



NAVIGATING CROSS-BORDER RESTRUCTURING: LEGAL CONSIDERATIONS FOR NIGERIAN COMPANIES



1. Introduction

Cross-border restructuring often involves complex legal and regulatory requirements that can affect the timing, cost, and overall success of a transaction. For Nigerian companies that are part of a multinational group, these requirements include compliance with the Companies and Allied Matters Act 2020 (as amended) (the “**CAMA**”) and other relevant regulations.

Beyond mergers, restructuring may involve recapitalisation, share reconstruction, or debt-to-equity swaps, either as part of a broader initiative or as standalone transactions aimed at achieving specific objectives such as capital strengthening, balance sheet restructuring, or strategic realignment without culminating in a merger. Given the scale and complexity of such transactions, they attract governance, disclosure, and regulatory compliance obligations. Many companies are unaware of these requirements, exposing them to legal and regulatory risks that may compromise the validity and effectiveness of the restructuring process. This article outlines the key legal considerations, common pitfalls, and practical guidance for Nigerian companies, while comparing Nigerian requirements with international best practices to strengthen governance in cross-border restructuring.

Furthermore, the article considers insolvency-led restructuring options for Nigerian companies, whether to stabilise a distressed entity or as a practical exit strategy, and highlights the legal and procedural risks of pursuing restructuring without alignment to applicable insolvency frameworks.

2. Some Restructuring Mechanisms available in Nigeria

- 2.1 **Recapitalisation:** Recapitalisation involves issuing additional shares to strengthen a company’s capital base, often to remedy undercapitalisation or satisfy regulatory minimum capital thresholds, as commonly required for banks and other regulated entities. It is typically effected through the issuance of new shares, an increase in share capital, or, in some cases, a reduction of share capital to restructure the balance sheet. Under Section 127 of the CAMA, a company may, by ordinary resolution, increase its issued share capital through the allotment of new shares. The CAMA requires that the company amend its memorandum and articles of association to reflect the increase and notify the Corporate Affairs Commission (the “**CAC**”) within 15 days. Where approval from another regulator is required, the company must still notify the CAC within this period and continue to file a notice every 48 days confirming that approval is pending. If the approval is not obtained within 9 months, the increase automatically becomes void.

Furthermore, an increase in issued share capital will not take effect unless at least 25% of the share capital, including the newly issued shares, has been paid up, and the directors have



delivered a statutory declaration to the CAC confirming compliance.¹ Companies that fail to meet these requirements are subject to fines prescribed by the CAC for each day the default continues.

- 2.2 **Share Reconstruction:** Share reconstruction involves altering the structure of the company's share capital without necessarily injecting new funds. It usually involves altering how shares are denominated or classified, such as by consolidating shares (e.g., 10 ordinary shares of NGN 1 each consolidated into 1 share of NGN 10), subdividing shares (e.g., 1 share of NGN 10 subdivided into 10 shares of NGN 1 each), or reclassifying shares (e.g., converting ordinary shares into preference shares). It changes the form of share capital, not its overall quantum. Companies use this to clean up their balance sheet, adjust shareholding structures, or comply with regulatory directives. Under sections 125 and 126 of the CAMA, where a company consolidates, subdivides, or otherwise alters its shares in the course of a share reconstruction, it must notify the CAC within 1 month, specifying the nature of the change, whether consolidation, subdivision, or cancellation of shares, and the Commission is required to record the notice. Failure to comply attracts penalties against both the company and its officers. These requirements ensure that alterations to share capital are properly documented and transparent, thereby safeguarding shareholders and maintaining regulatory oversight.
- 2.3 **Debt-to-equity swaps:** Debt-to-equity swaps are not expressly defined in CAMA but may be effected through provisions permitting allotment of shares for non-cash consideration.² A debt-to-equity swap allows a creditor to convert debt owed to it by the company into equity, thereby reducing the company's liabilities and strengthening its capital structure. This option is often used in distressed situations where the company cannot meet its repayment obligations, or in group reorganisations to stabilise balance sheets while preserving business continuity. CAMA addresses this type of restructuring by providing for the issuance of shares for a consideration other than cash. Section 161 of the CAMA clarifies that shares are only regarded as paid for in cash to the extent that actual cash has been received, while section 162 of the CAMA requires a public company to appoint an independent valuer to confirm the true value of any non-cash consideration. The company may only proceed if the valuer's assessment confirms that the value is at least equal to the amount to be credited as paid up on the shares, thereby safeguarding the company's share capital and creditor interests.
- 2.4 **Reduction of share capital:** This involves a company reducing the amount of its share capital. A company may reduce its share capital by cancelling unissued shares, cancelling lost or unrepresented capital, or returning surplus capital to shareholders. This process decreases the company's issued share capital and is often used to eliminate accumulated losses or to return excess funds to members. Under CAMA, a reduction of share capital must

¹ Section 128 of the CAMA.

² Section 160 of the CAMA provides that the shares of a company and any premium on them shall be paid up in cash, or where the articles so permit, by a valuable consideration other than cash or partly in cash and partly by a valuable consideration other than cash.



first be authorised by the company's articles and approved by a special resolution. As provided in sections 130 to 133 of the CAMA, such a resolution has no effect unless it is confirmed by the court, which ensures that creditors are protected, either by payment, consent, or adequate security. Once the court grants confirmation, the order and supporting minutes must be filed with the CAC, and the reduction takes effect upon registration in line with section 134 of the CAMA. Section 135 of the CAMA further provides that members' liability is limited to the revised nominal value of their shares, although past members may remain liable if a creditor was overlooked and the company later becomes insolvent.

3. Additional Regulatory Approvals and Compliance Requirements

Restructurings are often multi-layered, and as a result, may trigger additional regulatory approvals and compliance obligations beyond the immediate corporate approvals. These may include mandatory disclosure requirements imposed on the company in relation to market-sensitive information, as well as restrictions on the participation of certain interested parties in decision-making processes to mitigate conflicts of interest. We have broadly categorised them below:

3.1 Disclosure Obligations:

There are no public disclosure requirements for a private company. However, the notice periods prescribed by CAMA and the company's articles regarding the meetings required to be convened to approve the restructuring must be observed.³ These requirements may be dispensed with where written resolutions are validly executed, which eliminates the need for meetings and notice periods.

For public companies, notice periods prescribed by CAMA and the company's articles must be observed, alongside specific disclosure obligations under the Securities and Exchange Commission Rules and Regulations, 2013 (as amended) (the "**SEC Rules**"). Rule 401 of the SEC Rules provides that any sale or purchase of shares by an insider of a company must be disclosed by the relevant insider not later than 48 hours after such sale or purchase.

Publicly listed companies are required to comply with specific disclosure obligations under the Rulebook of the Nigerian Exchange Limited 2015 (as amended) ("**NGX Rulebook**") in addition to the notice periods prescribed by CAMA and the company's articles. Rule 19.2(b) of the NGX Rulebook requires the company to notify the NGX at least 7 business days before any board meeting where matters such as capital restructuring or other price-sensitive issues⁴ will be considered, and in practice, this notification is usually made at the same time

³ Fourteen (14) days' notice is required to convene a meeting of the Board of Directors, while 21 (twenty-one) days' notice is required for a General Meeting of shareholders.
⁴ Rule 17.5(g) of the NGX Rulebook defines price sensitive information to include proposed capital raising or restructuring exercise or changes in capital structure, giving or receiving a notice of intention to make a takeover or mergers, or acquisitions, tender offers or divestments.



as the notice of the board meeting. Furthermore, Rule 17.5(f) of the NGX Rulebook obliges the company to notify the NGX within 1 business day of board approval of any price-sensitive matter, including changes to its capital structure. Furthermore, a publicly listed company is required to notify the NGX within 2 business days after the relevant general meeting of the resolutions passed and the outcome of the business transacted. The notice period cannot be waived or abridged.

3.2 Related Party Risks:

Oftentimes, restructurings occur within a group; in such cases, an additional governance requirement may arise where the transaction qualifies as a related party transaction (“**RPT**”). Specifically, where a controlling member of the company acquires one or more non-cash assets of the requisite value from the company, Section 310 of CAMA requires shareholder approval. However, as the legislation does not define what constitutes the “requisite value,” there is potential for uncertainty and confusion regarding the threshold that triggers the shareholder approval requirement. In practice, companies address this ambiguity by using fair market value (often with independent valuation), board judgment, or materiality thresholds aligned with regulatory or accounting standards.

Additionally, Rule 20.2 of the NGX Rulebook defines an interested person transaction as a transaction between an ‘entity at risk’ and an ‘interested person’. The NGX Rulebook define “interested persons” as the directors, the chief executive officer or controlling shareholders (either directly or indirectly) of an issuer⁵ or any person connected to such director, chief executive officer, or controlling shareholder. An “entity at risk” means:

- (i) the issuer; or
- (ii) a subsidiary of the issuer that is not listed on the NGX; or
- (iii) an associated company of the Issuer that is not listed on the NGX; provided that the listed group, or the listed group and its interested person(s), has control or significant influence over the associated company.

In such a related or interested person transaction, an RPT in a publicly listed company will require shareholders’ approval if the value of the RPT is equal to or more than:

- (i) 5% of the issuer or its group's latest audited net tangible assets; or
- (ii) 5% of the issuer or its group's latest audited net tangible assets, when aggregated with other transactions entered into with the same interested person during the same financial year; or
- (iii) 5% of the issued share capital.

⁵ Section B of the Listing Requirements, NGX Rulebook defines an issuer to mean any entity, any class of whose securities has been admitted into listing by the NGX.



Conversely, under the UK Companies Act 2006, directors have a statutory obligation to the board of directors to declare the nature and extent of their interests in proposed transactions with the company to the other directors before the company enters into the transaction and require shareholder approval for certain substantial property transactions with directors. This duty applies irrespective of the monetary value of the transaction, making disclosure an absolute obligation, unlike the provision under CAMA, which presupposes that the transaction should be of requisite value. Similar to the NGX Rules, there are increased disclosure requirements for directors in the United Kingdom (the “**UK**”). Related party transactions are also subject to a more stringent framework under the UK Listing Rules Instrument 2024⁶ (the “**UK Listing Rules**”). If a listed company enters into a related party transaction where any percentage ratio is 5% or more, the listed company must:

- (a) obtain the approval of its board for the transaction or arrangement before it is entered into;
- (b) ensure that any director who is, or an associate of whom is, the related party, or who is a director of the related party, does not take part in the board’s consideration of the transaction or arrangement and does not vote on the relevant board resolution;
- (c) before entering into the transaction or arrangement, obtain written confirmation from a sponsor that the terms of the proposed transaction or arrangement with the related party are fair and reasonable as far as the security holders of the listed company are concerned; and
- (d) notify a RIS as soon as possible after the terms of the transaction or arrangement are agreed.

In the United States of America (the “**US**”), governance of related party transactions is shaped by federal securities regulation, stock exchange listing rules, and state corporate law. At the federal level, Item 404 of Regulation S-K of the Securities and Exchange Commission⁷ (the “**US Regulation S-K**”) requires public companies to disclose any transaction since the start of the last fiscal year, or any proposed transaction, where the company is or will be a participant, the amount exceeds USD 120,000, and a related person has a direct or indirect material interest. Related persons include directors, executive officers, director nominees, beneficial owners of more than 5% of voting securities, and their immediate family members. Companies must also disclose their policies for reviewing, approving, or ratifying related person transactions, even if no transaction meets the threshold. At the state level, Delaware General Corporation law (“**DGCL**”), which is widely followed given the number of corporations incorporated there, addresses insider transactions under Section 144 DGCL⁸ - which provides that a contract or transaction involving directors or officers (or entities in which they

⁶ Financial Conduct Authority, *UK Listing Rules Instrument 2024* (FCA 2024/XX) <https://www.fca.org.uk/publication/consultation/uk-listing-rules-instrument-2024.pdf> accessed 19th September 2025.

⁷ U.S. Securities and Exchange Commission, *Item 404 of Regulation S-K – Transactions with Related Persons, Promoters and Certain Control Persons: Staff Interpretation* (8th August 2007) <https://www.sec.gov/divisions/corpfin/guidance/execcomp404interp.htm> accessed on 17th September 2025.

⁸ *Delaware Code*, Title 8 Corporations, Chapter 1 General Corporation Law, Subchapter IV § 144 (“Interested directors and officers; controlling stockholder transactions; quorum”) <https://delcode.delaware.gov/title8/c001/sc04/index.html> accessed 17th September 2025.



have an interest) is not voidable solely due to the conflict if material facts are disclosed and the transaction is approved in good faith by disinterested directors or shareholders, or is substantively fair at the time. Unlike Nigeria's CAMA, which mandates shareholder approval at defined thresholds, the US framework emphasises disclosure, disinterested board approval, and fairness review.

The Nigerian framework shows two main weaknesses compared with the UK and US. First, Section 310 of CAMA leaves "requisite value" undefined, creating inconsistency. By contrast, the UK Listing Rules and US Regulation S-K set clear monetary thresholds and objective disclosure standards. Second, the NGX Rules rely only on numerical thresholds, without safeguards such as excluding conflicted directors, requiring fairness opinions, or mandating disclosure.

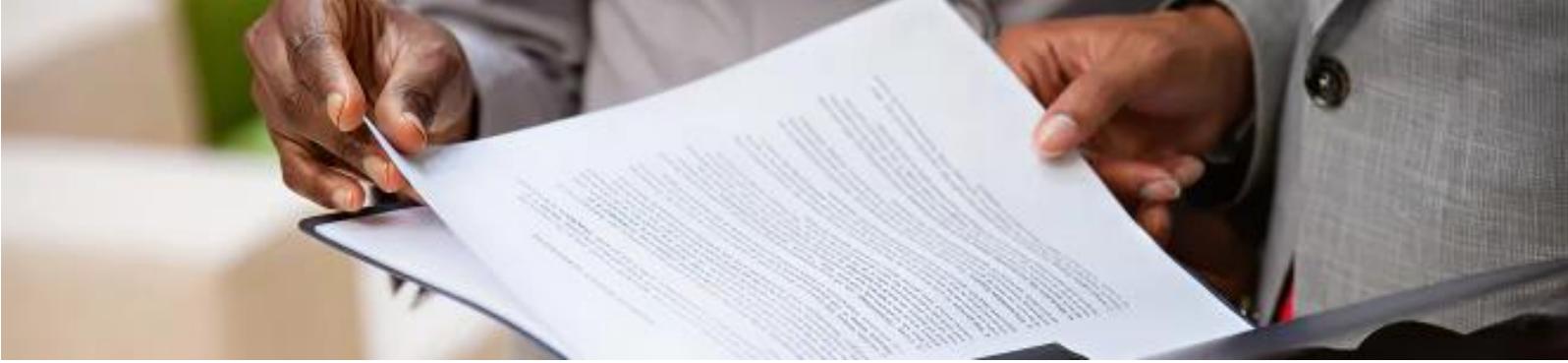
These gaps mean that related party transactions in restructurings may escape meaningful oversight where they fall below thresholds or exploit statutory ambiguity. Companies involved in cross-border restructurings should therefore adopt stronger internal governance to align with international best practices and avoid any governance risks. practice, this means going beyond the regulatory requirements, such as:

- (i) subjecting all related party transactions, regardless of value, to board audit committee review;
- (ii) requiring conflicted directors to abstain from deliberations and votes;
- (iii) commissioning independent valuations or fairness opinions where restructuring transfers are material; and
- (iv) voluntarily disclosing such transactions to stakeholders and counterpart regulators, even if not expressly required.

3.3 Merger Control Approvals:

Under the Federal Competition and Consumer Protection Act 2018 ("**FCCPA**"), a merger occurs when one or more undertakings acquire direct or indirect control over the whole or part of the business of another undertaking. This may be achieved by way of a purchase or lease of shares, interests or assets, an amalgamation or other form of combination, or through the establishment of a joint venture. The concept of "control" under section 92(1) of the FCCPA is deliberately broad and extends beyond ownership of shares to include any arrangement by which one undertaking gains the ability to influence the policy of another.

For a transaction to require the prior approval of the Federal Competition and Consumer Protection Commission ("**FCCPC**"), two tests must be satisfied. The first is the Control Test, which requires that the transaction must result in a change of control, whether direct or indirect, of the whole or part of the target's business. The second is the Threshold Test, which requires that the financial thresholds for a large merger are met. In this respect, the transaction must either involve parties whose combined turnover in, into or from Nigeria in



the preceding year is at least NGN1,000,000,000 (one billion Naira), or a target whose turnover in, into or from Nigeria in the preceding year is at least NGN500,000,000 (five hundred million Naira).

Section 92(2) of the FCCPA makes clear that one of the lowest levels of control that may give rise to a notifiable merger is the ability to materially influence the policy of another undertaking. The Merger Review Regulations 2020 (“MRR”) confirms that the FCCPC conducts a case-by-case analysis to determine whether an acquirer could materially influence policy. However, for certainty, the MRR provides a rebuttable presumption that an acquisition of more than 25% of the shareholding or voting rights in a target confers material influence, while acquisitions of less than 15% are not ordinarily subject to review. Between these ranges, the FCCPC may look to additional factors such as veto rights, board representation, or contractual provisions that enable an acquirer to exert significant influence on the business and policy direction of the target.

For cross-border restructurings, even where the Nigerian incorporated company is not directly involved in the transaction, a filing obligation may still arise if there is a change of control over the Nigerian company or if the transaction otherwise has a material effect in Nigeria. This is because the FCCPC asserts jurisdiction over foreign-to-foreign mergers that impact competition in Nigeria. Consequently, parties to such restructurings must carefully assess whether the Control and Threshold Tests are met and, if so, ensure that the FCCPC’s prior approval is obtained before implementing the transaction. It is important to however, note that internal restructurings are excluded from requiring FCCPC approval under Section 4 of the MRR. Therefore, where the cross-border restructuring qualifies as an internal restructuring, FCCPC approval would not be required even if it meets the Control and Threshold Tests.

In a cross-border restructuring, no jurisdiction supersedes another; each company must comply with the laws of its place of incorporation and, if applicable, its listing jurisdiction. In Nigeria, merger control approval from the FCCPC is required where a change of control occurs, even if the Nigerian company is not directly involved, as the regime also applies to foreign-to-foreign transactions with a material effect on the Nigerian market.

4. Foreign Exchange and Funds Flow Considerations

Foreign investors are guaranteed the unconditional transferability of funds through an authorised dealer.⁹ An ‘Authorised Dealer’, which is a Nigerian bank licensed by the Central Bank of Nigeria (“CBN”) to deal in foreign exchange, issues an electronic Certificate of Capital Importation (“e-CCI”) electronically as proof that the investor brought capital into Nigeria for equity or loan investments. To repatriate the proceeds of foreign investments made

⁹ Section 24 of the Nigerian Investment Promotion Commission Act, Cap N117 LFN 2004.



through the official foreign exchange market (the “**Official Market**”), such a foreign investor must obtain a e-CCI. The e-CCI guarantees the investor access to the Official Market to repatriate returns, including dividends, interest on loans, and proceeds realised upon divestment.

Additionally, the flow of funds across group entities, including repayment of shareholder loans, settlement of intercompany balances or capital reallocation, must also comply with the rules of the CBN. Proper planning and compliance are critical to avoid delays or restrictions that could affect the timing and execution of restructuring steps, particularly those involving capital injections, debt-to-equity swaps, or cross-border transfers. Ensuring adherence to these requirements supports smooth implementation and protects both the company’s liquidity and stakeholder interests.

5. Group-Level Agreements and Operational Continuity

An important consideration in any restructuring exercise is the management of the company’s commercial arrangements with group companies, joint venture partners and third parties. Agreements such as transfer agreements, intellectual property licences and intra-group financing arrangements, etc, should be reviewed to determine whether any provisions could be affected by the restructuring. Particular attention should be paid to clauses on assignment, change of control, termination or material adverse change, as these may impose restrictions, require counterparty consent or trigger renegotiation or termination.

For third-party suppliers, distributors and service providers, the key focus is to ensure that the restructuring does not interfere with contractual performance or continuity of obligations. It will be important to confirm that critical services, including shared technology platforms, logistics and support functions, remain available throughout the restructuring process. Transitional arrangements or novations may be considered as precautionary measures to prevent disruption, depending on the outcome of the contractual review. This approach ensures that the company safeguards its relationships and avoids unanticipated operational risks.

Companies should therefore review all group and third-party agreements, secure necessary consents, ensure continuity of critical services, implement transitional arrangements where needed, and document all actions to mitigate operational and legal risks during restructuring.

6. Insolvency-Led Restructuring Options: Integrating Insolvency Mechanisms into Restructuring Strategy

Insolvency-led restructuring in Nigeria is often shaped by various dynamics rather than, in limited circumstances, consensus-driven workouts. These may include shareholder, fragmented creditor actions, and competing enforcement proceedings, particularly in foreign-owned Nigerian subsidiaries with complex ownership structures or conflicting investor



interests. These varied interests directly influence the choice and use of the restructuring options available under the CAMA, designed to facilitate either corporate rescue, value preservation, or an orderly exit, depending on the company's financial position and stakeholder dynamics.

Common triggers that signal the need to consider insolvency-led restructuring include persistent cashflow shortfalls, repeated defaults or near-defaults under loan or trade credit facilities, increasing reliance on creditor forbearance or informal extensions, and the accumulation of unpaid statutory liabilities such as taxes or pension contributions. Other indicators include enforcement actions or threats by creditors, conflicting or uncoordinated recovery steps by different creditor groups, shareholder or board deadlock that prevents timely decision-making, and the inability to raise fresh capital on reasonable terms. Where these conditions become present, particularly in combination, the risk of insolvency becomes significant, and directors' duties increasingly shift towards creditor protection. Section 308 of CAMA establishes the directors' duty of care and skill, and section 309 establishes their duty as trustees of the company's property. These sections emphasise the level of care, diligence, and honesty that directors must exercise in the interests of the company, including, in insolvency, protecting creditor interests.

Once a trigger occurs, early consultation with the company's legal advisers is critical to assess the company's standing, evaluate available options under CAMA, and seek recommendations for the most appropriate restructuring pathway to avoid value erosion, litigation exposure, or regulatory intervention, which can narrow the available choices.

Some of the insolvency options under CAMA are outlined below.

- 6.1. **Schemes of Arrangement and Compromise:**¹⁰ A Scheme of Arrangement under CAMA allows a company to propose a compromise or arrangement with its creditors or members. Once the scheme is approved by the requisite majority¹¹ of creditors or members and sanctioned by the Court, it binds all parties, including dissenting shareholders. This mechanism enables companies to restructure debt, adjust repayment terms, or modify shareholding arrangements without triggering immediate insolvency proceedings. Schemes are particularly useful in cross-border restructurings, as they provide a court-sanctioned framework that gives foreign investors and creditors confidence in the enforceability of the agreed compromise. It is best suited where there is a continuing viable business and creditor support can be achieved, but dissenting minority concerns require court sanction.
- 6.2. **Company Voluntary Arrangement ("CVA"):**¹² A CVA is a contractual arrangement between a distressed company and its creditors, supervised by a licensed insolvency

¹⁰ Section 711 of the CAMA.

¹¹ Section 711(2) of the CAMA provides for approval by a majority, representing at least 75% in value of the creditors or class of creditors, or members or class of members, present and voting, either in person or by proxy.

¹² Section 434 of the CAMA.



practitioner. It allows the company to continue trading while repaying its obligations under restructured terms. For a CVA to be binding, it must be registered with the Court.¹³ The mechanism also provides legal protection against individual creditor enforcement, which helps the company preserve value, stabilise operations, and maintain business continuity during the restructuring process. CVAs are particularly suited for companies seeking to restructure short-term liabilities or manage operational cashflow constraints.

- 6.3. **Administration:**¹⁴ Administration under CAMA involves the appointment of an administrator by the company, its creditors, or the Court to take control of the company's affairs with the primary objective of rescuing it as a going concern. Where rescue is not possible, administration facilitates the realisation of assets for the benefit of secured and preferential creditors. Administration allows the company to continue operations while the administrator implements a plan to maximise recoveries, maintain contractual relationships, and stabilise stakeholder confidence. In cross-border contexts, administration is often a strategic tool for coordinating local insolvency processes with foreign restructuring initiatives. It is an option that is suitable where urgent protection from creditor enforcement is required, management control has broken down, or an independent party is needed to stabilise the business.
- 6.4. **Liquidation:** This option remains the primary mechanism where rescue is no longer viable. The CAMA recognises three forms of winding up: members' voluntary winding up under sections 626-633, which is available only where the company is solvent; creditors' voluntary winding up under sections 635 - 641, where insolvency is probable or ascertained; and compulsory winding up by the Court pursuant to sections 571 - 581, including on just and equitable grounds. Court-ordered liquidation is particularly relevant where shareholder approval is unattainable or where judicial oversight is required to consolidate claims, stay parallel proceedings, and appoint a liquidator with authority to preserve assets and manage creditor claims in an orderly manner. Liquidation is usually the last resort where the business is no longer viable, unable to meet its financial obligations as they become due, management deadlock prevents rescue, or an orderly and court-supervised exit is required to protect creditor interests.

To conclude on these insolvency and business rescue options, creditor protection is a primary concern, central to all insolvency decisions. Nigerian courts closely scrutinise transactions undertaken shortly before, and even during an insolvency process, particularly where related-party arrangements and asset transfers are involved. This scrutiny is relevant for identifying fraudulent preferences,¹⁵ wrongful trading,¹⁶ or transactions at an undervalue,¹⁷ which, if discovered, may expose directors to personal and, in some cases, criminal liabilities, and may result in such transactions being set aside by the Court. To mitigate these risks, Nigerian companies are required to ensure full and accurate disclosure, obtain independent

¹³ For the purposes of insolvency proceedings, the term "Court" is defined in section 868 of the CAMA as the Federal High Court.

¹⁴ Section 443(1) of the CAMA.

¹⁵ Section 658 of the CAMA

¹⁶ Section 673 of the CAMA

¹⁷ Section 659 of the CAMA



valuations where appropriate, and engage with creditors transparently. In practice, early stakeholder engagement, including with shareholders, secured creditors, key suppliers, and where necessary, regulators, may prove helpful in minimising operational disruption and reducing disputes over asset valuation, creditor ranking, and related-party transactions.

7. Dispute Resolution Considerations

Restructuring and insolvency exercises frequently give rise to disputes, particularly in cross-border contexts where expectations and legal standards may differ across jurisdictions. Common areas of contention include disagreements over valuation, allegations of unfair treatment of minority shareholders, challenges to related-party transactions, and claims relating to breach of directors' duties during periods of financial distress. In liquidation scenarios, disputes may also arise over asset realisation, intercompany set-off, and the ranking or validity of creditor claims. From experience, many of these disputes can be mitigated or avoided entirely by adopting a proactive, litigation-mitigating approach at the restructuring stage. This includes ensuring proper documentation of board decisions, with evidence that directors considered the interests of creditors where insolvency is probable. Independent fairness opinions and valuations are particularly valuable in related-party restructurings or debt-to-equity conversions, both as a governance safeguard and as defensive evidence in the event of subsequent litigation. Furthermore, clear treatment of intercompany claims, strict separation of roles between group entities, and compliance with Nigerian corporate and insolvency law significantly reduce the risk of court actions or post-liquidation claims.

Jurisdictional considerations are critical in cross-border restructuring. While Nigerian courts generally exercise jurisdiction over insolvency proceedings involving Nigerian-incorporated entities, disputes may involve multiple jurisdictions, particularly where a foreign law governs finance documents or multi-jurisdictional arbitration clauses exist. It is therefore important to conduct legal analyses of dispute resolution clauses, governing law provisions, and enforcement risks. In some cases, proactive use of arbitration or negotiated settlements may offer a more efficient and commercially viable alternative to protracted multi-jurisdictional litigation.

For foreign-owned subsidiaries, additional challenges arise in coordinating Nigerian insolvency proceedings alongside parallel restructuring or insolvency processes involving the foreign parent company. Nigeria does not yet have a full cross-border insolvency system like the UNCITRAL Model Law and has not localised it. As a result, insolvency provisions under Nigerian law apply only to Nigerian-incorporated companies. To achieve set objectives in cross-border insolvency, Nigerian counsel would typically coordinate with foreign insolvency practitioners in jurisdictions where parallel insolvency proceedings are being conducted or in jurisdictions where assets of interest are domiciled. Where foreign insolvency or restructuring judgments affect Nigerian assets or creditors, enforcement can be pursued in Nigeria under the Foreign Judgments (Reciprocal Enforcement) Act 1961 and the Reciprocal Enforcement



of the Foreign Judgments Ordinance 1922, allowing such judgments to be recognised and enforced in Nigeria.

Ultimately, integrating insolvency planning with dispute resolution foresight enables Nigerian companies to navigate complex cross-border restructurings more effectively to preserve asset value while minimising the risk of director liability and disruptive litigation.

8. Conclusion

Cross-border restructuring transactions may trigger legal and regulatory obligations in each jurisdiction where the parties have significant business operations, presence, or turnover. Where Nigerian companies are involved or ultimately impacted, they must carefully assess applicable domestic laws and regulations to ensure compliance, avoid delays, and mitigate the risk of penalties or invalidation of the restructuring. To this end, companies should develop an implementation plan covering timely regulatory filings, governance requirements, assessment of related party transactions, review of critical contracts to safeguard operational continuity throughout the restructuring process, and protecting creditors' interests in the event of insolvency.

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