeover Code, part of the Financial Services and Markets Act 2000, which maintains fairness and transparency. Important provisions of the Takeover Code, such as Rule 9, set out guidelines to ensure equitable treatment for all parties involved.

Asset sales and divestitures are employed by companies to sell non-core assets or business units. This strategy helps firms streamline operations, raise capital, and concentrate on core activities, thereby improving financial stability. The legal framework for asset disposals is outlined in the Companies Act 2006, specifically Sections 190 and 198, which govern these transactions and ensure compliance with regulatory requirements. Management buyouts and management buy-ins are also significant restructuring strategies. In Management buyouts, the existing management team acquires a substantial portion or all of the company, often with external financing. In contrast, management buy-ins involves external managers buying into the company to assume control. Both management buyouts and management buy-ins are governed by the Companies Act 2006, under Sections 2 and 23, which provide the legal framework for these transactions and ensure they adhere to legal standards and regulatory procedures.

Perhaps, on 26 June 2020, the UK Corporate Insolvency and Governance Act 2020 introduced a new restructuring plan procedure as part of its permanent measures. The new "Restructuring Plan," introduced under Part 26A of the Companies Act 2006 by the UK Corporate Insolvency and Governance Act 2020, provides a flexible legal mechanism for companies in financial distress to restructure their debts and obligations. A key feature of this plan, as set out in Section 901F, is the "cross-class cram down," which allows a court to approve a restructuring plan even if certain classes of creditors or shareholders vote against it. According to Section 901G, the court can sanction the plan if it is fair and equitable and ensures that dissenting classes are no worse off than they would be in an alternative insolvency scenario, such as liquidation.

The process, outlined in Sections 901A to 901L, requires creditors and shareholders to be grouped into classes based on their rights and interests, with each class voting on the proposed restructuring plan. Generally, at least 75% in value of each class must vote in favor for the plan to be approved;[32] however, the "cross-class cram down" provision allows the plan to proceed even if not all classes agree, provided that the court finds the plan to be fair and equitable. Unlike other insolvency procedures governed by the Insolvency Act 1986, this Restructuring Plan is governed by the Companies Act 2006, making it applicable to companies that may not yet be insolvent but are experiencing financial difficulties. The Restructuring Plan differs significantly from the existing Scheme of Arrangement, also governed by the Companies Act 2006, primarily due to its inclusion of the cross-class cram down, which provides a mechanism for overcoming opposition from dissenting creditor classes. This feature makes the Restructuring Plan more suitable for complex, large-scale restructurings where there are conflicting interests among creditors. Overall, the introduction of the Restructuring Plan aims to enhance the UK's corporate rescue culture by providing companies with a robust tool to manage financial distress proactively, potentially avoiding insolvency and enabling viable businesses to continue operations.

[31] The City Code on Takeovers and Mergers commonly known as the UK Takeover Code issued in 1968.
[32] Section 901C.

6. Comparative Analysis

Restructuring practices in Nigeria, India, and the UK share common objectives and procedural similarities, as all three countries aim to provide mechanisms that enable financially distressed companies to reorganize their debts, avoid insolvency, and continue operations. Each country has established legal frameworks that include restructuring options, such as schemes or plans involving negotiations between creditors and the company, court oversight to ensure fairness, and methods to facilitate agreements among creditors. For example, the UK's 'Restructuring Plan' under Part 26A of the Companies Act 2006 is comparable to India's "Scheme of Arrangement" under the Companies Act 2013 and Nigeria's "Arrangement and Compromise" under the CAMA 2020. All three frameworks provide structured ways to reorganize a company's obligations with creditor consent and court approval.

Despite these similarities, there are notable differences in how each country approaches corporate restructuring, shaped by their distinct regulatory frameworks, economic conditions, and industry-specific challenges. The UK's approach, particularly with the introduction of the "Restructuring Plan" in 2020, emphasizes flexibility and creditor engagement, featuring a unique "cross-class cram down" under Section 901F of the Companies Act 2006. This provision allows the court to approve a restructuring plan even if dissenting creditor classes object, provided they are not worse off than in an alternative insolvency scenario. This reflects a mature legal environment with strong judicial oversight and well-developed corporate governance standards.

India's restructuring framework, under the Insolvency and Bankruptcy Code 2016 and the Companies Act 2013, focuses more on creditor rights and maximizing value for creditors. The Insolvency and Bankruptcy Code emphasizes speedy resolution, with a strict 180-day timeline extendable to 330 days for completing the insolvency resolution process.[33] Unlike the UK, there is no provision for a cross-class cram down, but the National Company Law Tribunal plays a critical role in ensuring that plans are fair and equitable. Meanwhile, Nigeria's restructuring practices are less formalized compared to the UK and India. The Nigerian framework leans more towards out-of-court negotiations and less on court-driven procedures, emphasizing informal arrangements such as private workouts or voluntary agreements, reflecting the country's evolving legal infrastructure and developing insolvency regime.

7. Lessons Learned from Each Country's Practices

Each country's restructuring practices offer valuable lessons. The UK's "cross-class cram down" highlights the importance of flexibility and judicial oversight in restructuring, ensuring that viable companies can restructure their debts even in the face of dissenting creditors. The UK model also underscores the value of having a well-developed professional services sector to support complex restructurings. India's experience with the Insolvency and Bankruptcy Code emphasizes the necessity of a clear, time-bound insolvency framework that balances creditor rights with efficient resolution, while also highlighting the need for sufficient judicial capacity and infrastructure to manage caseloads effectively. Nigeria's approach shows the importance of informal restructuring mechanisms and adaptability in a less formalized legal environment, pointing to the need for continued development of legal and financial infrastructure to support more structured and predictable restructuring processes.

8. Conclusion and Recommendations

The comparative analysis of restructuring practices in Nigeria, India, and the UK highlights both similarities and differences shaped by their unique regulatory frameworks, economic conditions, and

[33] IBC, Section 12.

industry-specific challenges, with each country's experience offering valuable lessons in corporate restructuring. The UK demonstrates the importance of a flexible and dynamic legal framework supported by a well-developed professional services sector, while India underscores the need for clear, time-bound insolvency procedures that balance creditor rights with efficiency and strengthen judicial capacity. Nigeria's experience illustrates the importance of adaptability and the role of informal restructuring mechanisms in environments with less developed legal and financial infrastructures. To improve corporate restructuring in Nigeria, it is essential to strengthen the legal framework, develop clearer guidelines and procedures for court-driven restructuring processes, encourage the growth of professional services sectors, and foster an environment conducive to alternative dispute resolution mechanisms.