



CORPORATE RESTRUCTURING AND TAKEOVERS: A COMPARATIVE ANALYSIS OF THE NIGERIAN LEGAL REGIME

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ABSTRACT

This article conducted a comprehensive doctrinal examination of the legal and regulatory frameworks governing corporate restructuring, reconstruction, and takeovers in Nigeria. In an increasingly volatile global economy, corporate entities frequently resort to strategic reorganizations, including mergers, acquisitions, and schemes of arrangement among others, to enhance financial performance, consolidate market positions, and ensure long-term viability. The study adopted the doctrinal method of legal research. Primary sources comprising statutes, subsidiary legislation, judicial decisions and relevant international instruments were critically analysed alongside secondary sources including textbooks, journal articles, policy papers and other scholarly materials. The article argued that while these mechanisms are vital tools for value creation, they necessitate a robust legal regime to balance corporate efficiency with the protection of minority shareholders, employees, and the broader public interest. Central to this analysis is a critique of the Companies and Allied Matters Act, 2020, the Investment and Securities Act, 2025, and the Rules and Regulations of the Securities and Exchange Commission. The article evaluated the procedural intricacies of various restructuring models, specifically focusing on the shift in regulatory oversight for mergers from the SEC to the Federal Competition and Consumer Protection Commission. It further investigated the legal implications of takeover bids and the defensive measures employed by target companies to resist hostile acquisitions. It identified significant challenges within the current regime, particularly regarding the protection of stakeholder interests during forced acquisitions and the complexities arising from overlapping regulatory jurisdictions. The article concluded that while the Nigerian legal framework has matured significantly, further refinement is needed to streamline approval processes and strengthen enforcement mechanisms. The study recommended legislative harmonization and the adoption of more rigorous public interest criteria in merger assessments to ensure that corporate restructuring serves both the economy and the equity of all stakeholders involved such as the government, shareholders, creditors and suppliers.

KEYWORDS: *Corporate, Restructuring, Legal, Regime and Take-over*

1. INTRODUCTION

The Company and Allied Matters Act 2020 provides that where under a scheme proposed for a compromise, arrangement of companies or the merger of any two or more reconstruction between two or more companies, the whole or any part of the undertaking or the property of any company companied in the scheme (in this section referred to as the transfer of company) is to be transferred to another company, the Court may, on the application in summary of any of the companies to be

affected, order separate meetings of the companies to be summoned in such manner as the Court may direct.¹

In today's rapidly changing business environment, corporations face numerous challenges, including financial distress, shifting market trends, and intensified competition. To survive and thrive, companies often undergo corporate restructuring or reconstruction, or engage in takeovers. These complex transactions involve significant changes to a company's structure, operations, or ownership, aiming to enhance performance, profitability, and sustainability.

In periods of economic challenges, a company that wishes to stay afloat, must design and embark on legally acceptable options to survive. However, the options available are under the Nigerian Corporate & Investment Law and Practice. Thus, rather than fizzle out due to harsh operating environment, stiff competition or difficult regulatory compliance, aiding companies avoid liquidation on adoption of various corporate restructuring options as a survival strategy. Similarly, the going concern companies desirous of expansion could also explore the corporate restructuring options to achieve greater corporate growth. Some involve internal arrangement between a company and its member or creditors, while others deal with the company and outsiders.²

2. CORPORATE RECONSTRUCTION AND RESTRUCTURING

Reconstruction is a general term indicating a re-organization in the equity holding of a company. It is a structural change that may take the form of merger or takeover. It is also said to be process of altering the status, composition and the general outlook of a company with commercial challenges or take some opportunities. Sometimes, this may also be in response to government's policy directives.³ It is also an internal arrangement which affects only one company. It may be the transfer of a company's undertaking to a new company formed for that purpose.⁴ Corporate Restructuring involves the process of reorganizing a company's structure, operations, or finances to improve efficiency, reduce costs, and enhance competitiveness. Process of reorganizing a company's structure, operations, or finances to improve efficiency, reduce costs, and enhance competitiveness. There are some of the recognized restructuring options that are provided by the law and they are: Arrangement and compromise; Arrangement on sale; Merger and acquisition; Takeover; Management buyout; Purchase on assumption; and Cherry picking. These options will be discussed below to give in depth knowledge of restructuring and takeover.

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¹ Companies and Allied Matters Act 2020, s 711(1).

² C C Wigwe, *Introduction to Company Law and Practice* (2nd edn, Princeton & Associates, 2022) 342.

³ L O Nwauzi, and S G Ibikiri, *Corporate Reconstruction in Nigeria* <<https://www.researchgate.net/publication/333450933>> accessed 3rd September, 2024.

⁴ O V C Okene and G G Otuturu, *Nigerian Company Law and Practice* (Port Harcourt, Faculty of Law, Rivers State University 2021) 230.



3. LEGAL AND REGULATORY FRAMEWORKS FOR RECONSTRUCTION/ RESTRUCTURING AND TAKEOVER

The legal architecture governing corporate reorganization in Nigeria is a multi-layered regime primarily anchored by the Companies and Allied Matters Act, 2020 and the Investment and Securities Act, 2025. This framework is further augmented by the Federal Competition and Consumer Protection Act, 2018, which shifted the oversight of mergers to the Federal Competition and Consumer Protection Commission (FCCPC), and the SEC Rules, which regulate investor protection and takeover bids. Together, these statutes provide the procedural safeguards and judicial oversight necessary to facilitate seamless corporate transitions while balancing the competing interests of shareholders, creditors, and the national economy.

3.1 The Companies and Allied Matters Act, 2020

It is an incontrovertible fact that the Companies and Allied Matters Act 2020 is one of the major legislations regulating corporate restructuring in Nigeria. Simply put differently, the CAMA 2020 is the principal statute controlling the practice and procedures of instant discourse owing to its pre and post incorporation requirements.⁵

However, with the enactment of the Investment and Securities Act, 2025 relevant provisions of the CAMA were transferred to the ISA 2007. Nonetheless, the CAMA 2020 still provides for salient provisions which pointedly relates to corporate restructuring in Nigeria. Accordingly, upon conclusion of negotiations between an acquiring company and the targeted company/ companies, the new company so formed must comply with the incorporation procedures as set out in the CAMA 2020. Therefore, it logically follows that the new entity must duly file its memorandum of association; articles of association as well as FORM CAC 1.1 (Application for Registration of Company) to the Corporate Affairs Commission evidencing the Company Address; the minimum Share Capital of the Company; Particulars of First Directors & their Consent to act; Particulars of Secretary (Individual); Particulars of Secretary (Firm/Corporation); and Statutory Declaration of Compliance with the requirements of CAMA 2020 by an applicant or his agent; Nonetheless, nothing prevents the CAC from accepting declaration of compliance signed by a legal practitioner.⁶

Similarly, the name of the new entity must comply with the unambiguous provisions of section 29 of the CAMA 2020. It therefore follows that in happenstances of mergers, acquisitions or takeovers, the names of the newly formed entity must meet the requirements set out in section 29 of the CAMA 2020, where it is a private, public, limited by guarantee or an unlimited company, considering the fact that a company may be converted and re-registered as different shades.⁷ Furthermore, nothing precludes the CAC from requiring a company to change its name if it discovers that such name conflicts with an existing trademark or business name registered in Nigeria prior to the registration

⁵ CAMA 2020, (n1) s 36.

⁶ CAMA (n1) s 27; 32; 40.

⁷ *ibid*, s 55-77.



of the company and the consent of the owner of the trademark or business name was not obtained.⁸; In sum, the name of the new entity must as a matter of law be registered with the Corporate Affairs Commission in its register of companies in lieu of the former names and a new certificate of incorporation issued.⁹

Every company is required to hold a general meeting as its annual general meeting in addition to any other meeting in that year, and not more than 15 months should elapse between the date of one annual general meeting of a company and that of the next. In so far as when a company holds its first annual general meeting within 18 months of its incorporation it need not hold it in that year or the following year.¹⁰ In the same vein, the Board of directors of a company may convene an extraordinary general meeting whenever they deem fit and if any time there are not within Nigeria sufficient directors capable of acting to form a quorum, a director may convene an extraordinary meeting.¹¹ Also, section 239 (2) of CAMA 2020 gives the members of a company the right to call extra-ordinary meeting; If for any reason it is impracticable to call a meeting of a company or of the board of directors in any manner in which such meeting should be called or be conducted in a manner prescribed by the articles or the CAMA 2020, the court may, either on its own motion or on the application of a director or any member entitled to vote, order a meeting to be called, held and conducted in such manner as the court thinks fit, and may direct that one member present and voting in case of a meeting of a company or one director in the case of a board may apply to the court for an order to take a decision which shall bind all the members.¹² Also, section 262(1) of the CAMA 2020 provides that copies of every resolution reached by the respective entities that were merged; acquired or taken over must be registered with the Corporate Affairs Commission and annexed to the articles issued after passing the resolution/ agreement.¹³ Accordingly, section 849 of the CAMA 2020 permits two or more incorporated trustees with similar aims and objects to merge under terms and conditions as the CAC may prescribe by regulation.¹⁴

3.2 Investment and Securities Act, 2025

The Investment and Securities Act, 2025 is an Act that established a body corporate known as the Securities and Exchange Commission,¹⁵ as the apex regulatory institution for the Nigerian capital market.¹⁶ Essentially, it is pertinent to state that prior to the enactment of the FCCPA 2018, the issues of mergers and acquisition were regulated by the ISA 2007 with the Securities and Exchange Commission having general regulatory oversight,¹⁷ with respect to matters such as the: methods of

⁸ CAMA 2020, s30 (4), *Niger Chemists Ltd v Nigeria Chemists* [1996] 1 ANLR 171.

⁹ *ibid* s 30 (5).

¹⁰ *ibid*, s 237 (1)(a)(b).

¹¹ *ibid*, s 239 (1).

¹² *ibid*, s 247.

¹³ *ibid* s 262(3).

¹⁴ G C Okara, 'Legal Frameworks for Corporate Restructuring in Nigeria: Loosed or Water-Tight?' [2021] (1) (1) *The Journal of Law and Policy* 20-25.

¹⁵ ISA 2007, s 1 (1)(2).

¹⁶ *ibid* s 13.

¹⁷ *ibid*, s 13 (p).



achieving a merger;¹⁸ determination of financial thresholds for mergers;¹⁹ pre-merger notice,²⁰ approval of scheme by shareholders,²¹ acquisition of dissentient's shares; post-approval procedures. Furthermore, the SEC was empowered by the ISA 2007 to identify any potential competition infractions, in order to prevent monopoly.²² In the same vein, it was authorized to break up or remerge any merger where the merger or proposed merger would substantially restrain competition.²³ In other words, until the coming into force of the FCCPA 2018, the ISA 2007 was the major legislation regulating mergers and acquisitions in Nigeria.²⁴

3.3 Bank and Other Financial Institutions Act, 1991

The Bank and Other Financial Institutions Act, 1991,²⁵ is an Act that regulates the banking sector in Nigeria with the Central Bank of Nigeria, as the regulatory body. Although the FCCPA 2018 is now the primary legislation on mergers and acquisitions in Nigeria, however, where business combinations involve organizations in regulated industries, they are also subject to the provisions of the various sectoral legislations. More often, such legislation would require the organizations to obtain approval/or no objection from the relevant sectoral authority in any proposed merger or acquisition.²⁶ It is upon this back drop that the CBN regulates bank mergers pursuant to its powers under the BOFIA alongside the Procedures Manual for Application for Bank Mergers/Take over 2005. Nonetheless, emphasis shall be placed on the former under this heading. Essentially, by section 7 of the BOFIA, the rules and regulations on reconstruction, reorganization, mergers and disposal of banks are explicitly provided. In essence it suffices to submit that the BOFIA has considerable impact on mergers and other forms of business combinations as it relates to banks.²⁷

3.4 Federal Competition and Consumers Protection Act, 2018

The Federal Competition and Consumers Protection Act 2018 is currently the key legislation on mergers and acquisition in Nigeria. The above stated assertion is hinged on the premise that the FCCPA 2018 tacitly repealed the provisions of the ISA as they apply to merger and by extension acquisitions; thereby introducing a change in the regulatory framework, stripping the SEC of its powers and conferring them on the FCCPC so established under it. In addition, the most important far-reaching effect of the FCCPA 2018 is the repeal of sections 118-128 of the ISA 2007 which previously regulated mergers.²⁸

¹⁸ ISA 2007, s 119 (2).

¹⁹ *ibid*, s 120.

²⁰ *ibid*, s 123-126.

²¹ *ibid*, s 118 (1).

²² *ibid*, s 118 (3); 121 (1)(a).

²³ *ibid*, s 128.

²⁴ *ibid*, s 121-130; G C Okara (n14).

²⁵ Cap B3, LFN 2004 (as amended), (BOFIA).

²⁶ A A Idigbe and Others 'Nigeria: Merger Control 2020' <<https://iclg.com/practice-areas/mergercontrol-laws-and-regulations/Nigeria>> accessed 4 September 2024.

²⁷ G C Okara (n14).

²⁸ *ibid*.



It is pertinent to state that the objectives of the FCCPA 2018 include to promote and maintain competitive markets in the Nigeria economy; promote economic efficiency; protect and promote the interest and welfare of consumers by providing consumers with competitive prices and product choices; prohibit restrictive business practices which prevent, restrict or distorts competition or constitute an abuse of a dominant position of market power in Nigeria; and contribute to the sustainable development of the Nigerian economy.²⁹ Under the FCCPA 2018, 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.³⁰ Based on the broader definition of mergers under the FCCPA 2018, the acquisition of shares and assets has been included within the scope of mergers. Therefore, any acquisition that would result in an indirect change in control over the whole or part of a Nigerian entity would trigger the merger control provisions of the FCCPA 2018.

The FCCPA 2018 classifies mergers into two categories, namely small and large mergers.³¹ However, the notification and approval requirements that apply to small mergers differ from those that apply to large mergers.³² Additionally, the Federal Competition and Consumer Protection Tribunal as established under Part VII, sections 39 to 58 of the FCCPA 2018 is empowered to adjudicate over conducts prohibited under the FCCPA 2018 and exercise the jurisdiction, powers and authority conferred on it under the FCCPA 2018 and any other enactment.³³ Although the decision of the FCCPC are both administrative and quasi-judicial, appeals from any decision of the FCCPC lies to the FCCPT by way of judicial review.³⁴ Therefore, a party aggrieved by the decision(s) of the FCCPC may file an application for review before FCCPT and where the decision relates to that of the FCCPT, to the Court of Appeal.³⁵ Also, the FCCPT is permitted under the FCCPA 2018 to exercise any of the powers which ought to have been exercised by the FCCPC in the course of implementation of the subject matter before it.³⁶

3.5 Securities and Exchange Commission

The Securities and Exchange Commission was established under the Investments and Securities Act 2007.³⁷ The Commission is charged with the responsibility for regulating investments and securities business in Nigeria.³⁸ In particular, it regulates all offers of securities of public companies,³⁹ and protects the integrity of the securities market against all forms of abuses including

²⁹ ISA (n15) s.1.

³⁰ *ibid*, s 92 (1) (a)

³¹ *ibid*, s 92 (4).

³² *ibid*, s95-96

³³ *ibid*, s 39 (2).

³⁴ *ibid*, s 47 (1)(a)-(b).

³⁵ *ibid*, s 103.

³⁶ *ibid*., ss. 47 (1)(a)(b); 42.

³⁷ ISA (n15) s.

³⁸ *ibid*, s 13(a).

³⁹ *ibid*, s 13(c).



insider trading.⁴⁰ It also reviews, approves and regulates mergers, acquisitions, takeovers and all forms of business combinations.⁴¹ The Act makes it mandatory for all securities and investments of public companies and collective investment schemes to be first registered with the Commission.⁴² It also empowers the Commission to review and approve applications for proposed mergers, takeovers, acquisitions and all forms of business combinations.⁴³ These provisions apply to both private and public companies. In addition, the Commission is responsible for regulating the capital market including the stock exchanges.⁴⁴

4. OPTIONS FOR CORPORATE RESTRUCTURING

The options available in corporate restructuring are internal or external to the company or combination of both. Business decisions and legal exigencies would determine the option a company will adopt. Internal options involve the company alone with its members or creditors while external options involve the company and other third parties. At times, the company can consider combination of both internal and external options as most potent measures in the circumstances.⁴⁵ The Securities and Exchange Rules 2010 (as amended) sets out the documents that must be forwarded to Securities and Exchange Commission in the course of internal restructuring of a company. Rule 230 (b)⁴⁶ provides as follows:

Shareholders resolution of the companies approving the restructuring;

- i. A copy of certificate of incorporation of the affected companies certified by the company secretary.
- ii. Corporate Affairs Commission forms dealing with particulars of directors and allotment of shares of the affected companies.
- iii. 'No objection' letter from relevant regulatory authorities (where applicable).
- iv. Information memorandum containing the following information:
 - (a) Directors of the company
 - (b) Profile/share capital history of the companies
 - (c) Shareholding structure of the companies
 - (d) Directors beneficial interest
 - (e) Status of the subsidiaries after the restructuring
 - (f) Status of the shares of restructured companies
 - (f) Status of the employees of the restructured companies
 - (g) Percentage or level of involvement of the combined companies (if they have similar products) in the industry.

⁴⁰ ISA (n15), s 13(n).

⁴¹ Ibid, s13(p).

⁴² ISA (n15) s 54(1).

⁴³ Ibid, s 118(1).

⁴⁴ Ibid, s28(1); O V C Okene (n14) 5.

⁴⁵ C C Wigwe (n2).

⁴⁶ Securities and Exchange Rules 2010 (as amended).

- (h) Any other information or document required by the Securities and Exchange Commission (SEC) from time to time.

4.1 Internal Restructuring Options

In internal restructuring options, a situation may arise when the liabilities of a company are in excess of its assets, prompting the company to look inwards and consider an internal reorganization of the company with its members or compromise with its creditors.⁴⁷

The following are some of the major internal restructuring options:

- (1) Arrangement and compromise
- (1) Arrangement on sale; and
- (2) Management buy-out

4.1.1 Arrangement and Compromise Under Sections 710 And 715 CAMA, 2020

Arrangement and compromise are used interchangeably. Compromise is basically an arrangement by a company with its creditors and or members or a class of them, to accept less than what they are ordinarily entitled to as full satisfaction of its obligation.⁴⁸

It involves a business negotiation whereby the company seeks a variation or relinquishment of its obligations to the creditors/debenture holder or shareholders. Thus, a scheme of arrangement by way of compromise allows a company to alter the rights of its members or creditors, with the sanction of the court. Compromises and arrangements facilitate the modification of rights of the class of persons involved following the assent of a majority of them at a meeting called for that purpose. The scheme when sanctioned by the court as being fair and equitable in the circumstances becomes binding on the company and its affected creditors/members.

In practice, the negotiation for the scheme of arrangement is often driven by the company and presented to the relevant party involved; the creditors or members. The scheme may involve negotiations for the company to:

- (1) Make a compromise or arrangement with its creditors (usually debenture holder): Propose a relinquishment of their security, or to permit the creation of a prior or pari passu charge, or undertake to pay them off prior to the reconstruction or convince them to take shares, or part cash, in satisfaction of their debts.
- (2) Make a compromise or arrangement with members (Usually preferential shareholders or a class thereof and aimed at varying the rights of its members, or any class of members): Propose reduction or cancellation of preferential shareholders' right to dividend, in exchange for an agreement with ordinary shareholders to surrender part of their holdings to the preference shareholders, who have agreed to accept ordinary shares in lieu of

⁴⁷C C Wigwe (n2) 343.

⁴⁸CAMA (n1), s710.



dividend arrears. Also propose an arrangement with preference shareholders for cancellation of their dividend arrears and reduction of the fixed rate of dividend or to convert their preference shares to ordinary shares.⁴⁹

4.1.2 Arrangement on Sale under Sections 714-716 of the Companies And Allied Matters Act, 2020

By Section 714 of the Companies and Allied Matters Act 2020, the members in a general meeting are empowered to resolve by way of special resolution that the company should be wound up and that the liquidator appointed and authorized sell the whole or part of its undertaking or assets to another corporate body. The consideration for the sale may be cash, shares, debentures or policies which should then be distributed in species amongst the members of the company in accordance with their rights in liquidation. The money realized can be used in the flotation of the new company or as equity contribution in any scheme of arrangement for restructuring, such as merger. The main difference between the liquidation process in the corporate restructuring and that of dissolution of the company lies on the fact that the winding up embarked on for restructuring usually results in the resurrection of the company in another form, either as a new company, or providing fund for another restructuring scheme, while the winding up for liquidation of the company brings a permanent end to the company since the assets are distributed to those entitled according to the rules of distribution of assets of a dissolved company.⁵⁰

4.1.3 Management Buy-Out

This refers to the acquisition by a management team of a company, of controlling shares of that company or its subsidiaries with or without third-party financing.⁵¹ Management buy-out is very interesting as the company which hitherto employed the management team, has been acquired by them. The management team involved usually constitutes of the directors and the officers of the company, who may or may not be holding shares in the company, but who offer to acquire the controlling shares of the company and make it their own. Management buy-out favors the proponents of directors' share qualification requirement and employee share ownership scheme to the effect that ownership of substantial interest in a company makes the management stakeholders in the affairs of the company they manage, making them to adopt dexterous management skills to salvage the returns on investment. This proposition therefore discloses the diametrical management flaw in some organizations, to the effect that there seems to be a dichotomy of the level of management skill adopted by the management team when operating as an owner and the one in use as employee.

Rather than allow the company to dissolve or be subject to merger and acquisition or takeover by third parties, who may not share the vision and mission of the enterprise, the management team of

⁴⁹C C Wigwe (n2) 344.

⁵⁰ Ibid.

⁵¹ SEC Rule 2013.

the company can decide to salvage the company by buying into its stock and acquire the controlling shares in-house. The funding may be from internal source and/or by third party financing. The third party financier however, merely grants loan to the team to purchase the shares and not in any way acquiring the shares of the company. A company can have access to grants from government as encouragement or assistance for its operation. The company can sue any individual or agency that prevents it from participating or receiving government grants on the grounds of its indebtedness. That was one of the decisions in *AMCON v A stone Quarries Ltd.*⁵²

4.2 External Restructuring Options

This involves the company and other third parties. The main types of external restructuring options are:

- (1) Merger and acquisition
- (2) Take over
- (3) Purchase and assumption
- (4) Cherry picking, etc

4.2.1 Merger and Acquisition

This is a veritable tool or option which companies use to address their business problems so as to enhance efficiency and profitability. Companies embrace merger and acquisition when faced with serious economic problems. Therefore, the importance of merger and acquisition cannot be over-emphasized. Here merger and acquisition will be discussed separately.

i. Mergers

Merger is any amalgamation of the undertaking or any part of the undertakings or interests of two or more companies or the undertakings or part of the undertakings of one or more companies and one or more bodies corporate.⁵³ Nonetheless, a merger is said to occur 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.⁵⁴ Thus, it is imperative to state copiously that under the FCCPA 2018, a merger can be in several forms namely: as a purchase or lease of the shares, interest or assets of the other undertaking in question, an amalgamation or combination with the undertaking in question or in form of a joint venture.⁵⁵

In a similar vein, merger is a business combination which involves the fusion of two or more corporate entities into one, largely on equal terms.⁵⁶ This position was also reinstated by

⁵² (2021) LPELR-54146(CA); *C C Wigwe* (n2) 346.

⁵³ ISA (n15).

⁵⁴ FCCPA 2018, s 92 (1)(a).

⁵⁵ ISA (n15) s 92 (1)(b)(i)-(iii).

⁵⁶ *N C S Ogbuanya, Essentials of Corporate Law Practice in Nigeria* (Novena Publishers Ltd, 2010), 615.



Muhammed, when he tersely stated inter alia: ‘merger entails the coming together of two or more firms to become one big firm’.⁵⁷

ii. Acquisition

An acquisition is the purchase of one organization by another, such that the acquirer maintains control over the acquired firm.⁵⁸ Acquisition defined as the purchase of one company by another with neither the shareholders nor directors of the purchased companies retaining any continuing interest in the enlarged company.⁵⁹ Fundamentally, it has been succinctly asserted inter alia that: ‘acquisition is the takeover or purchase of a small firm by a big firm which are both pursuing similar motives.’⁶⁰ Again, acquisition may be defined as an act of acquiring effective control over asset or management of a company by another company without any combination of businesses or companies. Hence, it is also a process of taking a controlling interest in a business.⁶¹

Again, it was observed that in a simple and erudite manner opines that acquisition is described as a business combination in which one completely swallows the other(s) under the leadership of a single management.⁶² Hence it is of great importance to state that acquisition can be friendly or hostile. In the case of a friendly acquisition, the target is willing to be acquired. Hence, viewing the acquisition as an opportunity to develop into new areas and use the resources offered by the acquirer, whereas in happenstances of hostile acquisition, the target is usually opposed to the acquisition. It is upon this backdrop that hostile acquisitions are sometimes referred to as hostile takeovers. Essentially, acquisition is defined as the takeover by one company of sufficient shares in another company to give the acquiring company control over that of the other company.⁶³

4.3 Takeover

A take-over may be comprehensively defined as the acquisition by one company (called the acquiring company) of sufficient shares in another company (called the target company) to give the acquiring company control over the target company.⁶⁴ The result is the formation of a group of companies in which the acquiring company becomes the holding company and the target company becomes a subsidiary.⁶⁵ A take-over of a company involves the sending of a take-over bid by the acquiring company (also called the offer or company) to the directors and shareholders of the target company (also called the offered company). However, a take-over bid shall not be made in any case

⁵⁷ O S Muhammed, ‘Legal and Procedural Tax Issues in Merger and Acquisition Exercise in the Nigerian Banking Sector’ [2012] 4 [1] *Port Harcourt Law Journal*, 216.

⁵⁸ U U Boniface, ‘Relevance of Mergers and Acquisition on Financial Performance of Deposit.

⁵⁹ Banwo & Ighodalo, ‘Tax Considerations for Mergers & Acquisitions’ <www.banwoighodalo.com/resources/tax-considerations-inmergers&acquisitions.pdf> accessed 5th September, 2024.

⁶⁰ J Okpanachi, Comparative Analysis of the Impact of Mergers and Acquisitions on Financial Efficiency of Banks in Nigeria, [2011] 3 [1] *Journal of Accounting and Taxation*, 48.

⁶¹ G C Okara (n14).

⁶² A O Umoren, and F O Olokoyo, ‘Merger and Acquisition in Nigeria: Analysis of Performance, Pre-and-Post Consolidation,’ [2007] 1 [1] *Lagos Journal of Banking Finance & Economic Issues*, 1-16.

⁶³ SEC (n51) Rules 2013;421.

⁶⁴ ISA (n15) s117.

⁶⁵ O V C Okene (n14) 233.

where the bid is dispatched to fewer than twenty shareholders in order to purchase shares by separate agreements, or to purchase shares in a company which has fewer than twenty shareholders or such other number as may be prescribed in the regulations,⁶⁶ or to purchase shares in a private company.⁶⁷ The Act requires any person or persons intending to make a take-over bid to apply to the Securities and Exchange Commission for an authority to proceed with the take-over bid.⁶⁸ The application must give the name and particulars of the offer or. It must also give particulars of the proposed bid and contain such information and be accompanied by such documents or reports as may be prescribed in the regulations.⁶⁹ A copy of the bid signed by or on behalf of the offer or must also be sent to the Commission for registration.⁷⁰

For the purpose of deciding whether to grant or refuse an application for an authority to proceed with a take-over bid, the Commission will take into Consideration the likely effect of the take-over bid on the economy of Nigeria and on any policy of the Federal Government with regard to manpower and development.⁷¹ If the application is granted, the take-over bid must be made within a period of three months following the date of the authority or such longer period as the Commission may allow.⁷² A take-over bid may be made for all the shares of the offered company or for only a part of the shares or a class of shares. Section 117(2) provides that where a bid in respect of a class of shares representing not less than ninety per cent in number of shares has been accepted, the offer or may within one month give notice to any dissenting shareholder to elect either to transfer his shares on the same terms as those who accepted the bid or to demand the payment of a fair value of his shares 43 If he does not make any election within twenty-days, he is deemed to have made an election to transfer his shares on the same terms. The made must send a copy of the notice to the Commission within one month.⁷³

Section 118 provides that where a dissenting shareholder makes an election to demand the payment of a fair value of his shares, the offer or shall within twenty days after sending the notice pay or transfer to the offered company the amount of money or other consideration that the offer or would have to pay if the dissenting shareholder made an election to transfer his shares on the same terms. Twenty days thereafter, the offer or may apply to the court to fix the fair value of the shares of the dissenting shareholder.⁷⁴ If the offer or fails to do so, a dissenting shareholder may apply to the court for the same purpose within a further period of twenty days.⁷⁵

⁶⁶ ISA(n15) s 133(3).

⁶⁷ *ibid* s 133(4).

⁶⁸ ISA (n15) s134(1).

⁶⁹ *ibid* s 134(2).

⁷⁰ *ibid* s 135(1).

⁷¹ *ibid* s 134(6).

⁷² *ibid* s 134(8).

⁷³ *ibid* s 146(8).

⁷⁴ *ibid* s 147(2).

⁷⁵ *ibid* s 147(3); O V C Okene (14)234.



4.4 Objectives of Merger and Take-Over

Everybody seems to agree that there has been upsurge merger and Take- over in the last few years. the reason for a merger of two companies are divers. Makers, takeovers or reconstructions are the result of perceived needs on behalf of both the acquiring Company and the Target Company. Sometimes, a merger results because the two companies believe they have a common interest and that a merger will benefit both of them. Of course. The Structural Adjustment program as contributed to the spate of reconstructions which we now see. This is because the economic realities of the times mean that only those companies which can provide good dividends to their shareholders can stay alive. A company which suffers from reduced access to capital (whether Naira or Foreign Exchange) which has insufficient or ailing management or a non-competitive product distribution network may find itself the target of an acquisition. The desire to diversify and reduce risks is also one of the reasons for mergers and takeovers. And this is done when a company which is in strong position within its own market either in terms of cash flow or market share decides to extend its influence by acquiring another company usually in a different line of business.⁷⁶ The result for diversification is usually a wide product range. To take advantage of the resulting economy of scale by the large-scale production, thus lowering unit costs and to enhance profit. To secure efficient management where the acquired company is poorly managed.

Another reason for merger and takeover is to reduce or eliminate competition e.g. in respect of scales, raw materials, market etc. so as to control that sector and if necessary raise prices for higher profits and to prevent the liquidation of a falling company by saving it. In any of these cases. It may be desirable to reconstruct a company transferring its assets to another company owned by the same persons under an arrangement whereby the shareholders of the transferor company receive shares or other interests in the transferee company.⁷⁷

5. COMPARATIVE ANALYSIS OF CORPORATE RECONSTRUCTION/ RESTRUCTURING AND MERGER

5.1 India

In India, there is a special tribunal to intervene in mergers affairs.⁷⁸ In Indian jurisdiction, there are measures put in place to protect minority shareholders. Also, section 231⁷⁹ makes provision for thresholds for merger, which determines applicable laws. In India, the regulation of the process of merger and acquisition is subject to statutes enacted by the relevant legislature, case law arising from court pronouncements and Rules, Regulations, Notices, directives and circulars issued by relevant regulatory authorities. The concept of Squeezing out Minority Shareholders India, aimed

⁷⁶ L O Nwauzi (n3).

⁷⁷ *ibid*

⁷⁸ Ministry of Corporate Affairs Notification of February 03, 2020.

⁷⁹ Companies Act, 2013.

to free dissenting shareholders (in the merger process) by purchasing their shares. The Competition Commission of India regulates mergers that affect competition.⁸⁰

5.2 South Africa

In South Africa, corporate restructuring and mergers are governed by the Companies Act of 2008 and the Competition Act of 1998. These laws provide a comprehensive framework for companies to undertake restructuring and merger transactions. Here is a comparative analysis of corporate restructuring and mergers in South Africa, along with the relevant sections of the Companies Act and Competition Act:

Corporate Restructuring:

1. **Companies Act of 2008:** The Companies Act sets out the legal framework for corporate restructuring in South Africa. Section 112 of the Companies Act allows companies to undertake various restructuring mechanisms, such as mergers, acquisitions, demergers, and business rescue. Companies must comply with the provisions of the Companies Act and follow the prescribed procedures for restructuring transactions.
2. **Business Rescue (Sections 128-155):** The Companies Act introduced the concept of business rescue, which is a formal process that allows financially distressed companies to restructure their operations and debts under the supervision of a business rescue practitioner. Sections 128 to 155 of the Companies Act outline the procedures and requirements for initiating and conducting business rescue proceedings.

Mergers:

1. **Competition Act of 1998:** The Competition Act regulates mergers in South Africa and aims to promote competition, protect consumers, and prevent anti-competitive practices. Section 12A of the Competition Act requires companies to notify the Competition Commission of mergers that meet certain thresholds and obtain approval before proceeding with the transaction.
2. **Public Interest Considerations (Section 12A (3)):** Section 12A (3) of the Competition Act allows the Competition Commission to consider public interest factors when assessing merger transactions. These factors may include the impact on employment, small businesses, and the economy. Companies must demonstrate that the merger will not have negative effects on these public interest considerations.
3. **Competition Law Compliance (Sections 8 and 9):** Sections 8 and 9 of the Competition Act prohibit anti-competitive practices, such as price-fixing, market allocation, and abuse of dominance. Companies involved in mergers must ensure compliance with these provisions to prevent anti-competitive behavior and protect market competition.

⁸⁰ S C Udemezue, A Comparative Review of the Regimes and Processes of Mergers and Acquisitions as Corporate Restructuring Options in Nigeria and India. <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4053183>. Accessed 5th September, 2024



6. CONCLUSION

Corporate restructuring and takeovers represent high-stakes strategic interventions that are indispensable for corporate survival and growth in Nigeria's evolving market. This Article has demonstrated that while the transition from the old regulatory regime to the combined oversight of CAMA 2020 and the FCCPC provides a modern foundation, the complexity of these processes requires a high degree of legal precision. The successful execution of a merger or reconstruction depends not only on financial engineering but also on strict adherence to statutory safeguards designed to protect the integrity of the market.

Ultimately, the goal of any reorganization must be the creation of sustainable value without compromising the rights of minority shareholders or the stability of the workforce. As Nigerian companies increasingly engage in cross-border and domestic consolidations, the legal framework must remain dynamic. The synergy between judicial oversight in schemes of arrangement and administrative regulation in takeover bids is essential. Moving forward, the focus must shift toward reducing bureaucratic bottlenecks while simultaneously enhancing the "public interest" considerations that ensure corporate growth does not result in anti-competitive monopolies or unfair labour practices.

7. RECOMMENDATIONS

1. **Harmonization of Regulatory Jurisdictions:** There is an urgent need to resolve the overlapping roles of the SEC and the FCCPC to prevent "regulatory double jeopardy" during merger approvals. The legislature should clearly demarcate the boundaries of competition-related oversight versus investor-protection oversight to ensure a faster, more predictable approval timeline for restructuring companies.
2. **Mandatory Socio-Economic Impact Assessments:** The legal framework should be amended to require a mandatory "public interest" audit for large-scale mergers. This would ensure that restructuring initiatives are not merely profit-driven but also account for employment retention and the protection of small-to-medium enterprises (SMEs) that may be impacted by increased market concentration.
3. **Enhancement of Minority Appraisal Rights:** To safeguard equity, the law should provide clearer "appraisal rights" or "exit triggers" for minority shareholders who dissent during a scheme of arrangement. Strengthening these provisions ensures that minority owners receive fair market value for their shares and are not unfairly squeezed out during aggressive corporate takeovers.
4. **Codification of Defensive Measure Standards:** CAMA and SEC Rules should be updated to provide a more detailed "code of conduct" for boards of directors facing hostile takeover bids. By codifying what constitutes a "legitimate" versus an "obstructive" defensive measure, the law can prevent directors from prioritizing their own job security over the best interests of the company's shareholders.