



THE NIGERIAN ECONOMY DURING AND AFTER THE CORONAVIRUS PANDEMIC

The outbreak of the coronavirus pandemic has forced many governments around the world to take drastic measures to protect people's lives through restrictions on movement and social distancing, among others, to slow the spread of the disease. These measures led to unprecedented disruptions to global supply chains, sharp drop in global crude oil prices, turmoil in global stock and financial markets, massive cancellation of events as well as national and international travel bans. These measures will have painful consequences for households and businesses, on top of the human suffering caused by the disease itself.

The International Monetary Fund (IMF) has predicted that the aftermath of the pandemic will see nations of the world face the worst economic fallout since the Great Depression of the 1930s.¹ The World Trade Organisation has also predicted that the world's economy would decline between 13% and 32% as the coronavirus pandemic batters economies and lives around the world,² while the New York based global consulting firm, Mckinsey and Company has predicted that in a best-case-scenario, the Nigerian economy will contract by as much as 3.5% in 2020 as a result of the coronavirus pandemic.³ The fact that the highest recent contraction of the Nigerian economy was a contraction of 1.62% in 2016 during Nigeria's first recession in 25 years shows how grave the situation might be.⁴

There are indications that Nigeria would not emerge unscarred from this pandemic, so, the immediate goal would be to bring the pandemic under control and to mitigate the economic damage to individuals, businesses and households. Governments at both the national and state levels must implement robust fiscal and monetary policies to stimulate the economy and provide lifelines for businesses and households to cushion the effects of the pandemic, while businesses must also take strategic business decisions

¹ See <https://blogs.imf.org/2020/04/14/the-great-lockdown-worst-economic-downturn-since-the-great-depression/> accessed on 16 April 2020.

² See https://www.wto.org/english/news_e/pres20_e/pr855_e.htm accessed on 16 April 2020.

³ See <https://www.mckinsey.com/featured-insights/middle-east-and-africa/tackling-covid-19-in-africa?cid=-soc-----&sid=3242625979&linkId=85640619&fbclid=IwAR0GNjyk4T6iVEXTAI-7KXeXnyr3WkukB2Wj9XwiLoU14hLOW8PVDQk3sTo> accessed on 16 April 2020.

⁴ See <https://www.worldbank.org/en/country/nigeria/overview> accessed on 16 April 2020.



to counter both the legal and economic consequences of the pandemic and lay the foundation for a strong, sustained and socially inclusive recovery.

The Nigerian economy depends heavily on government spending for its sustenance. So, the Federal and State Governments must take conscious steps to put money into the economy by spending on projects that will enable money to circulate and get into the hands of the people. Once there is adequate circulation of money within the economy, economic growth will be stimulated and the number of households requiring bailouts will reduce.

Whilst it is expedient for the government to cut down its budget in view of the present economic realities, it is also very essential for the government to ensure that it channels more money into capital expenditure in order to ensure that there is adequate circulation of money in the economy, to wade off any negative impact that the economy might suffer as a result of the pandemic. It has been advised that the government should rather reduce the budget for recurrent expenditure, especially the budget for overhead costs which is of little significance to the economy, instead of reducing its capital expenditure budget. For a fact, the current situation has vindicated the critics of the National Assembly that the humongous billions of Naira squandered on acquiring official cars for honourable members of the House of Representatives could have been better utilised by spending it on infrastructure. Also, the proposed renovation of the National Assembly through a debt of N37B budgeted by the Federal Capital Development Authority should be jettisoned at this time.

Furthermore, public office holders are advised to cut down on the litany of aides which most of them have employed to bug down the payroll system. In addition to maintaining a minimum number of aides, public officials should also consider reducing the salaries of aides and other political appointees, as had been done by some public office holders⁵, until such a

⁵ See <https://www.today.ng/news/nigeria/kaduna-cuts-senior-appointees-salary-50-fund-relief-items-294776> accessed on 1 May 2020.



time that the economy is strong enough to carry such wage bill without strain.

Also, the government may provide bailouts by way of grants and low interest loans to small and medium scale enterprises (SMEs) to aid their growth and development. It is an established fact that SMEs are the highest employers of labour in most developed and developing economies. They help to facilitate economic growth, recovery and national development.⁶ By ensuring that SMEs continue fully in business, the government would be ensuring that economic growth is not stalled and existing jobs are protected, while new ones are being created.

The Central Bank of Nigeria (CBN) has taken a commendable step in this regard by introducing a raft of measures to cushion the economic effect of the pandemic, including creating a N50 billion targeted credit facility at concessionary interest rate for households and SMEs that have been hardest hit by the pandemic.⁷ The CBN has also set up a N1.1 trillion Covid-19 intervention fund to support critical sectors of the Nigerian economy. The fund it said would be aimed at job creation and boosting local manufacturing and import substitution in the economy.⁸ These measures will go a long way in ensuring that businesses survive and thrive during and after the pandemic.

The government should also consider providing tax reliefs and other fiscal incentives such as tax holiday to individuals and businesses particularly affected by the pandemic in order to encourage continued local and foreign direct investments in the Nigerian economy after the pandemic.

While government policies that will help to keep businesses and households afloat during and after the pandemic are germane, a lot of businesses also face a pressing and present threat of breaching existing and future contractual obligations as a result of disruptions caused by the pandemic.

⁶ See <https://www.ifac.org/knowledge-gateway/contributing-global-economy/discussion/foundation-economies-worldwide-small-0> accessed on 16 April 2020.

⁷ See <https://www.cbn.gov.ng/Out/2020/FPRD/CBN%20POLICY%20MEASURES%20IN%20RESPONSE%20TO%20COVID-19%20OUTBREAK%20AND%20SPILLOVERS.pdf> accessed on 16 April 2020.

⁸ See <https://nairametrics.com/2020/03/18/cbn-offers-n1-1-trillion-intervention-fund-to-support-real-health-sectors/> accessed on 16 April 2020.



Many businesses, as well as governments, have employees which they are under contract, obligated to pay while others have credit obligations (such as loans repayment and payments to suppliers, etc.) which they have to meet, despite not having made money during the period.

The general rule of law, of course, is that once parties enter into a contract, they must honour their obligations under the contract. There are, however, two significant exceptions to this general rule: force majeure and frustration. There is also an unstated third exception, which comes into play where parties agree to vary or renegotiate their contract.

The doctrine of force majeure applies only to contracts which include a force majeure clause. It enables a party or both parties to either terminate or suspend the performance of a contract if they are prevented from performing their obligations under the contract by the occurrence of a force majeure event. What amounts to a force majeure event and the effect that it would have on a contract depends on how the force majeure clause is drafted in the contract.

Generally, Force Majeure clauses are not usually included in employment contracts.⁹ Where it is included, for any party to take advantage of a force majeure clause in a contract, it must first be determined whether the clause applies to them.¹⁰ If the force majeure clause applies to the party seeking to invoke it, the next issue to consider is whether the coronavirus pandemic falls within the definition of a force majeure event under the contract. Usually it would be included if the clause mentions events like epidemic, pandemic, disease, acts of parliament or government and circumstances beyond the parties' control, among other similar terms. If a party finds that the coronavirus pandemic is a force majeure event under the contract, it will be required to notify the other party of the occurrence of a force majeure event, and if it is accepted by the counter party, the force majeure event will serve to terminate the contract without liability or suspend performance of the contract until the force majeure event is

⁹ It is however arguable that the downturn in profit or business occasioned by the pandemic could provide a good cause to justify the termination of the employment of an employee by the employer.

¹⁰ Some force majeure clauses are drafted in favour of only one party, for example in supply contracts where it usually only protects the supplier.



removed. If the contractual counter party does not accept the event as a force majeure event, it would be left for the court to determine whether the event constitutes a force majeure event under the contract.

Although, it was held that the Ebola outbreak in Africa was not a force majeure, there are strong indications that the coronavirus pandemic would be held to be a force majeure event considering its global spread and heightened effect on all areas of human endeavour and existence. See *Fédération Royale Marocaine de Football v. Confédération Africaine de Football*, Award of 17 November 2015 (CAS 2015/A/392), where the Court of Arbitration for Sports held that the Ebola outbreak in Africa was not a force majeure event because it did not make the organising of the African Cup of Nations in Morocco impossible; rather, it only made it difficult. It is highly probable that courts may have a different opinion considering the scale of the present pandemic, especially with the lockdown of almost all major cities of the world.

If the parties' contract does not contain a force majeure clause, the parties' other option to avoid a breach of their contract would be the doctrine of frustration. The doctrine of frustration operates to put an end to a contract, which due to an unpredictable event, has become impossible to perform. For an event to be regarded as a frustrating event, it must: occur after the contract had been formed; strike at the root of the contract and be entirely beyond the contemplation of the parties; render further performance impossible, illegal, or make it radically different from that contemplated by the parties at the time of the contract; and not be due to the fault of either party. The effect of frustration is that it releases both parties from their remaining obligations under the contract. The major distinction between frustration and force majeure is that frustration applies to all contracts at law, whether or not it is included in the contract, except the parties expressly excluded it, while a force majeure clause must be specifically included in a contract before it will avail a party.

The third option available to the parties if they are to avoid a breach of their contract would be to agree to renegotiate the contract to accommodate the realities presented by the pandemic. This appears to be the most realistic option because, most contracts would not have



envisaged such pandemic and a party may not be able to prove that the lockdown period rendered further performance of the contract totally impossible so as to rely on frustration. Whilst the pandemic could render performance of contracts impossible for the period of the lock down, most contracts which are long termed can still be performed after the lockdown.

Thus, contractual parties can seek to renegotiate and vary the terms of their contract to make up for disruptions and remedy possible breaches caused by the coronavirus pandemic. In the realm of contracts, parties can negotiate or renegotiate anything as long as they are in agreement with each other.

This exception would be very useful to national and international financial institutions and their customers who are most likely going to breach the terms of credit facilities that they obtained from the financial institutions and run the risk of the unfavourable consequences of such breach. Commercial banks (and other financial institutions) and their customers may consider restructuring their credit facilities, e.g. placing temporary moratorium on repayment of principals and interest on loans by their customers, adding to the tenor of credit facilities to enable customers have more time to get their businesses back and running and also meet their credit obligations more easily. In deserving cases, financial institutions may give their customers an opportunity to pay a lesser sum of their customers' outstanding debt, consider debt reduction or total cancellation.

Already, the CBN had stated that it would immediately grant leave to Deposit Money Banks to consider temporary and time-limited restructuring of the tenor and loan terms for businesses and households most affected by the pandemic, particularly in the oil and gas, agriculture and manufacturing sectors.¹¹ Commercial banks and their customers are best advised to take advantage of this gesture by the CBN.

There are however situations where in spite of the best efforts of the parties, their businesses face an imminent risk of collapse or running insolvent as a

¹¹ See

<https://www.cbn.gov.ng/Out/2020/FPRD/CBN%20POLICY%20MEASURES%20IN%20RESPONSE%20TO%20COVID-19%20OUTBREAK%20AND%20SPILLOVERS.pdf> accessed on 16 April 2020.



result of their inability to pay their debts. In Nigeria, an insolvent person is described by Section 567 of Companies and Allied Matters Act (CAMA), Cap. C20 LFN, 2004 as “any person in Nigeria, who in respect of any judgment, Act or court order against him, is unable to satisfy execution or other process issued thereon in favour of a creditor, and the execution or other process remains unsatisfied for not less than six weeks.” Also, a company might be wound up for its inability to pay its debt if it owes an amount exceeding the sum of N2,000.00 then due and (a) the creditor has served the company a notice under its hand by leaving it at the company’s registered office or head office demanding payment and the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; or (b) execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or (c) the court, after taking into account any contingent or prospective liability of the company is satisfied that the company is unable to pay its debts.¹² An individual could also have a bankruptcy petition filed against him if he owes a sum not less than N2, 000.00 to a creditor.¹³

Where a company runs the risk of insolvency, it need not just wait for its creditors to file winding up petition or debt recovery action against it. There are many restructuring options available to companies that would enable them to reposition themselves financially in order to be able to meet their financial obligations. These include acquisition, merger, arrangement on sale and arrangement and compromise.

Acquisition refers to the purchase of the whole or part of the shares and or assets of one company by another company. It may be done by way of an asset deal or share deal. Asset deal involves the sale of the assets of a company for valuable consideration. Here, a company that is struggling to stay afloat financially might consider the sale of some of its assets in order to obtain funds to meet some of its financial obligations. The assets may be tangible or intangible assets of the company. On the other hand, a share

¹² See section 409 of CAMA.

¹³ See section 4 of the Bankruptcy Act Cap. B2 LFN 2004.



deal involves a company selling some of its share capital (or increase its share capital if it doesn't have enough and sell) to another company or individual for valuable consideration. The money raised from the deal can then be used to meet some of the company's financial obligations.

It is also possible for a company to do a hybrid of asset deal and share deal where it sells part of its assets and part of its share capital to one or more other entities.¹⁴ It should, however, be noted that where a company sells more than one half of its issued share capital or assets to another company the transaction would qualify as a merger under Section 92 (2) of the Federal Competition and Consumer Protection Act, 2018 (FCCPA)¹⁵. In that case, the Federal Competition and Consumer Protection Commission (FCCPC) would need to be notified of the transaction and its approval, if necessary, obtained.

A company may also adopt the restructuring options known as Arrangement on Sale and Arrangement and Compromise¹⁶. Under Arrangement on Sale, a company is permitted to sell the whole or part of its undertaking or assets to another company in consideration of fully paid shares, debentures, policies, cash or other like interest in the transferee company and to distribute the same among the members of the transferor company. In this case, although the transferor company is dissolved, its business is preserved though under the transferee company. The procedure for this restructuring option is laid down in Section 538 of CAMA.

On the other hand, the scheme of Arrangement and Compromise under Section 539 and 540 of CAMA may be utilised by an ailing company to carry out a reorganisation of the share capital of the company by the consolidation of shares of different classes or by the division of shares into different classes as well as exchange of debenture and securities for shares in the company, among others, for the purpose of reducing the debt

¹⁴ See <https://www.lexology.com/library/detail.aspx?g=b6664336-1e03-4d0c-8f23-0611136179d1> accessed on 16 April 2020.

¹⁵ Section 92 (1) of the FCCPA states that “a merger occurs when one or more undertakings directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another undertaking” by the purchase or lease of the shares, an interest or assets of the other undertaking in question; or by the amalgamation or other combination with the other undertaking in question, or by a joint venture.

¹⁶ See sections 538, 539 and 540 of the Companies and Allied Matters Act (CAMA), Cap. C30 LFN, 2004



burden of the company, repositioning it financially and returning it to profitability. Here the company only needs to enter into an agreement with the relevant members or creditors of the company to modify some of their rights against the company, for the purpose of freeing the company from such liability to enable it channel its resources towards other economically gainful ventures.¹⁷

The above notwithstanding, there would, unavoidably, be high level of recovery actions by creditors after the coronavirus pandemic, especially against debtors whose debts had long been due and had failed to liquidate same before the pandemic. The recovery actions would come with full force and many companies would be faced with liquidation or insolvency proceedings. Receivers would be appointed over security assets and receivers/managers would also be appointed over debtor companies.

It is not uncommon to see debtors engaging in frivolous litigation battles with a view to frustrating the takeover or operations of receivers in Nigeria. At the end of the day, if the battle commenced after the receiver had taken possession of the assets or the company, as the case may be, the court battle would only result in tying down the assets or running of the company without profits being generated and without any debt being realised by the receivers. If we are to be frank at this moment, this is not a scenario which should be encouraged with the imminent recession facing the economy. Debtors or debtor companies are encouraged to cooperate with receivers towards achieving the best out of the bad situation and at the same time, seeing how the business can still be sustained, if possible.

On the other hand, insolvency practitioners should hold strongly, and practice, the current global insolvency practice of business recovery rather than striving towards just realising the assets of the company for repayment of the debt without first considering possible rehabilitation of the company.

However the tide of events may turn for businesses and individuals during and after the pandemic, the measures suggested in this article, though not exhaustive, if diligently implemented and followed, would go a long way in

¹⁷ Hon. Dr. J. Olakunle Orojo, *Company Law and Practice in Nigeria* (5th edn. LexisNexis, 2008) p.336



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ensuring that individuals and businesses arise out of the crucible of the pandemic with as little scars as possible.