UDO UDOMA & BELO-OSAGIE

Corporate Restructuring Under the Investments and Securities Act 2025: Mergers, Acquisitions, and Takeovers


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1. Introduction

The enactment of the Investments and Securities Act 2025 ("ISA 2025") marks a significant milestone in the evolution of the regulatory framework for Nigeria's capital market. The ISA 2025, which repealed the Investments and Securities Act 2007, introduces a more comprehensive and robust structure and framework for corporate restructuring activities such as mergers, acquisitions of assets, takeovers, spin-offs, carve-outs, and share reconstructions involving public companies. It also strengthens and codifies the existing regulatory regime previously implemented by the Securities and Exchange Commission ("SEC") under its rules and regulations. The ISA 2025 requires that prior approval of the SEC should be obtained for, among other things, any corporate restructuring that results in a material change in a public company's business direction or policy, mergers and takeovers of public companies. It aims to ensure that such transactions are carried out fairly, transparently and in the best interest of shareholders and the wider economy. As undertaking a corporate

restructuring remains one of the critical strategies for public companies to maintain competitiveness and operational efficiency, the ISA 2025 significantly redefines the legal and procedural landscape to promote market integrity, investor protection, and alignment with international best practices.

We have provided in this article an analysis of the corporate restructuring regime under the ISA 2025, with particular focus on restructuring, mergers, acquisition / disposal of significant assets and takeovers.

2. Corporate Restructuring - Scope under the ISA 2025

The ISA 2025 expressly includes carve-outs, spin-offs, split-offs and acquisition or disposal of significant assets as part of corporate restructuring thereby recognising modern or complex restructuring strategies prevalent in today's corporate finance landscape. Section 140(1) and (2) of the ISA 2025 expands the types of corporate restructuring transactions undertaken by a public company that require the prior approval of the SEC. These include:

- the conversion or reconstruction of a public company's shares;
- spin-offs, carve-outs, or split-offs or other forms of restructuring;
- the acquisition or disposal of significant assets that result in a change in the business direction or policy of a public company or a listed entity whether or not in relation to any proposal, scheme, transaction, arrangement or activity; and
- a compromise, arrangement or scheme by way of issue of securities for the amalgamation of two or more listed companies.

There is no prescribed materiality threshold in any of the above restructuring options that will trigger the need for the SEC's approval. Where applicable, we believe that the SEC will need to address that in its subsequent regulations.

3. Corporate Restructuring – The SEC's Power in Reviewing an Application

In evaluating the proposal, Section 140(3) requires the SEC to ensure that shareholders are treated similarly, fairly, equitably, and sufficient information is disclosed to the shareholders regarding the transaction. This is to ensure transparency and to enable informed decision-making. The SEC is not empowered to consider competition, monopoly, or dominant player-related issues when reviewing an application for a corporate restructuring. These remain within the power of the Federal Competition and Consumer Protection Commission ("FCCPC") in respect of companies generally, except for the financial institutions regulated by the Central Bank of Nigeria ("CBN").

The provisions of the ISA 2025 generally reflect a stronger commitment to transparency and investor protection, especially for minority shareholders. The SEC's approving authority is without prejudice to the powers of other financial market regulators such as the CBN, National Insurance Commission ("NAICOM"), National Pension Commission ("PENCOM"), FCCPC, etc.

4. Mergers - Process and Court-Sanctioned Schemes

Where a merger involving a public company is achieved or is to be achieved by amalgamation or other combination with another undertaking, the approval of the SEC will be required at various stages of the merger. The process for mergers involving public companies is set out in Section 141 of the ISA 2025, and includes the following steps:

- first, obtain an approval-in-principle ("AIP") from the SEC;
- second, following the grant of the AIP, make an application to the Federal High Court ("Court") for an order to hold court-ordered meetings of the shareholders of the merging companies;
- third, obtain the approval of the scheme by at least 75% of shareholders present and voting either in person or by proxy at the court-ordered meeting;
- fourth, following shareholders' approval, refer the scheme to the SEC for approval;
- fifth, upon obtaining the SEC's approval, apply to the Court for an order to sanction the scheme; and

- lastly, upon the Court sanctioning the scheme, the sanctioned scheme shall become effective (subject to the provisions of the Companies and Allied Matters Act, 2020 (as amended) ("CAMA"). The merger scheme shall become binding on the companies and all other affected parties, including the transfer of properties (and liabilities if approved by the Court) under the merger to the surviving entity.

As part of the sanction process, the Court may make orders regarding:

- transfer of assets or liabilities to the transferee company;
- dissolution of the transferor company without winding up. The Court shall not make an order in respect of this point, unless the following conditions are met:
  (a) whole of the undertaking and the property, assets and liabilities of the transferor company are being transferred into the transferee company; and
  (b) the Court is satisfied that adequate provision by way of compensation or otherwise have been made with respect to the employees of the company to be dissolved;
- the continuation by or against the transferee company of any legal
- proceedings pending by or against any transferor company;
- provisions for dissenting shareholders and any necessary consequential matters, etc.

The Court may also make an order in respect of such incidental, consequential and supplemental matters as are necessary to ensure that the reconstruction or merger shall be fully and effectively carried out. Where an order of the Court provides for the transfer of property or liabilities pursuant to a merger, such property or liabilities shall be transferred to and become the property or liabilities of the transferee company – that is, the surviving entity post-merger. In the case of any property subject to a charge, it will be freed from any charge which by virtue of the merger ceases to have effect, if the order so directs.

The merger of two or more private companies does not come within the regulatory powers of the SEC, but that of the FCCPC if the prescribed minimum thresholds regarding control and turnover are met. If the private merging private companies are financial institutions regulated by the CBN, the approval of the merger will be exclusively under the purview of the CBN pursuant to the Banks and Other Financial Institutions Act 2020. It is also important to note that mergers involving public

companies may, in addition to SEC approval, require FCCPC review and clearance where the relevant thresholds under competition law are triggered.

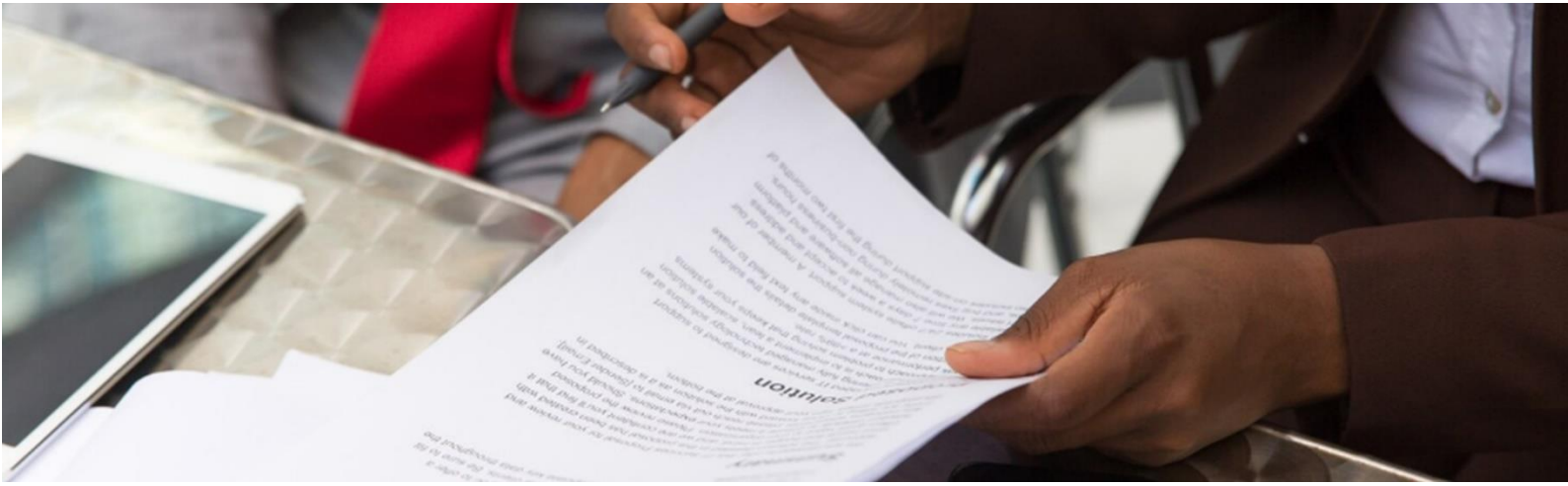
5. Takeovers – Thresholds and Procedure

Sections 142–145 deal with takeovers of public companies and provide, among other things, that a person: (a) shall not acquire shares, whether by a series of transactions or not, which carry 30% or more of the voting rights of a company; and (b) whether by a series of transactions or not, acting in concert with another, shall not acquire shares which, taken together with the shares held or acquired by them, carry 30% or more of the voting rights of a company. A person intending to acquire 30% or more of the shares in any of these manners shall make a takeover bid to the other shareholders of the target company.

The takeover threshold has been reduced significantly from the position under the repealed law and the SEC is expected to issue tender offer rules on how these takeover provisions will be implemented in practice. The SEC shall ensure that the acquisition of voting shares or control of public companies is conducted in an efficient, competitive and transparent manner.

A major shift introduced under section 141(4) of the ISA 2025 is the requirement that, at the intention stage of a proposed acquisition of shares meeting the 30% threshold, a takeover bid must be made. Accordingly, the ISA 2025 requires that an application be submitted to the SEC for authority to proceed prior to the completion of the acquisition. Under the previous regime, the obligation to make a mandatory takeover bid was triggered only after the transaction had been completed. This change is intended to enhance transparency and give the SEC greater oversight of potential changes in control before they become effective. In relation to the implementation of section 141(4), it is expected that the SEC will issue guidance notes to clarify its practical application for relevant stakeholders.

Consequently, an acquirer who: (a) has obtained, or seeks to obtain, control in a public company shall make a take-over bid; and (b) subject to any exemption, has obtained control of a public company shall not acquire any additional voting rights or



voting shares in that company unless in accordance with the ISA 2025 and the SEC's rules and regulations.

The SEC is empowered to ensure that the person(s) making a takeover bid:

- make a mandatory takeover bid to the shareholders;
- disclose its identity as the acquirer or offeror to the shareholders and directors of the offeree and the market for the shares that are the subject of the takeover;
- ensure shareholders have reasonable time and sufficient information to consider and assess the merit or otherwise of the bid; and
- ensure that there is fair and equal treatment of all shareholders.

Shareholders of an offeree must be given equal opportunities to participate in the benefits accruing from the takeover, including in the premium payable for control. This means that every shareholder must be placed on the same pedestal and treated equally in respect of any premium payable. In this regard, the directors of the acquirer and the target company must act in good faith, and ensure that shareholders are not subject to oppression or disadvantaged by the treatment and conduct of such directors.

The SEC's power in respect of takeovers extends to the conduct of persons involved in take-overs, mergers or compulsory acquisitions, including an acquirer, target company, offeror, offeree and their officers and associates.

Duty of good faith: The ISA 2025 imposes a duty on acquirers and the directors of the target company to act in good faith and avoid conduct that may prejudice or oppress shareholders.

Authority to proceed and bid validity: The ISA 2025 outlines clear steps and timelines for initiating a takeover bid, reducing the potential for abuse or regulatory arbitrage. Under Section 144 of the ISA 2025, no takeover bid may be launched without obtaining the prior written authority to proceed from the SEC. The application for an authority to proceed must be made by the person proposing to make the bid and must contain the particulars of the bidder and those of the proposed bid. The SEC's authority to proceed is valid for three months, with a possibility of an extension if the three months have elapsed.

In deciding on whether or not to grant an authority to proceed with a takeover bid, the SEC shall: (a) have regard to the likely effect of the takeover bid if successfully made (i) on the Nigerian economy, and (ii) on any policy of the Federal Government of Nigeria with respect to manpower and development; and (b) determine whether all shareholders are fairly, equitably and similarly treated and given sufficient information regarding the takeover. If the SEC determines that none of these would be adversely affected, it shall grant an authority to proceed with the proposed takeover bid.

Consideration: Lastly, where the consideration for the shares deposited under a takeover bid, merger or other arrangements is to be paid: (a) in cash or partly in cash, the offeror shall ensure that funds are available to make the required monetary payment for those shares; or (b) by the securities of a public company, the provisions relating to the registration of securities and invitations to the public shall apply.

6. Other Applicable Regulatory Approvals

Based on the provisions of Section 140(1) of the ISA 2025, and the SEC Rules and Regulations 2013 (as amended), the approval of the FCCPC and, where applicable, any industry-specific regulator (such as the CBN, NAICOM, PENCOM etc.) will still be required for any corporate restructuring transaction that is required to be approved by that other financial market regulator. Where applicable, the approval of the FCCPC and/or any relevant industry-specific regulator may be obtained prior to obtaining SEC's approval. The FCCPC approval will not be required if the restructuring transaction involves financial institutions regulated by the CBN.

7. Payment for Loss of Office

The ISA 2025 contains provisions that strengthen protections against undisclosed or unfair insider benefits in corporate restructuring transactions. Under Section 146 of the ISA 2025, no compensation may be paid to a director for loss of office in connection with a takeover or merger unless it is approved by a special resolution of the relevant shareholders (that is, the holders of the shares to which the bid relates and any holder of shares of the same class as any of those shares). As part of the process of passing the resolution, a memorandum detailing the payment must be

made available at the company's registered address for at least 15 days before the meeting and at the meeting itself. In addition, the offeror (or any of its associated parties) shall be excluded from voting at the relevant shareholders' meeting.

To prevent parties from entering into a side agreement that would have the effect of negating the above requirements, a payment made under an arrangement: (a) entered into as part of the agreement for the transfer of shares in question, or within one year before or two years after that agreement; and (b) to which the company whose shares are the subject of the offer, or any person to whom the transfer is made, is privy, is presumed (unless the contrary is shown) to be a payment to which the relevant shareholders' resolution applies.

8. Misleading Information and Omissions

Section 147 of the ISA criminalises the provision of false or misleading information, omissions of material facts, and deceptive conduct in connection with mergers, takeovers, or other restructuring. It imposes a minimum fine of ₦5 million, imprisonment of up to five years, or both such fine and imprisonment. The section also empowers the SEC to impose additional administrative fines of ₦10 million or more. This is expected to serve as a strong deterrent measure against market abuses and to align Nigeria's capital market legal regime with global disclosure and anti-fraud standards.

9. Liability of Professional Parties

Professional parties involved in a restructuring or related transactions now have an obligation to ensure that any document or information in respect of a restructuring transaction (including a merger or takeover) does not contain false, misleading or deceptive information or any material omission and shall not submit any document or information that is false, misleading, deceptive or contains a material omission. Failure to satisfy these obligations by the financial adviser, expert or other person could result in prosecution and imposition of the applicable fine on the defaulting person(s). The SEC may, in lieu of prosecution, impose a penalty of not less than ₦10 million.

10. Enforcement and Restitution

The ISA 2025 equips the SEC with expanded tools to ensure regulatory compliance and provide redress to investors. Under Section 148, the SEC is empowered to:

- direct the person in breach to comply;
- suspend trading or listing of securities of the defaulter;
- direct a securities exchange to prohibit access to the person in breach;
- direct the securities exchange to prohibit the person in breach from transactions to be executed through the securities exchange;
- direct restitution or compensation for aggrieved parties by requiring the person in breach to remedy or otherwise mitigate the effect of the breach; and
- recover fines or restitution as civil debts in court.

Before enforcement actions are taken against a defaulting party, the ISA 2025 requires the SEC to provide notice to the affected parties and afford them the opportunity to be heard.

11. Conclusion

The ISA 2025 marks a significant advancement in the regulation of Nigeria's capital market, especially in the area of corporate restructuring, acquisition / disposal of significant assets, mergers, and takeovers involving public companies. By expanding the SEC's oversight functions, improving procedural rigour, and imposing tougher sanctions for non-compliance, the ISA 2025 aligns Nigeria's regulatory framework for the capital market to be more closely linked with global best practices. When compared with the ISA 2007, the ISA 2025 is more detailed, and enforcement-oriented regarding corporate restructuring, mergers and takeovers, this is to ultimately provide a robust framework for promoting investors' protection, transparency, and market confidence. Public companies undertaking the affected transactions and the professional parties will need to ensure that the statutory and regulatory requirements are strictly complied with.

This publication has been provided by Joseph Eimunjeze, Lisa Esamah and Titilola Odi of the Banking & Finance and Capital Market teams at Udo Udoma & Belo-Osagie. For more information about our Banking & Finance practice group offerings, please visit our website at www.uubo.org or email us at financeteam@uubo.org.