PRIVATE EQUITY AND VENTURE CAPITAL ASSOCIATION, NIGERIA

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2025 MID-YEAR REVIEW AND STRATEGIC OUTLOOK

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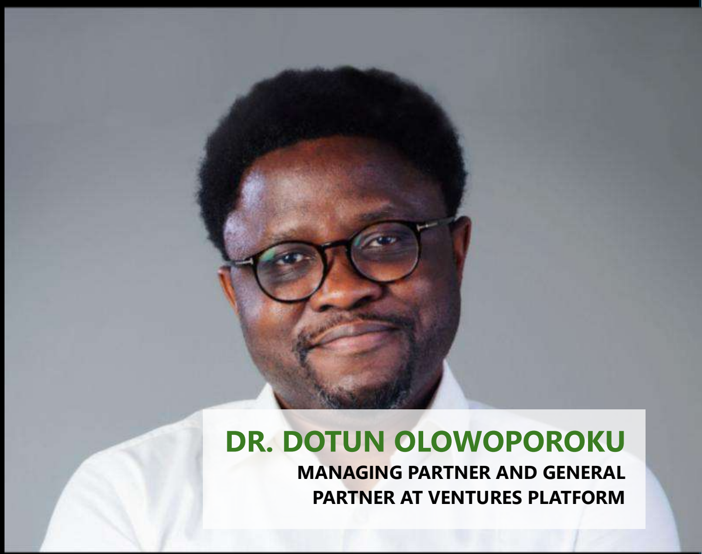

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In this Issue:

Forward

I. Market Watch: Resilience Amid Headwinds

As the first half of 2025 draws to a close, the African private capital landscape has shown a tempered but resolute resilience, even as macroeconomic pressures persist. Against this backdrop, Nigeria's private capital ecosystem continues to navigate a complex terrain marked by **currency volatility, tightening liquidity, and cautious investor sentiment**. Yet, the **fundamentals - demographics, digital adoption, energy needs, and entrepreneurial activity - remain attractive**, and investor interest is holding firm across select asset classes.

The broader H1 2025 data from AVCA confirms a slight dip in deal volumes continent-wide, but total deal value has remained stable at US$1.9 billion. Fundraising has seen a modest uplift, with **local investor participation rising -** a promising signal for capital formation within domestic borders. However, Nigeria's regional context tells a more nuanced story: West Africa recorded its third consecutive year of decline in deal volume, down 27% year-on-year, with just 40 transactions - a contraction mirrored in reduced exit activity for the sub-region.

While Southern Africa outperformed and North Africa grew its share of exits, the subdued pace of transactional activity in Nigeria reflects a mixture of delayed deal closures, FX recalibration, and sector-specific adjustments. Despite this, areas of momentum have begun to emerge. **Infrastructure and private debt,** though still underrepresented in Nigeria relative to other African regions, are receiving renewed attention. Sectors such as **FinTech, AI-driven enterprise software, and renewables** continue to draw capital - albeit with more scrutiny and longer timelines.

Notably, legal and regulatory developments during H1 2025 - including **tax reform proposals, currency liberalisation adjustments, and competition law enforcement** - have had material implications on deal structuring, pricing, and risk allocation. These shifts reinforce the importance of early, nuanced legal advice and proactive engagement with regulators.

This Bulletin reflects collaborative insights from the PEVCA Legal & Regulatory Committee, with expert contributions from legal, regulatory, and tax professionals at **Aelex**, **Deloitte**, **Detail Commercial Solicitors**, **DLA Piper Africa (Nigeria)**, **Duale, Ovia & Alex-Adedipe**, **G. Elias & Co.**, **KPMG**, **Norrsken22**, **Trium**, **Udo Udoma & Belo-Osagie**, and **Verod Capital**

Management. We are grateful to all contributing firms for their insight, expertise, and continued support.

II. LRC membership updates

We are also pleased to acknowledge the current members of the PEVCA Legal & Regulatory Committee, whose firms are represented in this mid-year cycle: **Aelex, Duale, Ovia & Alex-Adedipe, G. Elias & Co., Jackson, Etti & Edu, Kuramo Capital, Norrsken22, Udo Udoma & Belo-Osagie, and Verod Capital Management.** Their cross-cutting expertise continues to enrich the Committee's regulatory engagement and industry alignment efforts. We encourage even broader participation from GPs and LPs across the ecosystem, and welcome deeper collaboration as we work to shape an enabling legal and regulatory environment for private capital in Nigeria.

II. CEO Voices: Strategy, Resilience, and Capital Catalysts

We are thrilled that this edition also features a bumper pack of exclusive interviews with three influential leaders shaping private capital deployment and institutional resilience across Africa.

Rachel More-Oshodi (MD, CEO at **ARM-Harith Infrastructure Investment Ltd**) offers pragmatic insight into blended finance, decentralised energy delivery, and Africa's infrastructure readiness gap.

Dr. Dotun Olowoporoku, Managing Partner and **General Partner** at **Ventures Platform,** explores resilience as strategy, venture capital as catalytic capital, and the structural shifts needed to unlock local LP participation.

Lexi Novitske of Norrsken22 reflects on building fundable businesses, scaling with local insight, and what African venture capital must do next to deepen investor confidence and exit pathways.

We are deeply grateful to each of these three leaders for their candour, thought leadership, and generosity of perspective. Their reflections are grounded in real-world execution and offer rare clarity on the road ahead - demonstrating how bold thinking, strategic alignment, and market fluency are reshaping the role of capital in Nigeria and beyond.

III. Upcoming Analysis: ISA 2025 and the Road Ahead

No 2025 mid-year review of Nigeria's legal and regulatory environment would be complete without acknowledging one of the most consequential developments of the year: the **Investment and Securities Act 2025 (ISA 2025).**

While this bulletin does not delve into the ISA's full implications, its impact on private equity, venture capital, and broader transactional activity cannot be overstated. From fund structuring and registration requirements to expanded enforcement powers and disclosure obligations, ISA 2025 introduces a new regulatory playbook for dealmakers and advisers.

In view of its impact and implications, **the PEVCA Legal & Regulatory Committee will shortly publish a dedicated ISA 2025 analysis** exploring its implications across key themes -drawing on perspectives from leading practitioners in fund advisory, M&A, compliance, and capital markets. Watch this space - it is coming very soon.

IV. Looking Ahead

As H2 2025 begins, cautious optimism prevails. While deal execution may remain uneven, the long-term fundamentals continue to support private capital deployment and innovation.

The PEVCA Legal & Regulatory Committee will stay focused on timely advocacy, constructive regulatory engagement, and the clarification of emerging legal frameworks. We encourage industry stakeholders to continue to participate actively in shaping reform priorities, by sharing feedback on PEVCA surveys and research and engaging in PEVCA events and insights.

We thank our fellow Committee members, contributing firms, and regulatory partners for their ongoing collaboration - and welcome continued dialogue as we work collaboratively to shape a more predictable, transparent, and enabling environment for private capital in Nigeria.

Folake-Elias Adebowale

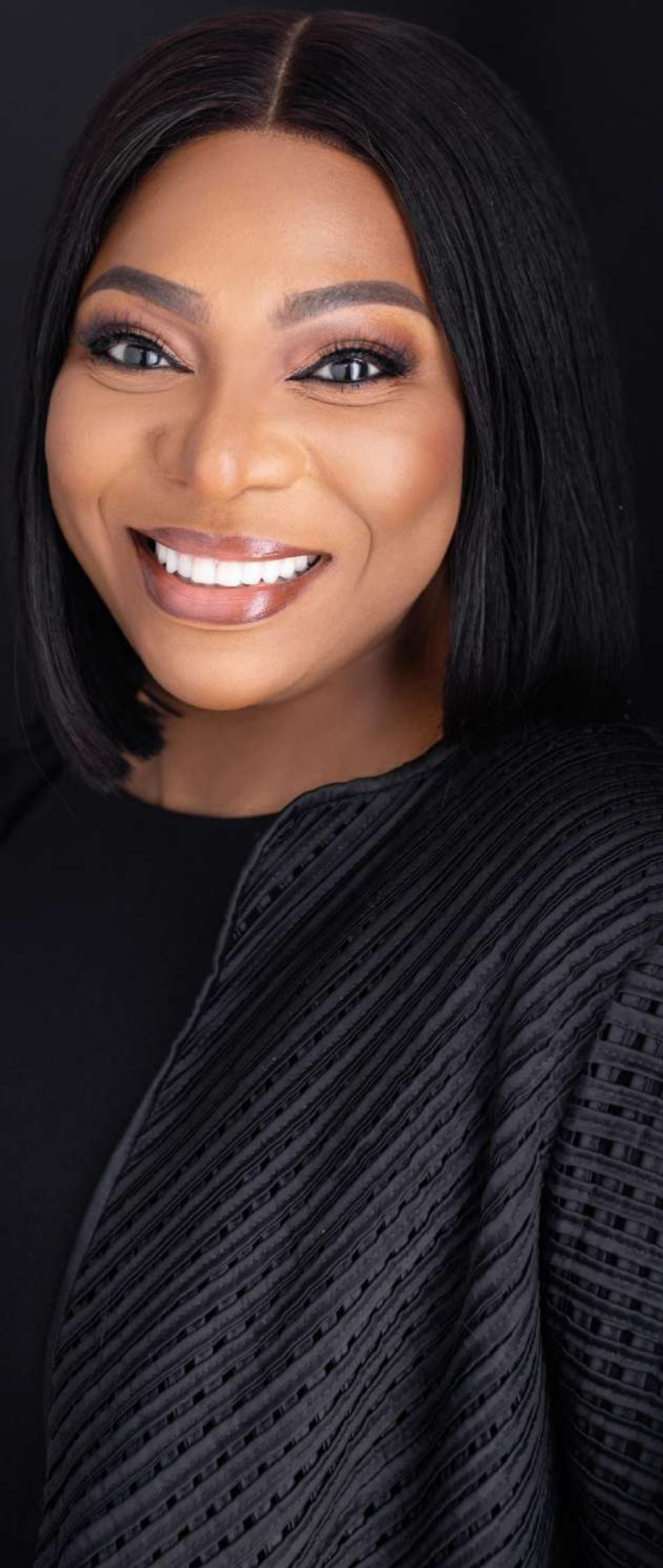
'Dipo Okuribido

For: THE PEVCA NIGERIA LEGAL AND REGULATORY COMMITTEE

CEO SPOTLIGHT

In Conversation With Rachel More-Oshodi

CEO & MANAGING DIRECTOR OF ARM-HARITH INFRASTRUCTURE INVESTMENT LTD



Rachel Moore on Unlocking Africa's Energy Future: From Capital Gaps to Catalytic Action

Rachel Moore, Managing Director and Chief Executive Officer at ARM-Harith Infrastructure Fund, doesn't mince words when it comes to Africa's energy dilemma: "Scarcity is not the issue- underinvestment in readiness is." With over 600 million Africans still off-grid despite significant capital availability, she argues that the problem is not money, but deployment-and a fundamental rethinking of how and where capital enters the project lifecycle.

In this thought-provoking interview, Rachel dissects the structural, investment, and mindset shifts required to build a resilient, investable energy ecosystem across the continent. She speaks candidly about the failure of traditional infrastructure playbooks, the critical need for early-stage development funding, and the power of blended finance when used not to subsidise risk but to reallocate it intelligently.

From pioneering ARM-Harith's ADP platform—delivering 13,000+ renewable energy connections and avoiding nearly 3,000 tons of CO_2—to designing hybrid financial instruments for subnational markets post-Electricity Act reform, Rachel demonstrates what pragmatic innovation looks like in action.

Her perspective is unapologetically African: build systems that make sense for this context, invest in people as much as in projects, and replace extractive capital models with mission-aligned partnerships. For her, energy access isn't charity—it's infrastructure, resilience, and a growth story that's ready to be told by those bold enough to believe in it.

PEVCA LRC: Despite significant dry powder, over 600 million Africans remain off-grid. What are the structural bottlenecks preventing institutional capital from flowing at scale into Africa's energy sector, and how can infrastructure funds like ARM-Harith lead the shift from capital being available to capital being deployed?

Rachel: At ARM-Harith, we see the problem as bifurcated: there are large-scale projects adding gridtied capacity - whether solar or natural gas - which are critical, but then there is also the distributed renewable energy (DRE) sector, which is working fast to close the access gap. DRE is the best solution for closing the access gap because it's tailored to off-grid communities where grid extension is the least viable.

The bottleneck in this sector is scale and bankability. We created a platform to solve this: the ADP Platform, which aggregates projects, invests in project development, and raises and deploys capital at scale into the right assets. To date, the platform has delivered 13,000+ connections across 9 communities, powered entirely by 100% renewable energy, and avoids nearly 3,000 tons of CO_2 annually. It supports a pipeline of 161 MW, including a 38 MW shovel-ready project, and is structured to attract local and international investors through blended capital and a legal/tax framework aligned with domestic markets. Backed by a technical assistance grant from the AfDB and inspired by the World Bank's DARES program, ADP is a working example of how targeted intervention can convert fragmented opportunities into bankable, scalable energy access infrastructure.

PEVCA LRC: The traditional infrastructure playbook has proven insufficient. From your vantage point, what strategic or investment orthodoxies must be unlearned to unlock Africa's energy future?

Rachel: Investment fundamentals cannot be disposed of: projects still need viable offtake partners, must be bankable, and must adhere to global standards for ESG and sustainability. But in the
African context, catalytic capital must be directed toward project development. The often-cited McKinsey stat—80% of projects failing at the feasibility stage–illustrates the urgency here.

We must rethink where capital enters the project lifecycle. Local context and market expertise are essential for sifting through opportunities and identifying those that are truly capital-ready. At ARM-Harith, we act as hands-on investors early in the cycle - de-risking projects, shaping bankability, and structuring them in ways that meet institutional expectations.

Instruments, Structures, and Pipeline

PEVCA LRC: Conversations about "blended finance" have proliferated. Which specific instruments or structures—first-loss layers, revenue guarantees, anchor DFIs—do you see making the most difference in crowding in commercial investors into energy access plays?

Rachel: Blended finance has become a buzzword - but when done right, it's not about subsidising risk, it's about reallocating it to those best equipped to bear it.

In our experience, the most catalytic instruments fall into three categories: (1) structured capital protection, (2) credit enhancement, and (3) signaling confidence and help mobilize capital are key for African markets. Our most recent example is the FSDA local currency facility, which provides liquidity to pension funds by enabling interim distributions during construction phases. That's a game-changer for pension trustees who need predictable returns but are wary of long lock-up periods.

We've also worked with DFIs on junior capital layers, credit enhancement, and pooled vehicles. The most important thing is structure: if the structure works for local and global capital, capital flows.

PEVCA LRC: One frequently cited constraint is the lack of a viable pipeline. Is the problem genuinely one of project scarcity or are we underinvesting in early-stage project development and prefeasibility?

Rachel: Scarcity is not a word I would ever associate with the African investment opportunity. There is so much that needs to be built, funded, and developed. So, it's not a pipeline problem, it's a preparation problem, with the real issue being underinvestment in early-stage project development and pre-feasibility to bridge the gap between concept and bankability.

What we lack is sufficient risk-tolerant capital, technical support, and institutional capacity at the upstream end of the project cycle. As a result, too many projects stall out before they ever reach the kinds of metrics institutional investors require, because the capital to do the hard, early work just isn't there. Early-stage project development is alarmingly underfunded because it sits in the uncomfortable middle: too risky for commercial capital, too commercial for grants. This is where, thanks to the catalytic capital we raise from DFIs, we like to step in. Our approach is to invest early, help shape the pipeline, and de-risk projects from the ground up.

And we can attest first-hand that the problem isn't scarcity, it's underinvestment in readiness. If we want a scalable, investable pipeline for Africa's energy future, we must be willing to invest where the risk is highest—but also where the returns, in impact and capital, are greatest.

Energy Strategy in Context

PEVCA LRC: Nigeria remains Africa's most energy-deficient market despite its resource wealth. Does recent reform momentum - such as the decentralisation under the 2023 Electricity Act— create investable opportunities in subnational markets?

Rachel: The new Electricity Act unlocks meaningful potential for subnational energy markets, but investor confidence will depend on how well that potential is implemented. Lagos, now empowered to regulate, license, and develop its own grid, has the fiscal and administrative capacity to lead, but must translate that authority into investor-grade structures.

Yet, subnational deal closure remains a complex process. Weak credit ratings fragmented institutional coordination, and slow approvals can hinder project progress. To fix this, we need hybrid instruments—blended local currency loans, pooled funds, structured equity with concessional support. ARM-Harith brings deep experience designing and deploying such solutions. Our goal is to unlock Nigeria's institutional capital—over $2 trillion continent-wide, most of which remains underutilized.

PEVCA LRC: Africa's energy transition is unique—balancing access, affordability, and emissions. How do you view natural gas as a transition fuel within your investment portfolio? And what expectations do you face from LPs regarding alignment with net-zero commitments?

Rachel: Natural gas is central to how we think about Africa's energy transition as a pragmatic enabler of energy access, economic growth, and emissions reduction. At ARM-Harith, we see it as a bridge fuel that can provide baseload power to complement renewables, unlock industrial development, and replace biomass in cooking, which over 900 million Africans still use. Africa holds 620 trillion cubic feet of proven reserves, yet gas remains just 5% of sub-Saharan Africa's energy mix. That gap is a development issue.

Our LPs are increasingly sophisticated in their expectations: they want to see real climate alignment, but some also recognize that Africa's pathway must be distinct. This means investing in infrastructure that facilitates gas-to-power conversions, accelerates the transition from heavy fuel oil, and is designed to scale down over time as competing renewable energy sources increase.

Execution, Collaboration, and Talent

PEVCA LRC: You have called for 'true collaboration' across public and private sectors. In your experience, what does a high-functioning partnership with government look like?

Rachel: A high-functioning public-private partnership is not built on rhetoric or memoranda of understanding—it is built on alignment of incentives, shared accountability, and a bias for action.

In my experience, the best partnerships with government happen when both sides treat each other as co-architects of delivery—not as funders versus implementers, or regulators versus operators. That means moving beyond transactional project approvals to co-creating enabling environments: from bankable off-take structures and consistent policy signals to de-risking instruments that blend public resources with private capital at scale.

We must also be honest: high-functioning partnerships are not just about the 'what', but the 'who'. They depend on individuals on both sides who are mission-aligned, who pick up the phone, solve problems in real time, and are empowered to make decisions. That's how you get projects moving from ideas to financial close.

Africa doesn't just need capital—it needs collaborative execution. That is where government and the private sector, working hand in hand, can unlock the infrastructure and energy transformation we urgently need.

PEVCA LRC: Local capacity is a frequent concern in infrastructure execution. Are we investing enough in the necessary human capital to deliver technically complex, financially structured energy assets?

Rachel: We're not investing nearly enough—and that is both a risk to execution and a missed opportunity for economic transformation.

Too often, Africa is treated as a project site, not a talent hub. We import technical consultants, structure deals offshore, and outsource project development—only to wonder why local ownership, capacity, and continuity remain weak. The truth is: no infrastructure transformation is sustainable without human capital at its core.

We need to stop asking whether local talent exists—it does—and start asking whether we are deliberately cultivating it through long-term investment in mentorship, knowledge transfer, and institutional partnerships. At ARM-Harith, we have seen firsthand that young African professionals—when given a seat at the table—bring not only technical competence, but local insight, grit, and innovation that global advisors simply can't replicate.

But this isn't just about engineers and financiers. It's about building a full ecosystem: regulators who understand blended finance; lawyers who can structure bankable PPAs; public servants who know how to think commercially without compromising public value.

If we want energy access and infrastructure development to be by Africa, for Africa, then human capital is not a side issue—it is the backbone. And the smartest investors will be those who invest not just in assets, but in the people who can sustain and scale them for decades to come.

ESG, Impact and Value Creation

PEVCA LRC: There is growing scrutiny around impact and ESG integrity in infrastructure

portfolios. How does ARM-Harith define and track value beyond returns—whether in lives electrified, emissions avoided, or livelihoods created?

Rachel: We actively track a broad set of impact metrics and are proud of the achievements we have made. Our portfolio currently delivers over 720 MW of energy capacity, helping avoid more than 2.6 million tons of CO_2 emissions annually. That translates into over 1,700 GWh of reliable grid power, reaching more than 173,000 households and businesses.

Beyond the grid, we've enabled 6,671 off-grid connections in rural and peri-urban communities, powering homes and micro-enterprises alike.

Our investments have also contributed to the creation of over 22,000 local jobs—and we are also thrilled that each of those jobs supports another 5-10 additional lives who rely on that worker across those communities. This is the multiplier effect infrastructure can have.

PEVCA LRC: Energy access is increasingly framed not as aid, but as an investable transformation. What is the most misunderstood risk or opportunity in African energy investing today?

Rachel: The most misunderstood risk in African energy investing is the *perceived risk*, not the actual one.
Investors often conflate macroeconomic volatility, political noise, or regulatory uncertainty with investment unviability—when in reality, the fundamentals of energy demand, demographic growth, and the shift toward industrialization make African energy markets among the most compelling long-term investment opportunities globally. This *perception gap* creates a selffulfilling capital shortfall that undervalues commercially viable, high-impact projects.

On the flip side, the most underestimated opportunity is the ability to build the future market from the ground up—using distributed, resilient, and climate-smart energy systems that leapfrog legacy infrastructure. Africa is not just catching up; it's architecting a different paradigm. That's why the next wave of global energy innovation will emerge from African challenges and solutions—off-grid solar, hybrid mini-grids, storage-enabled systems, and AIdriven energy efficiency are not experiments here; they are lifelines, and increasingly investable ones.

But it takes a shift in mindset: from extractive short-termism to long-term partnership; from the illusion of stability in developed markets to the reality of growth in Africa.

Risk in Africa is not just about the external environment. It's about whether investors have the right local partners, understand context, and are structured to navigate complexity. That's where fund managers like us come in—not just as capital allocators, but as ecosystem builders with the experience, track record, and local relationships to turn perceived risk into real returns.

Ultimately, energy access in Africa is *not charity*. It is infrastructure. It is resilience. And most importantly, it is a growth story waiting to be told by those bold enough to believe in it—and build it.

UDO UDOMA & BELO-OSAGIE

A 2025 PLAYBOOK FOR PRIVATE CAPITAL IN NIGERIA: CHARTING CHANGE

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A 2025 PLAYBOOK FOR PRIVATE CAPITAL IN NIGERIA: CHARTING CHANGE

Market Watch: Opening Plays

As African private capital markets emerge from a period of volatility, the first half of 2025 has signalled a phase of stabilisation and renewed investor focus. AVCA's H1 2025 Private Capital Report records that deal activity has held steady at 215 transactions, a modest 7% year-on-year decline from H1 2024, with deal values flat at US$1.9 billion. Infrastructure and private debt were standout performers, while final close fundraising rose 18% year-on-year, driven by increased local LP participation. Yet the reported regional picture in H1 was uneven: West Africa marked its third consecutive half-year decline, dragged by lower FinTech volumes and falling valuations, even as infrastructure and energy investments showed promise. Investors and fund managers continue to adjust strategies in real time, reflecting shifting capital preferences, tighter diligence, and increasing pressure for profitability.

Context and Catalyst: Regulation in Motion

These shifts are unfolding against a backdrop of intensifying regulatory reform in Nigeria. In 2025, the legal landscape has been reshaped by the Investments and Securities Act 2025 (ISA 2025), four new tax reform Acts, and Central Bank of Nigeria (CBN) measures that have reconfigured liquidity, foreign exchange (FX) management, and bank capitalisation. Together, these instruments redefine how private capital is structured, regulated, and taxed in Nigeria. The ISA 2025 expands the Securities and Exchange Commission's (SEC) oversight to include PE/VC funds, digital assets, and smart contracts. The new Nigeria Tax Act consolidates key tax legislation and introduces far-reaching reforms with phased implementation from 2025 to 2026. At the same time, the CBN's FX Matching System, stricter repatriation rules, and ongoing monetary tightening are challenging legacy structuring assumptions. For private capital, this is not simply a regulatory update, it is a systemic overhaul.

A Redrawn Game Plan: New Regulatory Boundaries

The ISA 2025 codifies a major shift: PE and VC funds are now deemed collective investment schemes (CISs) unless exempt. This removes the grey zone that previously insulated closed-ended or qualified-investor-only funds from statutory oversight.

For these funds, the rules of engagement have changed. Limited partnerships and contractual schemes may be used, but SEC approval is required. Offering documents must be pre-cleared. Managers must be registered. Investor disclosures must comply with statutory content and timing rules. Misstatements and omissions now attract not only administrative penalties, but personal liability and civil claims.

While these changes align with international principles of investor protection and market transparency, they also demand that Nigerian fund sponsors and managers rethink their strategies for fund lifecycles from inception - from structuring and registration, through fundraising and capital deployment, to exit and wind-down.

Tactical Headwinds: Fee Caps, Filings, and Fund Friction

Certain rules introduced by ISA 2025 have raised stakeholder concerns. The 2% cap on fees and expenses, as set out in Rule 560(c), may limit operational efficiency, particularly for first-time and early-stage funds. The cap includes non-discretionary costs such as custody and SEC supervision fees, which leaves insufficient margin for high-quality legal, tax, and audit services. In response, stakeholders propose more flexible models, including a 2% ceiling on management fees, and LP-disclosed but uncapped operational expenses. Similarly, the no objection" filing requirement for sub-₦5 billion funds may create some uncertainty where clarity is needed. With no formal timeline or consequences for SEC silence, first-time managers may be delayed - or deterred entirely. A defined auto-clearance window or streamlined self-certification model may better support innovation without compromising regulatory oversight.

Rules of Engagement – Pension Allocation and Foreign Fund Marketing

Another area of potential regulatory tension is the proprietary investment threshold for pension-backed funds, which currently appears to be aligned with the National Pension Commission (PenCom) Guidelines. These thresholds were repeated in SEC Rules (made pursuant to the previous iteration of the ISA) without capturing the full range of carve-outs, such as those for DFI-backed or pan-African vehicles. If these limits are replicated in regulations made pursuant to the ISA 2025 without reference to PenCom's evolving regulatory position, fund managers could face regulatory misalignment and overlapping compliance burdens, especially when seeking pension allocations.

Furthermore, foreign fund marketing restrictions, codified under the ISA 2025, will now include steep penalties and potential civil liability. Without clear carve-outs on reverse enquiry principles or digital outreach exemptions, managers targeting only professional investors may unintentionally fall within scope. Without clear SEC guidance, the risk of inadvertent non-compliance could, conceivably, sideline qualified cross-border capital that would otherwise be deployed into the Nigerian market.

FX Plays – Capital Controls and Currency Strategies

Alongside ISA 2025, fund managers must now navigate a dramatically different currency policy regime. The CBN's Electronic Foreign Exchange Matching System (EFEMS) and revised repatriation rules, including 90-day and 180-day windows for oil and non-oil exporters, respectively, are designed to improve transparency and liquidity. However, they also introduce friction into traditional fund structuring, especially for offshore capital inflows, exits, and dividend flows. Hedging strategies, diaspora investment channels, and localised project finance may soften some of this impact, but fund sponsors must now treat currency risk as a core operational factor, integrating it into capital allocation decisions, waterfall mechanisms and investor relations. FX strategy is now an integral part of fund architecture.

Strategic Advances – Digital Assets, Tokenisation, and the Compliance Edge

ISA 2025 offers explicit statutory recognition of digital and virtual assets, formally classifying them as securities. This cements and extends earlier SEC rulebooks on cryptoassets, blockchain platforms, and tokenised instruments.

For fund managers investing in digital infrastructure or crypto-related ventures, the implications are immediate. Startups operating in this space must now comply with new SEC licensing regimes. Tokenisation of fund interests may require prior SEC approval, and portfolio valuation, fundraising, and exit planning must now factor in regulatory timelines and compliance friction. While these developments open the door to regulated innovation, they also raise the bar for operational, legal, and financial discipline.

The Tax Offensive – Structuring for the New Fiscal Regime

In July 2025, Nigeria's tax regime was overhauled via the consolidated Nigeria Tax Act, which centralises Value added tax (VAT), Capital gains tax (CGT), Companies Income Tax (CIT), and Stamp Duty frameworks. While most CGT reforms will take effect from 1 January 2026, their impact will be felt immediately in deal structuring and investor strategy. Most notably, indirect asset and share transfers will be taxed, CGT may rise from 10% to 30%, pending legislative finalisation, and pass-through treatment is excluded for "specialised or alternative schemes", which includes most PE and VC funds, unless structured as partnerships or other flow-through vehicles. Funds must now reassess their tax assumptions and may need to reconfigure their structures in anticipation of these changes. Tax planning is transaction-critical from day one, and tax considerations must be embedded in every stage of deal architecture - from structuring to exit.

From Playbook to Endgame: Lessons, Line-Ups, and What Comes Next?

2025 has marked a structural pivot for private capital in Nigeria. Macroeconomic headwinds, monetary tightening, and far-reaching legal and regulatory reforms, from the ISA 2025 to tax consolidation and FX restructuring have redrawn the regulatory terrain. What is emerging is not just a new set of rules but an entirely different field of play.

For fund managers, investors, transaction advisers, and regulators, the focus must now shift from reaction to recalibration and strategy. The statutory recognition of private equity and venture capital funds as regulated schemes, the expansion of disclosure and liability regimes, the enforcement of fee caps, and the potential tax implications for indirect exits collectively demand a more deliberate and strategic approach to fund structuring, governance, and compliance.

Dealmakers negotiating transaction documents must now anticipate regulatory scrutiny. Investor communications must reflect evolving filing thresholds and marketing restrictions. Fund architecture must build in FX risk and tax exposure from the outset.

In this endgame phase of regulatory transformation, legal strategy must be proactive, not defensive. The playbook has changed - and so too must the 'game sense' of all market players. Timely legal guidance is no longer a post-closing safeguard, it is central to getting capital effectively deployed, protected, and repatriated. Success in this new environment requires clarity, coordination, and strategic execution.

VEROD | Capital Management

Sledgehammers and Scalpel Work: Why Capital Gains Tax Needs a Lighter Touch

Dipo Okuribido

www.verod.com

Private equity investing in Nigeria is a heavyweight sport. One that leaves bruises. It is not uncommon for an investor to achieve a 4x Naira return over a five-year holding period - a respectable internal rate of return (IRR) north of 30%- and still end up losing money in US dollar terms.

Consider a typical (read: painful) example. An investor commits $20 million to a promising Nigerian company in 2020, when ₦7.3 billion buys you that amount. Five years later, they exit at ₦29 billion—a local-currency success story by any metric. But by then, the Naira has withered like forgotten egusi. That ₦29 billion now converts to just $19 million, leaving our investor with a 0.95x return in dollars. And this, mind you, is before tax.

This phenomenon—nominal gains masked by real losses—has been a reality of investing in Nigeria for years. Sophisticated investors either limit their exposure to only the most tantalising opportunities or, more commonly, lace the capital stack with financial gymnastics to wrestle out acceptable returns. Yet, even with these challenges, Nigeria has managed to attract a reasonable flow of foreign direct investment (FDI), driven by the promise of long-term demographic tailwinds and the kind of inefficiencies that beg for private capital.

So when the Nigerian government says it wants to encourage FDI, it sounds like music. Until, that is, the trumpet turns into a siren.

From Exemption to Extraction

In 1999, in a rare moment of forward-thinking pragmatism, the government introduced an exemption from capital gains tax (CGT) on the sale of shares. The logic was simple: incentivise capital market activity and attract investment. It worked. For 22 years, investors took comfort in the fact that, whatever else went wrong—and in Nigeria, things often do—they wouldn't be taxed for taking risks in the equity markets.

But in 2021, priorities shifted. The exemption was abolished. Sales of shares exceeding ₦100 million were now subject to CGT at 10%. This might not seem scandalous by global standards, but in Nigeria, it landed with a thud.

Even more striking was the lack of nuance. The change made no provision for the realities of dollar-denominated investing. CGT is assessed in Naira, regardless of the currency in which capital was deployed or returns are reported. In our earlier example, the investor who exits at a 0.95x dollar return would still owe tax on the "gain" in Naira. That 0.95x becomes 0.86x once CGT takes a 10% bite out of a phantom profit. A Kafkaesque tax on a loss.

A Punch in the IRR

In 2025, the government doubled down. With the passage of the Nigeria Tax Administration Act—a piece of legislation otherwise lauded for its modernising intent—it moved to tax capital gains at the corporate income tax rate of 30%. No special regime for long-term investors. No accommodation for exchange rate loss. The taxman has gone from nibbling to chomping.

Under the new regime, our brave investor's 0.95x return is whittled down to a 0.67x return. Put differently, for every dollar invested, 33 cents vanishes into the ether—not due to market risk or business failure, but because of a tax system that refuses to acknowledge economic reality. And this, remember, is in a country where security concerns, currency volatility, power shortages, and policy uncertainty already do plenty to depress enthusiasm.

The effect on investment is predictable. The higher the tax burden, the higher the bar for deals to make sense. Fund managers will adjust. They will invest less, demand lower valuations, or walk away entirely. Financial engineering—already a core part of the toolkit—will become a lifeline. And while spreadsheets may still show modelled returns above hurdle rates, the real economy will suffer from reduced capital inflows.

From Policy to Paradox

The contradiction at the heart of Nigeria's tax policy is glaring. On the one hand, the government repeatedly proclaims its desire to attract FDI. On the other, it introduces tax rules that actively discourage it. One hand giveth; the other taketh away—while muttering something about BEPS compliance and broadening the tax base.

To be fair, the impulse to raise revenue is not without merit. Nigeria has a yawning fiscal gap and an overreliance on oil. Tax-to-GDP is embarrassingly low, and the pressure to diversify income sources is legitimate. There's also the need to prevent domestic entities from disguising trading profits as capital gains—a real abuse that needs real remedy.

But here's the rub: private equity investors are not the culprits. They are not converting operating income into capital gains. They are not resident corporates shuffling paper to avoid tax. They are long-term investors who provide growth capital, improve governance, create jobs, and accept significant risk.

Lumping them together with the tax-avoidance crowd is a bit like using the same criminal code for pickpockets and philanthropists. It misses the point—and causes collateral damage.

A Case for Carve-Outs

What's needed is not wholesale repeal but targeted relief. A scalpel, not a sledgehammer.

A well-designed **special exemption regime** for bona fide private equity investors would do the trick. Such a carve-out could apply to:

- Long-term foreign investors (e.g. minimum holding period of 3–5 years);
- Investments into Nigerian businesses that meet certain development criteria (e.g. SME size, job creation, or export potential);
- Investments made in foreign currency, where the investor can demonstrate a loss in real terms.

This is not unheard of. Many jurisdictions offer rollover relief, step-up basis, or reduced CGT rates for certain types of investment. Even the much-vaunted OECD frameworks leave room for special treatment where policy objectives—like FDI and job creation—justify it.

Indeed, refusing to recognise real loss while taxing nominal gain is a curious kind of fiscal gaslighting. In one breath, government says: "We need you." In the next, it says: "Thanks for showing up—now hand over a third of your capital."

Beyond the Ledger

There's a broader point to be made. Private equity is not just about capital—it's about confidence. Investors need to believe that the rules won't change mid-game, that taxes will be fair and predictable, and that the government understands the difference between return and risk.

By targeting not just profit but the illusion of profit, Nigeria risks breaking that confidence. And confidence, once broken, is harder to repair than even the Naira.

Nigeria doesn't need to choose between revenue and reform. It can have both—by making distinctions that matter. By encouraging the kind of capital that stays long enough to build factories, fund innovation, and outlast a few finance ministers.

Epilogue: A Modest Proposal

So here it is. A modest proposal, delivered without sarcasm (though perhaps with a raised eyebrow):

- Reinstate a CGT exemption—or at least relief—for private equity investments where the real economic gain is uncertain or negative due to currency depreciation.

- Introduce indexation or foreign exchange adjustment mechanisms to ensure tax is levied only on real returns.

- Create a certification or safe harbour regime for qualified FDI investors to avoid onerous compliance processes.

- This doesn't mean Nigeria becomes a tax haven. It just means it stops being a capital repellant.

Afterword

Capital, like water, flows to where it is treated well. At 30% CGT on nominal Naira gains, Nigeria risks being left high and dry. It is time for tax policy to align with investment policy -and for government to retire the sledgehammer in favour of more delicate instruments. The patient is still breathing. But if we keep taxing losses as though they were windfalls, the prognosis isn't good.

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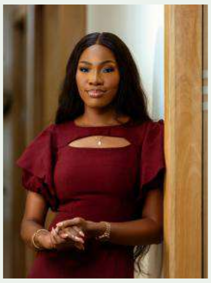
Navigating Nigeria's 2025 Tax Reforms: What Private Equity and Venture Capital Investors Need to Know



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On 26 June 2025, the President of the Federal Republic of Nigeria signed into law, four tax reform bills: the Nigeria Tax Act, 2025 (NTA), the Nigeria Tax Administration Act, 2025 (NTAA), the Nigeria Revenue Service Act, 2025 (NRSA), and the Joint Revenue Board Act, 2025 (JRBA) (together, the "Tax Reform Acts" or the "Acts"). These enactments form the centrepiece of Nigeria's broad fiscal reform agenda and represent an ambitious effort at modernising the country's tax framework. According to the Federal Inland Revenue Service (FIRS), the Tax Reform Acts are scheduled to take effect from 1 January 2026.

The Acts introduce broad-ranging changes aimed at simplifying compliance, broadening the tax base, modernising administration, and aligning Nigeria's fiscal regime with global best practices. These reforms may significantly influence the investment strategies of private equity (PE) and venture capital (VC) investors, with implications for tax due diligence, financing structures, portfolio company operations, and exit planning. This article provides an overview of the reforms most relevant to PE and VC transactions in Nigeria.

Capital Gains Tax Reform and Exit Planning

One of the most far-reaching changes under the NTA is the significant restructuring of the capital gains tax (CGT) regime. The CGT rate applicable to companies has been increased from 10% to 30%, aligning it with the companies income tax rate and closing any arbitrage opportunities between capital gains and trading income.

In addition to the rate increase, the scope of CGT has been broadened to capture indirect disposals of Nigerian assets. Under the new regime, gains accruing to a non-resident from the disposal of shares are now chargeable to tax in Nigeria where the disposal results in:

(i) a change in the ownership structure or group membership of a Nigerian company; or

(ii) a change in the ownership, title, or interest in any asset located in Nigeria.

The NTA further clarifies that shares or comparable interests in a foreign entity will be treated as situated in Nigeria where, at any time within the 365 days preceding the disposal, more than 50% of the value of such shares or interests is derived, directly or indirectly –

(i) through one or more interposed entities that result in a change in the direct or indirect ownership structure of a Nigerian entity; or

(ii) from immovable property or other chargeable assets located in Nigeria.

In effect, a Nigerian CGT obligation may now arise where a foreign holding company exits its investment by selling shares in an offshore SPV that holds underlying Nigerian assets. This marks a significant departure from the previous position and has material implications for private equity and venture capital investors. Offshore holding structures, which are historically used to facilitate tax-efficient exits, are now more likely to trigger Nigerian tax liabilities on exit. As a result, fund managers will need to reassess their investment holding arrangements, paying closer attention to treaty protection, entity location, and transaction structuring from the outset. The increased tax cost may also influence deal timelines and preferred exit routes.

In addition, the threshold for exempt share transactions has been revised: CGT will only apply to share disposals exceeding NGN150 million within any 12-month period, provided the gains exceed NGN10 million. However, these thresholds are relatively modest and are likely to be exceeded in most private equity and venture capital transactions, particularly where exits involve growth-stage or mature portfolio companies. As such, these exemptions may offer limited relief for institutional investors.

Redefinition of Small Companies and Targeted Tax Relief

The definition of "small companies" has been broadened to include entities with annual gross turnover not exceeding NGN100 million (up from NGN25 million) and fixed assets not exceeding NGN250 million. Qualifying companies are now exempt from Companies Income Tax, Capital Gains Tax, and the Development Levy.

This expansion offers meaningful relief for early-stage startups and smaller growth companies. For VC investors, it creates a more conducive fiscal environment in the seed and Series A stages, allowing capital to be deployed into operations rather than compliance. However, eligibility will need to be monitored as portfolio companies scale, especially when determining tax liability at the point of a follow-on investment or acquisition.

Interest Deductibility and Effective Tax Floors

The NTAA introduces a formal limitation on interest deductibility, restricting tax deductions on related-party debt to a fixed percentage of EBITDA, in line with the Base Erosion and Profit Shifting (BEPS) Action 4 recommendations by the Organisation for Economic Co-operation and Development (OECD). In parallel, the NTA introduces a minimum effective tax rate (ETR) of 15% on the net income of certain companies. Net income is defined as profit before tax reported in audited financial statements, excluding franked investment income and unrealised gains or losses. This ETR requirement applies to companies with annual turnover exceeding NGN50 billion and to members of multinational enterprise groups with a global turnover of at least €750 million. The rule aligns with the OECD's Pillar II framework, which seeks to ensure that large multinational groups pay a minimum level of tax in each jurisdiction in which they operate. The rule, however, exempts licensed entities operating within Free Trade Zones unless they exceed the €750 million threshold or make sales into the customs territory.

These reforms have significant implications for deal structuring as they may limit the effectiveness of traditional tax optimisation strategies commonly used in private equity transactions, particularly those that rely heavily on intercompany debt and profit shifting. As a result, deal teams may need to reassess acquisition models, financing structures, and expected post-tax returns.

Permanent Establishment Risk

The Tax Reform Acts also expand the scope of taxable presence through the "force of attraction" rules. Under these rules, Nigeria may tax income from activities carried out by a non-resident or its related parties if those activities are economically connected to a Nigerian permanent establishment, even where such activities are not physically performed through the permanent establishment. The new regime also expressly recognises that engineering, procurement, and construction (EPC) contracts fall within scope for Nigerian taxation, codifying earlier judicial interpretations.

This has far-reaching implications for management companies and platform structures commonly used in cross-border investments, which were previously thought to be outside Nigerian tax scope. Advisory fees or success fees paid to offshore counterparties may become taxable in Nigeria if sufficiently connected to a Nigerian permanent establishment. This heightens the risk of unintentional tax exposure and calls for greater scrutiny of cross-border management platforms and intercompany arrangements.

Free Zone Regime: Sunset Clauses and Export Focus

The reforms retain the tax exemptions available to entities operating within Export Processing Zones (EPZs), but introduce a more stringent framework for determining eligibility. Under the

NTA, profits of Free Zone entities remain exempt from Companies Income Tax where:

- All of the entity's sales arise from the export of goods or services or from the supply of inputs exclusively used in the production of goods or services for export;
- No more than 25% of total sales are made to the Nigerian customs territory; and
- Any sales to the customs territory are made to entities engaged in upstream, midstream, or downstream petroleum or gas operations.

Where these conditions are not met, tax becomes chargeable on profits attributable to sales into the customs territory. However, effective from 1 January 2028, the regime becomes significantly stricter: any sale into the Nigerian customs territory, regardless of volume, will result in a loss of the tax exemption for those profits.

For PE and VC investors, these changes require a careful recalibration of exit models and operational structuring for portfolio companies leveraging Free Zone benefits. Investments in manufacturing, logistics, and business services with hybrid domestic-export operations must be assessed for exposure to a future erosion of tax incentives. Additionally, the need to preserve Free Zone status may influence the design of commercial contracts, warehousing strategies, and intra-group supply chains.

Introduction of the Economic Development Incentive (EDI)

The Economic Development Incentive (EDI) replaces the erstwhile Pioneer Status Incentive (PSI) under Nigeria's new tax reform framework. While the PSI granted a full corporate income tax holiday for up to five years (with possible extension), the EDI adopts a more targeted and performance-based model, offering a 5% annual tax credit on qualifying capital expenditure for an initial five-year period, with unused credits permitted to carry forward for a further five years.

To qualify, companies must operate within a designated priority sector and incur capital expenditure above a prescribed threshold prior to, or on, the "production day" (i.e., the date commercial operations commence). The list of priority sectors, set out in the Ninth Schedule of the NTA, retains most sectors previously eligible under the PSI, but now excludes telecommunications, e-commerce, and certain digital businesses. Conversely, new areas such as manufacturing of equipment for renewable energy generation, have been included, creating opportunities in sectors aligned with Nigeria's industrial and sustainability agenda.

The relevance of this shift to private equity and venture capital sponsors lies in the realignment of incentive strategy and tax planning at the fund and portfolio level. Sponsors pursuing long-hold, capital-intensive investments such as infrastructure, manufacturing, renewables, and agro-processing should assess the availability and viability of the EDI during deal structuring, as timely application (including pre-incorporation submissions by company promoters) and strict compliance with investment thresholds are now critical to qualification. The new regime eliminates the one-year post-production application window under the PSI and links eligibility more directly to early-stage capital deployment and certified asset verification.

While the EDI is less generous than the PSI in terms of headline relief, it introduces greater transparency, cost predictability, and performance alignment. Application fees are now capped at NGN10 million and approval requires presidential assent based on recommendations from the Nigerian Investment Promotion Commission. In return, the benefit, a recurring tax credit usable against assessable profits, can materially enhance post-tax internal rate of return where properly planned.

For VC sponsors and growth equity investors focused on capital-light or digital enterprises, the EDI will have limited relevance given the exclusion of their core sectors. Nonetheless, understanding the shift is important: it reflects a broader policy direction away from blanket incentives and toward sector-prioritised, investment-led tax relief. PE and VC sponsors should take note not only to assess qualification in specific deals but also to anticipate how this approach may shape future tax policy, particularly in relation to local industrial development goals.

Governance, Disclosure and Penalties

The NTAA introduces a proactive disclosure obligation on companies to notify the tax authorities of any tax planning arrangements or transactions that may confer a "tax advantage". Tax advantage is broadly defined to include any arrangement that results in a more favourable tax outcome than would otherwise have arisen. This encompasses, among other things, obtaining new or increased tax reliefs, obtaining or increasing tax repayments, reducing or avoiding tax liabilities or assessments, deferring the timing of tax payments, accelerating tax refunds, or avoiding obligations to deduct or account for tax. In substance, the requirement captures any scheme or transaction designed to secure a more beneficial tax position would otherwise have arisen. For PE/VC funds, this may mean disclosing specific structuring arrangements (e.g. offshore vehicles, hybrid mismatches, treaty planning) if they are seen to produce a tax advantage.

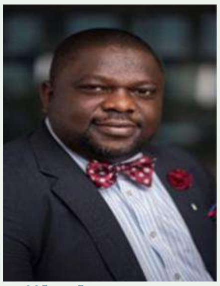
In addition, penalties for non-compliance have been significantly increased. Failure to file returns attracts NGN100,000 in the first month and NGN50,000 for every additional month of default. A new penalty of NGN5 million applies to awarding contracts to non-tax-registered entities. Tax governance must now be elevated as a priority. PE and VC funds should consider developing tax risk registers and reviewing intercompany arrangements.

Conclusion

The Tax Reform Acts represent a fundamental restructuring of Nigeria's tax system. They seek to enhance coherence, efficiency, and fairness, while promoting fiscal discipline and improving Nigeria's competitiveness as an investment destination. For private equity and venture capital investors, these reforms create both challenges and opportunities. While compliance burdens are higher, the rules are clearer, and the fiscal environment is more predictable. Success in this new regime will depend on early alignment of deal structures with the reforms, robust tax governance frameworks, and agile adaptation to emerging regulatory interpretations.

With effect from January 2026, these reforms will become binding. It is imperative that sponsors, investors, and portfolio companies take proactive steps to understand the implications, re-model investment assumptions, and engage in timely compliance planning. In doing so, they will be better positioned to navigate Nigeria's evolving tax terrain and unlock sustainable long-term value.

LIMITED PARTNERSHIP VEHICLE UNDER NIGERIAN LAW: A VIABLE OPTION AS FUND VEHICLE



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1. Introduction

Fund investment has witnessed a significant growth globally and in Nigeria, driven by its critical role in fostering economic development, job creation, and innovation. According to the African Private Equity and Venture Capital Association (AVCA), between 2020 and 2024, investors completed 404 private capital transactions in West Africa worth a total of US$3 billion1. Nigeria accounted for 66% of the deal volume and 52% of the deal value in the region, establishing Nigeria's position as the leading destination for fund investment in West Africa. Fund investment in Nigeria has been concentrated around key sectors such as financial services, consumer markets, information technology, and infrastructure.

Against this backdrop of growing fund activity, the choice of a legal structure or fund vehicle has become increasingly important for fund owners as selected vehicles impact regulatory and tax compliance requirements, tax efficiency, governance, and potentially, the profitability of fund investments. Common structures used include limited liability companies (Ltd or LLCs), trust structures (such as unit trusts), and limited partnerships (LPs). Of these, the limited partnership has gained considerable traction due to its alignment with international best practices as a fund vehicle. Leading private capital firms around the world, such as KKR and Verod Capital, have adopted the LP vehicle for their funds.

LP vehicle offers advantages such as flow-through tax treatment, reduced tax burden, flexible profit distribution, a clear distinction between fund managers and investors, and greater ease in attracting both local and foreign capital, amongst others.

This article seeks to examine the limited partnership vehicle under Nigerian law and evaluate its suitability as a fund structure, particularly in light of the existing legal framework such as the Investment and Securities Act (ISA) 2025, Companies and Allied Matters Act (CAMA) 2020, The Partnership Law of Lagos State 1958 (as amended), Personal Income Tax Act 2004 (as amended), Deduction of Tax at Source (Withholding) Regulations, 2024 and the Nigeria Tax Act 2025. It also explores the benefits and challenges of the LP model in Nigeria.

2. Legal Framework for the formation of Limited Partnership as a Fund Vehicle in Nigeria

The development of Limited Partnerships (LPs) in Nigeria predates the enactment of the Companies and Allied Matters Act (CAMA) 2020. Historically, the Lagos State Partnership Law of 1958 (as amended) provided the earliest legal framework for the creation of LPs in Nigeria. Although it was a state law with territorial limitations, it filled a critical legal gap before federal recognition was introduced.

To enforce the Lagos State Partnership Law, the Lagos State Commercial Law Directorate set up a Registry of Limited Partnerships for registering LP businesses in the state. Registration became mandatory before an LP could start operating. Moreover, the Lagos State Partnership (Amendment) Law of 2009 was the first to acknowledge Limited Liability Partnerships (LLPs), with many law firms adopting LLP or LP structures by the mid-2000s.

Over time, the use of partnership structures, particularly LPs, became more common in Nigeria as a vehicle for private equity and venture capital investments. This development aligns with the provisions of ISA 1999, which recognises arrangements consistent with the LP model as collective investment schemes. These structures allow for the pooling of funds to be managed by a third party (a general partner), making them suitable for investment activities where investors (limited partners) are not involved in day-to-day management.

The CBN SMEEIS scheme further reinforced the use of Limited Partnerships vehicles by providing flexibility in how banks could operationalize their SME investments. While the scheme required that beneficiary enterprises be structured as limited liability companies, it also allowed banks to implement the scheme through venture capital companies, whether wholly owned, formed by consortia of banks, or independent fund managers. This operational design prompted the adoption of LP, which is widely recognized as an effective vehicle for pooling and managing third-party capital in private equity and venture capital contexts. By enabling external fund managers to manage SMEIS funds and aligning with the regulatory structure stipulated by the SEC, as discussed above. Early adopters also saw the benefits of structuring funds in a tax-efficient way.

While the Investment and Securities Act (ISA) 1999 explicitly recognised limited partnerships (LPs) as suitable vehicles for Collective Investment Schemes (CISs), the ISA 2025 adopts a more flexible and less prescriptive approach. It does not specifically list LPs among the preferred fund structures but empowers the Securities and Exchange Commission (SEC), under Section 151, to approve any other vehicle it considers appropriate for managing CISs. This discretionary authority allows the SEC to accommodate a wider range of fund vehicles, including LPs and contractual schemes, provided they meet regulatory requirements.

ISA 2025 also defines CISs broadly to include any open-ended or closed-ended scheme through which members of the public or qualified investors contribute money or assets into a pooled portfolio. Investors hold participatory interests in the portfolio and share in the risks and benefits in proportion to their contributions or as otherwise agreed. This expansive definition supports the inclusion of LPs as fund vehicles under the ISA framework.

In practice, the SEC has exercised its discretion to approve LPs as valid fund vehicles, in line with global standards for private capital structures. Although the ISA outlines certain preferred vehicles, such as unit trust schemes, investment companies, and real estate investment trusts, it does not prevent the registration or recognition of LPs. Therefore, the Act provides sufficient flexibility for fund promoters to adopt the LP structure where appropriate.

Furthermore, CAMA 2020 provides a nationwide framework for the establishment of a Limited Partnership vehicle in Nigeria. CAMA provides that a Limited Partnership may be formed with a composition of not more than 20 persons, which must include at least a general partner who is liable for all debts and obligations of the partnership and at least one limited partner whose liability is restricted to the amount contributed or agreed to be contributed to the partnership. With respect to fund structuring, in practice, the fund manager typically engages as the general partner, as limited partners are restricted from taking part in the management or control of the LP business. Also, both individuals and corporate bodies may act as partners in a limited partnership, subject to certain disqualifications; for instance, an individual who has been found by a court to be of unsound mind, or an undischarged bankrupt, cannot serve as a partner2.

While an LP is not a body corporate within the provisions of CAMA and does not enjoy separate legal personality like a company or LLP, it is nonetheless a recognised legal arrangement that enjoys statutory recognition upon registration with the Corporate Affairs Commission (CAC). Once registered, the LP is accorded a distinct legal identity for the purpose of limiting the liability of limited partners and enabling legal enforceability of the partnership agreement. Importantly, the LP's non-corporate status does not preclude it from enjoying pass-through tax treatment under applicable tax laws.

The Lagos State Partnership Law (1958, as amended) continues to offer a parallel framework for registering LPs and LLPs. This law has proven especially adaptable for fund managers, especially when CAMA's registration process is seen as too demanding or when tax structuring is better suited to state-level treatment. Unlike LLPs under CAMA 2020, LLPs and LPs formed under the Lagos State Partnership Law aren't considered corporate entities. Therefore, they may retain pass-through tax treatment, creating a more flexible and tax- efficient structure for fund managers and investors. This distinction is important, making Lagos-based vehicles potentially more appealing for private capital structuring, particularly when minimizing tax leakage is a priority.

There remains, however, a question as to whether LPs or LLPs registered under Lagos State law must now complete their legal compliance by registering under the federal regime introduced by CAMA 2020. It is arguable that CAMA now 'covers the field' in this area of law and may supersede Lagos State legislation, particularly in light of the constitutional doctrine of covering the field where federal and state laws conflict. Nonetheless, until the Lagos State law is repealed or judicially declared moribund, it may continue to operate in parallel, raising practical and legal issues around dual compliance, recognition, and enforceability. Fund promoters should therefore proceed cautiously, ideally taking legal advice on the appropriate registration regime, especially where regulatory or tax treatment is a key consideration.

3. Suitability of Limited Partnership as a Fund Vehicle in Nigeria

Compared to other fund vehicle options, the limited partnership structure offers various ways to improve tax efficiency, distribute profits flexibly, limit the partnership's liability, and attract investors. In a limited partnership (LP), the general partner (GP) manages the business and has unlimited liability, while limited partners (LPs) contribute capital and enjoy liability protection, as long as they do not participate in management. In contrast, limited liability partnerships (LLPs) do not have a general partner. Instead, all partners have limited liability and may, by agreement, designate one or more persons to manage the business. The default rule under CAMA allows all partners to participate in management, but the LLP agreement can assign these functions to specified persons.

Under the Companies and Allied Matters Act (CAMA) 2020, LLPs are treated as body corporates and are considered separate legal entities from their partners. This corporate status enhances their ability to contract, sue, and own property in their own name. However, this classification presents a significant risk of subjecting LLPs to company-level taxation, which could reduce their tax efficiency compared to LPs. Based on FIRS guidelines on the taxation of Limited Liability Partnerships (LLP) under the CAMA 2020, LLPs may be liable to Companies Income Tax (CIT) on profits (unless exempt as a small company) and distributions to partners may be treated as dividends, attracting withholding tax (WHT). This could result in double taxation, first at the LLP level, then at the partner level. Additionally, LLPs may be subject to other corporate levies such as Tertiary Education Tax, NASENI Levy, Nigeria Police Trust Fund Levy and Capital Gains Tax3.

However, the Nigeria Tax Act (NTA) 2025 appears to introduce greater clarity on LLP taxation. Section 10(5) of the NTA provides that LLP profits shall be deemed distributed and taxed in the hands of partners, suggesting a shift to pass-through treatment. This aligns LLPs more closely with LPs for tax purposes and could eliminate the double taxation risk. Still, the practical application of this provision and whether it prompts revisions to FIRS and CAC guidance remains to be seen. While the NTA takes effect on 1 January 2025, LLPs may remain subject to corporate-level taxation until then.

In contrast, LPs, while not body corporates, are recognized as legal entities upon registration with the Corporate Affairs Commission (CAC). They benefit from flow-through taxation, meaning the partnership itself is not taxed at the entity level. Instead, profits are taxed only in the hands of the partners under the Personal Income Tax Act (PITA) for individuals or the Companies Income Tax Act (CITA) for corporate partners. This structure avoids the double taxation typically associated with corporate entities, such as LLPs, where both the entity and the partners may be taxed.

LPs may still incur withholding tax on income such as interest or management fees, but this is creditable against the partner's tax liability. Dividends paid to an LP, once subject to WHT, are treated as franked investment income and not taxed again upon distribution. LPs may also be liable for indirect taxes such as Value Added Tax (VAT) on services like fund management.

From a regulatory standpoint, LPs gain formal recognition upon registration with the CAC, which enhances credibility, protects the partnership's name, and ensures continuity despite changes in limited partners. The combination of limited liability, tax transparency, and regulatory recognition makes LPs particularly attractive to both local and foreign investors seeking exposure to private capital with minimal risk.

4. Future Outlook of the Tax Implications of Limited Partnership as a Fund Vehicle in Nigeria

The tax landscape in Nigeria has experienced significant changes recently, the most notable being the enactment of the Nigeria Tax Act (NTA) 2025, which is proposed to come into effect on 1 January 2026. The Act represents a major consolidation and overhaul of Nigeria's tax laws, repealing various existing tax legislation, including the Companies Income Tax Act, Personal Income Tax Act, Capital Gains Tax Act, and others, and introducing a unified tax framework.

For limited partnerships, the NTA brings critical implications. Similar to existing legislation, income, profits, or gains derived from partnerships will be taxed directly in the hands of the partners, based on their share of the profits , whether corporate or personal, however, at new rates and subject to thresholds introduced by the NTA.

In line with the provisions of the NTA, corporate partners in limited partnerships would now be liable for corporate tax at 30% only when they are not small companies, i.e., when their gross turnover exceeds N50 million; otherwise, the rate of tax is 0% (i.e., no tax)4. For individual partners, tax will be payable under the NTA on a progressive basis after deducting applicable reliefs and exemptions. The applicable rates range from

0% to 25%, starting with 0% on the first ₦800,000 of taxable income, and increasing through various income bands up to a maximum of 25% on income exceeding ₦50 million5.

The NTA reinforces the need for partnerships to register their agreements with the tax authority6, keep proper records and accurately report each partner's share of profits, with non-compliance exposing them to additional assessments and penalties.

In view of these developments, it is essential that limited partnerships engage proactively with their tax advisors to stay up to date with compliance requirements and to optimise their tax positions under this new regime.

5. Conclusion

The limited partnership has been established as a viable and strategically advantageous fund vehicle in Nigeria, offering tax transparency, limited liability for investors, and alignment with global fund structuring standards. Supported by existing legislation, the LP structure enables efficient capital pooling, investor protection, and regulatory recognition without the double tax burden typical of corporate vehicles.

However, the tax environment has entered a new phase with the enactment of the Nigeria Tax Act 2025. While LPs retain the pass-through tax treatment under the new regime, the increased compliance obligations, updated tax rates, and stricter reporting rules mean that partners must now navigate a more complex tax and regulatory terrain.

Given these developments, it is imperative for fund managers, general partners, and investors to proactively engage with tax advisors, as doing so will ensure they remain compliant and optimize their tax positions.

4 Section 56 of the Nigeria Tax Act
5 Section 58 (1) and the Fourth Schedule of the Nigeria Tax Act
6 Section 15(7) of the Nigeria Tax Act

Legal Risk Management in Due Diligence: A Checklist of Common Legal Pitfalls and How Investors Can Proactively Manage Them

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Introduction

In the realm of venture capital and private equity, legal due diligence is one of the most critical, yet complex, elements of the investment process. It serves as both a microscope and a compass: examining a company's legal foundations while guiding investor decision-making. Yet, many investors either underestimate legal risk or engage with it too late in the process, leading to avoidable post-deal disputes, reputational damage, or financial loss.

This article provides a comprehensive analysis of legal risk management in due diligence, outlining a checklist of common pitfalls for investors to avoid and offering practical recommendations to help investors proactively manage legal exposure.

What is Legal Due Diligence and Why it Matters
Legal due diligence reviews and analyzes a company's legal aspects before an investment, merger, or acquisition. It involves examining regulatory compliance, employee contracts, IP rights, and other legal documents to identify potential liabilities and risks. The goal is to ensure no hidden issues could impact the transaction or the future of the business. Legal due diligence helps investors:

- Identify liabilities that may not be visible in financial statements
- Assess the legal and regulatory compliance posture of the target company
- Validate ownership and enforceability of IP
- Ensure the legality and clarity of existing contractual obligations
- Safeguard investment rights post-transaction through well-structured documents

Neglecting legal diligence has historically led to failed transactions, protracted litigation, and value erosion post-close. In markets like Africa, where informal practices and regulatory opacity are common, legal diligence is even more critical.

Common Legal Pitfalls: A Due Diligence Checklist

1. **Incomplete or Inaccurate Corporate Records What to check:** Articles of incorporation, shareholder register, board minutes, founder agreements.

   Risk: Misrepresentation of ownership, unauthorized share issuances, non-compliance with regulatory filings.

   Mitigation: Cross-reference statutory filings (e.g. CAC in Nigeria, Companies House in the UK, or the Delaware Secretary of State in the U.S.) with internal records; require warranties confirming corporate housekeeping is up-to-date.

   Insight: In venture capital transactions, ensure you review the statutory filings of both the Holding Company (which is typically incorporated in Delaware) and the operating subsidiaries, usually registered in the relevant African countries where the business operates.

2. **Ambiguous Shareholder Agreements (SHA)**

   What to check: Shareholder agreements govern the relationships between shareholders and outline key provisions such as share transfer rights, dispute resolution mechanisms, and decision-making processes. A thorough understanding of these agreements is crucial to evaluating governance rights, protecting against dilution, drag/tag-along clauses, liquidation preferences, and ensuring alignment on exit and control provisions.

   Risk: Disputes among shareholders, lack of investor protections, unenforceable exit rights.

Mitigation: Legal counsel should do a side-by-side term sheet vs. SHA review to identify gaps; consider requiring a restated SHA post-investment.

Insight: In growth-stage investments, SHAs are often outdated or based on seed-round templates that no longer reflect the current cap table or investor protections.

3. Improper Intellectual Property (IP) Ownership

What to check: IP assignments, employee invention agreements, licensing contracts, domain name registrations.

Risk: Founders or ex-employees retain ownership of IP; key technology is licensed but not owned; weak IP protection limits scalability.

Mitigation: The DD process should include a review of the startup's licensing agreements, which can shed light on how its IP is monetized, whether it receives fair compensation, and any dependencies on third-party IP that could pose legal or operational risks. In parallel, the startup's internal IP policies and practices should be assessed - examining how it identifies and protects trade secrets, manages IP ownership among employees and contractors, and mitigates the risk of infringement. A startup with strong IP governance not only safeguards its core assets but also signals lower investment risk and greater long-term value.

4. Regulatory and Licensing Non-Compliance

What to check: Business licenses, sector-specific permits e.g, fintech licenses, insurance licenses, export/import licenses, tax compliance. Review all licenses, permits, and regulatory approvals held by the startup to verify their validity and scope. This review ensures the company is legally authorized to operate. Additionally, any correspondence with regulators, particularly notices of non-compliance or ongoing investigations should be scrutinized, as they may signal material legal or operational risks.

Risk: Fines, suspension of business activities, reputational damage.

Mitigation: Engage local counsel early to confirm all mandatory licenses are in place and valid. Verify renewal schedules and statutory filings.

5. Labour and Employment Non-Compliance

What to check: Examination of the startup's employment contracts and policies. These documents should comply with the minimum statutory requirements.

Risk: Litigation from misclassified employees, back payment of benefits, reputational risk.

Mitigation: Conduct an employment audit. Ensure proper classification, signed contracts, and compliance with local labour laws, including provisions for wages, working hours, leave entitlements, and ESOP.

Insight: In several African startups, ESOPs are implemented informally without board or shareholder approval, making them unenforceable.

6. Unresolved or Ongoing Litigation

What to check: Court filings, legal letters, threatened disputes, arbitration proceedings.

Risk: Material liabilities, reputational risks, contingent claims.

Mitigation: Request legal opinion letters detailing the stage and risk exposure of all pending cases. Build indemnities into transaction documents.

Pro Tip: Review litigation history through official judiciary portals where possible, such as Nigeria's NJC Case Management System.

7. Risky Commercial Agreements

What to check: Key customer and supplier agreements, exclusivity clauses, change of control provisions, auto-renewal terms.

Risk: Inability to assign or novate contracts post-acquisition; hidden financial obligations; unfavourable terms.

Mitigation: Identify contracts that require third-party consent upon change of control. Flag any most-favoured-nation (MFN) or exclusivity clauses.

8. Data Privacy and Cybersecurity Gaps

What to check: GDPR/NDPR compliance, privacy policies, data processing agreements, security protocols, DPO appointments.

Risk: Regulatory fines, class action lawsuits, data breaches.

Mitigation: Conduct a privacy compliance review. Verify if the company has a Data Protection Officer (DPO), breach notification policies, and proper consent mechanisms.

Reference: Nigeria's NDPR and Kenya's Data Protection Act require comprehensive data processing documentation, often missing in early-stage startups.

9. Poor Tax Governance

What to check: Tax clearance certificates, transfer pricing policies, withholding tax compliance, VAT filings, intercompany arrangements.

Risk: Tax audits, back taxes, penalties, loss of tax benefits.

Mitigation: Involve a tax advisor to review filings, compute liabilities, and stress-test transfer pricing policies for cross-border entities.

10. Faulty Legal Entity Structuring

What to check: Subsidiary structure, holding company location (e.g, Mauritius vs Delaware), nominee arrangements, intercompany loan agreements.

Risk: Withholding tax inefficiencies, regulatory scrutiny.

Mitigation: Map the group structure. Assess the rationale behind jurisdiction selection. Determine regulatory barriers for dividend flows or shareholder repatriation.

11. Anti-Money Laundering (AML) and KYC Failures

What to check: KYC/AML policies, customer onboarding flows, reporting obligations.

Risk: Sanctions violations, regulatory shutdowns, loss of banking relationships.

Mitigation: Request AML policy documents and audit logs. Ensure periodic KYC refresh procedures are in place.

12. Related-Party Transactions

What to check: Intra-group contracts, founder-loan arrangements, affiliate payments.

Risk: Value leakage, governance concerns, tax exposure.

Mitigation: Disclose all related-party contracts. Add board oversight and audit requirements.

13. Inadequate Board Governance

What to check: Board composition, meeting minutes, quorum requirements, conflict of interest policies.

Risk: Poor oversight, compliance failures, concentration of power.

Mitigation: Review board procedures. Recommend governance improvements as a CP to close.

How Investors Can Proactively Manage Legal Risk

Beyond the checklist, effective legal risk management requires structured planning and strategic thinking. Below are core recommendations to institutionalize this.

1. **Engage Local Counsel Early:** Investors should engage jurisdiction-specific legal counsel during initial term sheet negotiation, not just at final closing. Local lawyers can flag deal-killer issues early, especially in complex regulatory environments.

2. **Use a Standardized Legal DD Framework:** Create a reusable legal due diligence template customized by sector. It should include - legal entity documentation, licensing and compliance, IP ownership, litigation, tax and employment law, data privacy, key contracts, etc.

3. **Insist on Reps, Warranties, and Indemnities:** No due diligence is perfect. Investors must protect themselves contractually through representations and warranties covering - legal standing, title to shares and assets, IP ownership, compliance with law, absence of undisclosed liabilities, etc. Negotiate an indemnity cap (often 10% – 20% of deal value) and ensure a minimum claims threshold (basket) is in place.

4. **Mitigate Post-Close Risk Through Conditions Precedent (CPs):** Common CPs include - transfer of IP to the company, board-approved ESOP plan, regularization of licenses, shareholder agreement updates. CPs should be tailored to align with the specific characteristics and risks of the transaction. Best practice is to tie tranches of the investment to completion of specific CPs. This reduces exposure while allowing operations to continue.

5. **Integrate Legal DD With Commercial and Financial DD:** Legal due diligence should not occur in a silo. For instance - legal findings about IP ownership must tie back to product roadmaps (commercial DD); discovery of off-balance-sheet liabilities during legal DD should inform financial model sensitivity. Best approach is to run joint DD syncs across legal, commercial, and finance advisors every 1 - 2 weeks during the DD period.

Conclusion

Legal due diligence is not merely a compliance exercise. It is an essential process to understand, manage, and mitigate legal risks that could derail an investment. As Africa's venture ecosystems mature and more institutional capital flows into the continent, legal DD will continue to play a pivotal role in deal success.

By proactively deploying a structured legal DD checklist, engaging local counsel, securing strong warranties, and syncing legal workstreams with broader DD efforts, investors can mitigate exposure and unlock more secure returns.

G. ELIAS

Investor Rights vs Founder Control: Legal Structuring in Nigerian Venture Capital Deals




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Introduction

In the first quarter of 2025, Nigerian startups attracted over US$100 million in disclosed funding, according to the Nairametrics Dealsbook[1]—a figure that mirrors the consistent momentum seen in 2024[2], when startups secured over US$400 million in funding.

However, behind these numbers lies a more delicate issue: striking the right legal balance between investor protections and founder control. As capital flows into Nigeria's growing tech and startup ecosystem, investors typically seek strong governance rights to protect their capital, while founders aim to retain control over their company's direction—even as their equity is diluted.

In this article, we explore the legal instruments and structuring strategies being used in Nigeria to align investor and founder interests and the evolving market realities influencing deal terms.

Players in the Nigerian Venture Capital ("VC") Ecosystem

Every Nigerian venture capital transaction involves several stakeholders with sometimes conflicting interests:

1. **Founders:** They bring the vision and execution power, often deeply tied to the startup's identity and long-term direction. Their goal is usually to preserve control—especially in the early growth stages.

2. **Investors (Angels, VCs, and private equity Firms):** These players bring not just capital, but also strategic input, business networks, and market credibility. Their concern is to secure returns within a predictable timeline, which often leads to demanding stricter corporate governance and stronger governance rights.

3. **Customers**: While not directly part of legal structuring, the strength of a startup's customer base influences deal terms. A startup (including the founders of such startups) with a big and loyal clientele base will typically enjoy better negotiating power.

4. **Competitors:** Though not players in legal structuring, competitors are a crucial factor to be considered when startups are raising capital. The intensity of market competition can accelerate fundraising timelines or affect valuations. This is common in high demand sectors where founders can negotiate from a position of strength.

Core Investor Rights in Nigerian VC Deals

As the Nigerian VC market matures, investors are increasingly insisting on enforceable rights that protect their investments and influence governance.[3] These investor-rights are usually embedded in a combination of legal documents, among others: shareholders' agreements; SAFEs; share subscription agreements; share purchase agreements; convertible loan agreements; the company's articles of association and so forth.

1. **Board Representation and Reserved Matters**

   Investors typically demand at least one board seat to participate in key decisions and monitor company performance. Some investors may also request seats on key committees such as audit, finance or strategy committees.

[1] https://nairametrics.com/2025/05/31/nigerias-startups-raised-over-100-million-in-q1-2025-here-are-the-top-10-deals/ (accessed June 18, 2025)

[2] https://nairametrics.com/2025/05/31/nigerias-startups-raised-over-100-million-in-q1-2025-here-are-the-top-10-deals/ (accessed June 18, 2025)

[3] https://dealstructuring.com/how-do-founders-negotiate-better-deal-terms/ (accessed June 30, 2025)

In many cases, investors also negotiate for the right to appoint or approve the appointment of key officers of the company, such as the managing director, chief operating officer, chief financial officer, and members of various board sub-committees.

Reserved matters refer to specific decisions or actions that a company cannot take without the prior consent or approval of a designated party—typically major investors, shareholders, or a board committee. These "reserved matters"—such as issuing new shares, incurring significant debt, changing business objects, or removing key executives—require investor consent before such actions can be carried out or implemented by the company.

2. Pre-emptive Rights and Participation Rights

In Nigeria's private investment landscape, pre-emptive rights are a key protection for investors looking to maintain their equity stake in future funding rounds. These rights give existing shareholders the first option to buy newly issued shares, in proportion to their current holdings, before those shares are offered to third parties. This helps investors avoid dilution and preserve their influence, especially where ownership thresholds are tied to board seats or other control rights. While pre-emptive rights are standard under Nigerian company law for private companies[4], investors typically reinforce or expand these protections in shareholders' agreements.

Other important rights commonly negotiated include rights of first refusal and co-sale rights. A right of first refusal ensures that investors have the first chance to purchase any shares other shareholders intend to sell, before selling to such parties. Co-sale rights allow investors to exit alongside founding or majority shareholders, on the same terms, in the event of a sale protecting both sides.

3. Anti-Dilution Protection

Anti-dilution protection ensures that rights of existing shareholders, especially early investors, are not reduced if the company raises future capital at a lower valuation. In the event of a future capital raise at a lower valuation, anti-dilution protection ensures that existing shareholders/investors who had previously invested in the company at a higher valuation maintain the value of their investment by getting additional shares for their investment as if they had invested at that lover valuation. This is commonly referred to as a "down round." Down round may occur due to increased competition in the market, general economic or stock market declines, or the altered perception of new investors on the value of the business during other financing rounds.

This is critical during future equity rounds. VC firms typically use broad-based weighted average formula, balancing fairness with flexibility. More aggressive investors may insist on full-ratchet protection, although this may deter future investors or heavily dilute founders.

4. Tag-Along and Drag-Along Rights

Tag-along rights protect minority investors by ensuring they can sell their shares on the same terms if majority shareholders intend to sell their shares.

On the other hand, drag-along rights allow majority shareholders to force minority shareholders to sell if a full acquisition is being negotiated.

[4] Section 142 of the Companies and Allied Matters Act 2020 ("**CAMA**").

5. Exit Rights and Liquidation Preferences

VCs typically expect a defined "exit strategy"—via secondary sale, initial public offers, or acquisition. They may also negotiate put options (right to sell shares back) or liquidation preferences (getting paid before founders in the event of a solvent winding up). Nigerian law treats equity holders as the last to be paid upon liquidation, but liquidation preferences can still offer early-stage investors peace of mind in a solvent winding-up.

Strategies for Preserving Founder Control

While investors seek governance rights, founders must ensure their ability to lead the company is not unduly undermined. Below are strategies used in Nigeria to protect founder interests:

1. Share Class Structuring

Issuing ordinary shares to founders and preference shares to investors allows flexibility. Preference shares often come with priority on dividends or liquidation proceeds but may have limited voting rights unless otherwise agreed in the company's articles of association.[5]

Importantly, under Nigerian law, preference shares must be redeemable,[6] meaning the company can buy them back in the future—creating a path for founders to recover control.

Founders can use this structure to separate economic upside (offered to investors) from governance rights (retained by the founder(s)). For example, while investors enjoy preferential financial returns, they may have no say in operational matters or everyday company decisions.

2. Founder Reserved Matters

Founders may negotiate veto rights or control over key areas of the company. These reserved matters are typically set out in the shareholders' agreement and/or articles of association. This gives founder(s) a say over decisions that could fundamentally alter the company's vision or strategic direction. Reserved matters can cover a wide range of areas such as issuing new shares, entering into significant contracts, taking on debt, hiring of core team members or selling key assets or assets value above stipulated thresholds. By securing a right of consent over such matters, founders ensure that investors cannot unilaterally alter the company's path or dilute founder influence through board or shareholder actions.

3. Board Composition and Quorum Rules

A staggered board structure—where founders and investors appoint directors for varying tenures—can help prevent boardroom dominance. Founders can also negotiate that key decisions require the presence or approval of at least one founder-appointed director.

This structure ensures that decisions reflect a broader set of perspectives and that founders retain a seat at the table, even where investor appointees may be in the majority. In addition, quorum rules that require the physical or virtual presence of a founder-appointed director before meetings can proceed are important safeguards—ensuring that founders are never sidelined in critical board-level discussions.

[5] Section 168, CAMA.

[6] Section 147(1), CAMA.

4. Exit Control Mechanisms

Exit control mechanisms help to align investor exit strategies with founder vision. For example, drag-along clauses can be structured so that they only apply if the sale price meets a minimum multiple of invested capital, or if a certain number of years have passed since the initial investment. In addition, requiring that exit decisions (such as sale of the company) be approved by a supermajority, rather than a simple majority, protects founders from being coerced into premature exits that may not reflect the long-term value of the business. Specifically, CAMA permits private companies to include provisions in their articles requiring the consent of all members before selling assets valued at more than 50% of the company's total assets[7].

Bargaining and Negotiation Dynamics

In Nigeria, VC deal negotiations often revolve around three key factors:

1. **Stage of the Company:** Seed-stage startups generally offer more control rights to investors due to higher risks. More mature companies with revenue or traction can resist aggressive terms.

2. **Valuation vs. Control Trade-offs:** A higher valuation may attract investors but come with stricter governance demands. Founders must evaluate whether to accept a lower valuation in exchange for greater decision-making autonomy.

3. **Warranties, Representations, and Indemnities:** Founders typically provide detailed disclosures about the company's financials, tax status, and legal compliance. Investors often seek indemnities for breaches—but founders can limit liability through caps, time limits and disclosure schedules.

4. **Performance-Based Structures:** Investors may agree to limit their influence if founders hit agreed milestones (e.g. revenue targets, user growth), giving founders more operational freedom.

Key Legal Instruments for Structuring VC Deals in Nigeria

1. Shareholders' Agreement

This is the primary contract between founders and investors. The shareholders' agreement ("**SHA**") often defines the framework for governance, funding, control, and protection of minority or majority interests. It also addresses share transfers, dispute resolution (commonly arbitration), tag-along and drag-along rights, pre-emptive rights, and anti-dilution protections, reserved matters and exit rights. Deadlock resolution mechanisms such as call/put options or mediation processes are also commonly included.

2. Articles of Association

The articles of association of the target company, being its constitution should align with the Shareholders' Agreement. In practice, the articles serve as the binding internal rulebook for the company under Nigerian law and any inconsistency between the SHA and the articles may result in enforceability issues. Also, certain rights—like issuing preference shares—must be expressly stated in the Articles to be enforceable.

When VC deals involve equity restructuring or the introduction of new share classes, the articles of association of the target company

[7] Section 22(2)a, CAMA

must be amended by special resolution to reflect these terms.

3. Convertible Instruments

Tools like convertible notes or SAFE agreements are also key for structuring VC Deals. These instruments start as debt or simple agreements, then convert to equity during future financing rounds—usually at a discount or capped valuation. Convertible notes operate as debt instruments with a maturity date and an interest rate, while SAFEs are more equity-oriented and typically do not accrue interest or have a repayment obligation. They give investors downside protection and upside potential while avoiding valuation negotiations at early stages.

Conclusion: Finding the Right Balance

In Nigeria's dynamic venture ecosystem, the balance between investor protection and founder control is not a one-size-fits-all formula. It depends on the company's stage, the founder's leverage and the investor's risk appetite.

Founders must be ready to share control in exchange for capital, while ensuring their vision is not compromised. Investors, on their part, must protect their downside without stifling the very innovation they are backing.

Well-structured legal agreements that encourage transparency, trust, and alignment of interests are key to building sustainable businesses—and unlocking long-term value for all parties.

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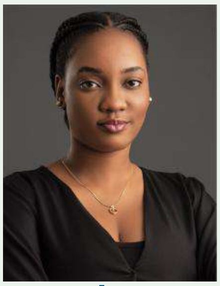
Regulatory Trends and Legal Challenges in Exit Strategies for Private Equity in Nigeria



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Introduction

In the Private Equity (PE) ecosystem, the exit is the crystallization point of returns, where the success (or failure) of an investment strategy becomes evident and investors determine whether years of risk and capital deployment were worthwhile. The lifespan of PE funds involves the fundraising phase, investing, value creation, and finally, the exit phase. While the early phases are vital for identifying and enhancing Portfolio Companies (PC), experienced investors recognize that the true measure of an investment's success is determined by the quality and execution of the exit strategy.

A well-planned exit strategy has wider implications for all parties involved. For the PE firms, it means liquidity, the ability to return capital to limited partners (LPs), and improved fundraising potential; for the PC, it often signifies growth and maturity and can unlock new capital or operational horizons.

According to the 2024 African Private Equity and Venture Capital Association survey[8], African PE firms are facing increased pressure from LPs to return capital and this has led to an uptick in diversified liquidity and exit strategies. The survey also showed a lag in exit-to-investment ratios, a sign that many PE funds postponed exits while waiting for macroeconomic conditions to stabilize. This backlog is now driving a renewed focus on exit execution.

Whilst the Nigerian dynamic is no different, the local landscape is more complex due to the interwoven regulatory, tax, and legal challenges that shape every exit decision. Understanding these challenges and devising ways to mitigate them is key to ensuring that PE firms exit successfully, legally, efficiently, and with maximized value.

Overview of Common Exit Routes - The Nigerian Landscape.

Some of the most common exit strategies used in Nigeria are:

1. Trade Sales or Strategic Acquisitions

In a trade sale, the PC is sold to another company (often in the same industry) where the buyer typically pays a premium, seeking synergies or market share. Whilst this exit strategy is fairly common, parties must ensure that all applicable sector-specific approvals and competition requirements are considered. From 2000–2023 across Africa, trade sales represented ~44% of exit value and ~43% of exit volume.[9] In Nigeria, many PE exits are via trade sales, such as Actis selling C&I Leasing to Peace Mass Transit (2021) and ACA's exit from Cornerstone Tower to Everty (2019).

2. Initial Public Offerings (IPOs)

This strategy involves the listing of the PC's shares on the stock market for the first time for public subscription. This route provides a significant opportunity for the investor to sell its shares to the public and exit with substantial returns on its investments. IPOs offer visibility and access to a larger capital base but come with a heavy compliance burden. PCs must obtain the approval of the Securities and Exchange Commission (SEC) and meet Nigerian Exchange Group (NGX) listing requirements, including the governance standards and financial thresholds. From 1999–2019, Nigerian IPOs raised only circa ₦319 billion.[10] The unpopularity of the IPO option is due to Weak capital markets, tough listing requirements, currency instability, and foreign exchange constraints.

3. Secondary Sales:

In this exit route, the PE firm sell its stake to another PE firm or financial investor. It is increasingly common in Nigeria due to the growing ecosystem of secondary market participants. In 2024, CardinalStone Capital Advisers executed a full exit from i-Fitness Nigeria by selling its 65% stake to Verod Capital Management for approximately USD 12 million.

[8] <https://www.avca.africa/media/fcpjt4s3/2024_avca_african_private_capital_activity_report_apca_public.pdf

[9] Katie Hill, Warren Chetty, Lisa Ivers, Mills Schenck, and Jonathan Davidson, "Deals to Dollars: Navigating Successful Private Equity Exits in Africa" published by the Boston Consulting Group.

[10] Nairametrics < https://nairametrics.com/2017/08/16/amount-raised-from-ipo-in-nigeria-since-1999/>

According to a 2018–2023 Boston Consulting Group analysis, Nigeria experienced the significant use of PE-specific secondary sales – placing it among the top four countries in Africa (alongside Côte d'Ivoire, Kenya, and South Africa).[11]

4. Buybacks

Here, the PC repurchases its shares from the PE firm. This exit strategy allows the founders/management to regain control of the PC, either fully or partially, by buying back equity stakes that were previously sold to PE firm. Under the Companies and Allied Matters Act (CAMA) 2020[12], a company in Nigeria may repurchase its own shares provided that such buyback is authorized by the company's articles of association and approved by a special resolution of its shareholders. The buyback must be funded either from distributable profits or the proceeds of a fresh issue of shares made for the purpose of the buyback. In addition, the PC must remain solvent after the transaction, meaning it should be able to meet its debts as they fall due. Considering the regulatory hurdles associated with Buybacks, it is not a popular exit option in Nigeria.

5. Management Buyouts (MBOs)

While still rare in Nigeria, MBOs allow key employees to acquire control of the PC. MBOs often require significant financing, and the buyer's ability to secure funding determines the success of this strategy.

6. Schemes of Arrangement

This court-approved mechanism facilitates restructuring and enables exit through organized acquisition or reorganization. It involves the sanction of the Federal High Court, SEC oversight and shareholder approval. This option is rarely used in PE exits due to high legal complexity, cost, and time. It is better suited for large or consolidated share bases.

7. Preference Share Redemptions

This offers a structured, contractually agreed exit route. Under CAMA 2020, redeemable preference shares may be repurchased under certain conditions. This offers investors predictable returns with limited risk. However, it may strain the cash flow of the PC.

8. Liquidation

This is a last-resort option, typically when the company is no longer viable. While it allows for the closure of investment books, it reflects a failure in value realization.

Tax Implications in Exits

Exits in Nigeria are subject to a range of tax considerations that can materially affect deal value and structuring. One of the primary taxes applicable is Capital Gains Tax (CGT), which is charged at a flat rate of 10% on gains derived from the disposal of capital assets[13]. However, exemptions may apply – for instance, under the Finance Act 2021, CGT does not apply to gains on share disposals where the proceeds are ₦100 million or less in any 12-month period, or where the proceeds are reinvested in the acquisition of shares in a Nigerian company within the same year of assessment[14]. In Nigeria, the Stamp Duties Act, prescribes a nominal stamp duty of ₦500 for instruments transferring shares,[15] while the asset transfer agreement attracts stamp duty at the rate of 1.5%. Notwithstanding the name given to an agreement, the tax authority will examine the contents to determine the applicable rate. Hence, parties should seek professional legal advice in documenting their transactions.

Dividends distributed as part of the exit process may attract withholding tax (typically at 10% for residents and 10% or reduced treaty rates for non-residents), and repatriation of exit proceeds by foreign investors must comply with foreign exchange regulations, including evidence of capital importation and appropriate tax clearances.

[11] *Supra*.
[12] Section 184 of the CAMA.
[13] Section 2 of the Capital Gains Tax Act (Cap. C1 LFN 2004)
[14] Section 2 of the Finance Act 2021.
[15] See Item 10 of the Schedule to the Stamp Duties Act (Cap S8 LFN 2004)

Finally, in transactions involving related parties – such as group restructurings or management buyouts – transfer pricing regulations must be observed to ensure that exit valuations reflect arm's length principles. Failure to comply may result in additional tax assessments and penalties. Accordingly, tax planning is a critical aspect of exit strategy formulation for private equity and corporate investors operating in Nigeria.

Legal and Contractual Considerations in Exit Planning

A successful exit is a carefully managed process involving legal foresight, strategic tax planning, regulatory compliance, and sound documentation. There are certain considerations which play a determining role in the exit structuring ensuring a smoother and more lucrative exit. These include:

1. **Exit Clauses in Investment Agreements**

   Well-drafted investment agreements are the backbone of a successful exit. Common contractual provisions that influence exit strategy decisions include drag-along rights, which empower majority shareholders to compel minority shareholders to participate in a sale, ensuring a clean exit; tag-along rights, which protect minority investors by allowing them to sell their shares on the same terms as the majority; and rights of first refusal (ROFR), which give existing shareholders the opportunity to purchase shares before they are offered to external buyers. These provisions are critical for aligning investor interests, minimizing disputes, and preserving flexibility for private equity firms to pursue timely and coordinated exits.

2. **Timing and Market Readiness**

   An exit must be timed with market conditions in mind. A well-performing company in a high-growth industry is more likely to command a premium valuation. PE firms must monitor sector trends, economic stability, political climate, investor appetite and liquidity ratios to identify viable exit strategies.

3. **Regulatory Approvals:**

   Depending on the sector of the PC and the exit strategy of choice, multiple layers of approval may be required. For public offerings or share transfers involving public companies, parties must pay recourse to the requirements of the SEC and the NGX for listing or delisting. Sector regulators such as the Nigerian Communications Commission for the telecommunication sector and the Central Bank of Nigeria for the finance sector have additional exit requirements which are applicable to their regulated companies. Non-compliance with sector requirement may result in fines, delays, or reputational harm.

4. Due Diligence: Exit readiness requires a thorough due diligence process to identify liabilities or legal risks that could derail an exit deal. This process involves the verification of the ownership structure of the PC, confirming regulatory compliance, reviewing contracts and disputes and other matters. A thorough due diligence will ensure that any preliminary issues surrounding the PC are identified and addressed before the PE's exit.

5. Transaction Documentation and Legal Advisory: Legal professionals ensure that the deal structure, terms, and execution align with regulatory requirements and the commercial objectives of the parties. Documents such as Share Purchase Agreements (SPAs), Novation Agreements, and Disclosure Letters are essential to manage legal risks, allocate liabilities, and secure post-closing protections like indemnities and escrow arrangements. Legal advisors also help navigate consents and regulatory approvals, thereby facilitating a smooth and enforceable exit.

Challenges with Cross-Border Exits

Cross-border exits often face significant enforcement and regulatory challenges that can complicate deal execution and value realization. One key issue is the repatriation of proceeds, which may be hindered by foreign exchange restrictions, capital controls, or delayed access to foreign exchange.

According to the African Private Equity and Venture Capital Association, foreign exchange volatility and FX shortages present some of the biggest challenges at the exit stage for African PE firms, with 25% of LPs frequently experiencing delays due to currency risk.[16] Industry surveys consistently highlight how Nigerian FX scarcity and multiple exchange-rate windows in the past have stalled exits – forcing PE firms to either hold assets longer, accept lower valuations, or carefully structure exits via offshore entities and natural hedging.

Nigeria's restrictive foreign exchange controls have historically posed serious repatriation issues for investors. Notably, Nigeria's backlog of unrepatriated revenues in the aviation sector peaked at $850 million at June 2023. Following the outcry by foreign investors, the Central Bank of Nigeria (CBN) released a circular in the same month announcing the consolidation of the multiple foreign exchange (FX) market system into an autonomous FX window. The new FX policy by the CBN has helped to enhance FX availability and facilitate easier movement of funds for investors in and out of the country.

Regulatory approvals such as consent from sector governing agencies, central banks, or competition authorities can also introduce delays or uncertainty, particularly where the transaction involves jurisdictions with lengthy approval timelines. Additionally, enforcing shareholder rights across borders can be difficult due to differences in legal systems, limitations on the recognition of foreign judgments, and the risk of biased or inefficient local dispute resolution mechanisms.

Recent Changes in Regulatory Policies Affecting Exits

From the commencement of the year, Nigeria has witnessed regulatory reforms spanning across tax, energy and banking – introducing heightened scrutiny, and stricter compliance thresholds, which can significantly influence exits.

1. **Tax Law and Policy:**

   The Nigeria Tax Act 2025 mandates that a valid Tax Clearance Certificate (TCC) must be presented prior to the approval or registration of share transfers in the shipping and aviation sectors. This requirement effectively links tax compliance with the ability to legally consummate an exit. Companies in these sectors with unresolved tax issues or historical filing gaps may face delays in closing exit deals or registering share transfers.[17]

   The Income Tax (Transfer Pricing) Regulations 2023, read together with the enhanced powers of the FIRS under the Nigeria Tax Administration Act 2025, signal a heightened level of oversight on transactions between related parties, including intra-group sales and restructurings during exits. Where exit transactions involve group entities or cross-border affiliates, the FIRS is likely to assess whether the transaction was conducted at arm's length. Any deviation from fair market value may result in transfer pricing adjustments and additional tax liabilities.

   These new tax laws are scheduled to come into effect on the 1st of January 2026.

   Under the Nigeria Startup Act 2022, the sums derived from the disposal of assets by an angel investor, venture capitalist or PE fund are exempt from capital gains provided that the assets have been held in Nigeria for a minimum of 24 months. A 30% tax credit is applicable to investments which are subject to tax. However, the labelled startups must maintain the startup label and ensure compliance with the Startup Act throughout their lifecycle.[18]

2. **Decarbonization Regulations**

   As part of Nigeria's commitment to net zero emissions by 2060 and in line with global energy transition plans, the Nigerian Petroleum Regulatory Commission (NUPRC) released the Upstream Petroleum Decarbonization Template (UPDT) in January 2025. Upstream oil and gas companies must now show evidence of decarbonisation compliance before divestments are approved.[19]

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[16] African Private Equity and Venture Capital, "Currency Risk Management Practices in African Private Equity and Venture Capital". Issued in March 2022. See at: https://www.avca.africa/media/qa1d0xvu/01997-avca-currency-risk-in-africa-report_6.pdf

[17] Section 18 (9) of the Nigeria Tax Act 2025.

[18] Section 29 of the Nigerian Startup Act 2022.

[19] NUPRC, "Policy Release on Decarbonisation and Energy Sustainability in Nigerian Upstream Oil and Gas Operations: Issuance of Upstream Petroleum Decarbonisation Template". Published on 31 December 2024 < https://www.nuprc.gov.ng/wp-content/uploads/2024/12/POLICY-RELEASE-Introduction-of-Regulatory-Decarbonisation-Template-for-Upstream-OIl-Gas-Operations-in-Nigeria-1.pdf> Last accessed on 8 July 2025.

3. Investments and Securities Regulation:

The ISA 2025 expands the regulatory scope of the Securities and Exchange Commission (SEC) to include digital assets, such as tokenized equity and blockchain-based instruments, by classifying them as securities.[20] As a result, issuers of digital assets must obtain SEC licenses and adhere to new compliance standards, including full disclosure and investor protection obligations. This affects private equity and venture capital investors divesting from fintechs or startups that raised funds via token offerings or operate digital investment platforms. Unregistered offerings, improper licensing, or non-compliance may delay or block exits and expose parties to enforcement actions.[21]

PE firms are now more incentivized to conduct enhanced regulatory due diligence on portfolio companies before exit, particularly where digital assets are involved, to ensure deal certainty under the new legal framework.

4. Banking Law and Regulation

On June 13, 2025, the CBN's Director of Banking Supervision released a circular directing banks still under forbearance (on single-obligor limits and other credit facilities) to suspend dividend distributions, defer bonuses, and halt offshore investments.[22] A follow-up directive was issued on June 20, 2025 requiring banks to submit Capital Restoration Plans by July 14, 2025, and announced terminations of all waivers, effective June 30, 2025.

The exit of Nigerian banks from CBN's regulatory forbearance – specially on single obligor limits – may tighten access to acquisition financing, making it harder for local buyers to fund PE exits. This could delay exits, lower valuations, or reduce buyer interest, particularly in capital-intensive sectors. PE firms may need to rely more on foreign buyers or non-bank financing to navigate the tighter credit environment.

Similarly, the CBN's recapitalization directive, requiring Nigerian banks to meet new minimum capital thresholds by March 2026, is likely to impact liquidity conditions and, by extension, the availability of acquisition financing for private equity (PE) exits. As banks focus on raising capital – either through retained earnings, new equity, or reduced risk exposure – they may become more conservative in lending, especially for large-ticket transactions like leveraged buyouts or management-led acquisitions. This could constrain access to debt financing for potential buyers, particularly domestic ones, thereby slowing down exit timelines, depressing valuations, or shifting buyer interest toward those with strong foreign or non-bank financing backing.

Conclusion

Navigating an exit in Nigeria's private equity landscape demands more than just strategic timing – it requires a deep understanding of the evolving regulatory, tax, and legal frameworks that underpin deal execution. As local and international investors continue to seek value realization, the ability to anticipate policy shifts, structure tax-efficient exits, and secure regulatory clarity will be central to unlocking liquidity and maintaining investor confidence. In this dynamic environment, early planning, robust legal advisory, and adaptive strategies are no longer optional – they are essential to a successful and rewarding exit journey.

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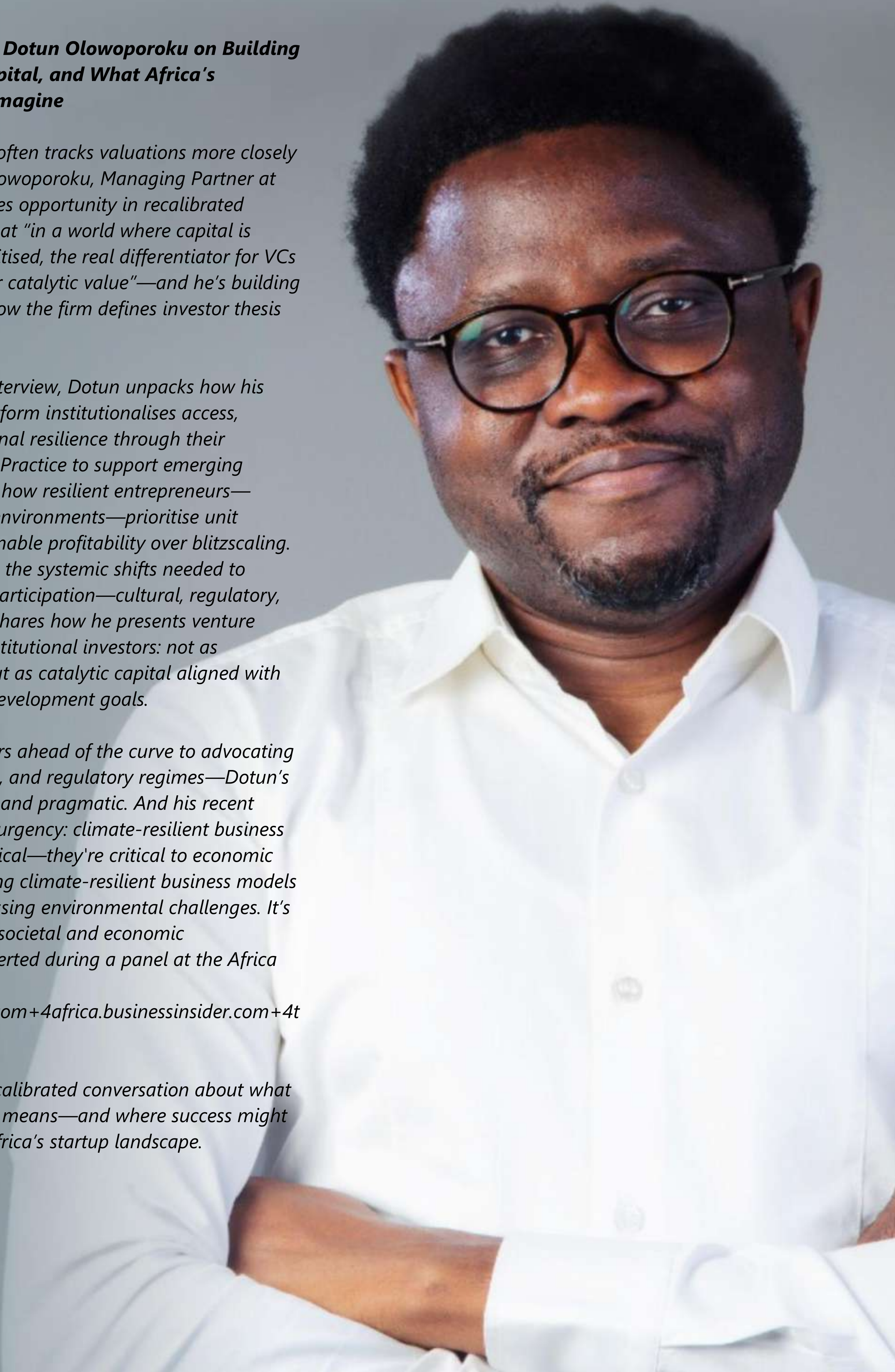
[20] Section 357 ISA 2025.
[21] Section 86 (7) ISA 2025.
[22] Central Bank of Nigeria, "Temporary Suspension Of Dividend Payments, Bonuses and Investment in Foreign Subsidiaries"https://www.cbn.gov.ng/Out/2025/BSD/TEMPORARY%20SUSPENSION%20OF%20DIVIDEND%20PAYMENTS,%20BONUSES%20AND%20INVESTMENT%20IN%20FOREIGN%20SUBSIDIARIES.pdf

CEO SPOTLIGHT

In Conversation With

Dr. Dotun Olowoporoku

MANAGING PARTNER AND GENERAL PARTNER AT VENTURES PLATFORM



Beyond the Cheque: Dotun Olowoporoku on Building Resilience, Local Capital, and What Africa's Ecosystem Must Reimagine

In an ecosystem that often tracks valuations more closely than vision, Dotun Olowoporoku, Managing Partner at Ventures Platform, sees opportunity in recalibrated purpose. He argues that "in a world where capital is increasingly commoditised, the real differentiator for VCs is the ability to deliver catalytic value"—and he's building that conviction into how the firm defines investor thesis and founder support.

In this illuminating interview, Dotun unpacks how his team at Ventures Platform institutionalises access, networks, and emotional resilience through their Platform & Networks Practice to support emerging founders. He explains how resilient entrepreneurs—especially in volatile environments—prioritise unit economics and sustainable profitability over blitzscaling. Dotun also reflects on the systemic shifts needed to deepen domestic LP participation—cultural, regulatory, and structural—and shares how he presents venture capital to cautious institutional investors: not as speculative capital, but as catalytic capital aligned with Nigeria's long-term development goals.

From spotting founders ahead of the curve to advocating for reforms in FX, visa, and regulatory regimes—Dotun's take is both visionary and pragmatic. And his recent advice amplifies that urgency: climate-resilient business models aren't just ethical—they're critical to economic sustainability. "Building climate-resilient business models isn't just about addressing environmental challenges. It's also about unlocking societal and economic sustainability," he asserted during a panel at the Africa Prosperity Summit cmbglobe.wordpress.com+4africa.businessinsider.com+4techpoint.africa+4.

Join us as he leads a calibrated conversation about what startup support really means—and where success might emerge next across Africa's startup landscape.

PEVCA LR: You've often spoken about the importance of founder support beyond capital. From your perspective, what non-financial forms of support are most crucial to early-stage founders in Nigeria today?

Dotun: In a world where capital is increasingly commoditised, the real differentiator for VCs is the ability to deliver catalytic value. At Ventures Platform, we've institutionalised this through our Platform and Networks Practice - a dedicated function focused on portfolio and ecosystem engagement, built around post-investment value creation. At its core, this practice offers what we believe is the most valuable support a founder can receive: access - to knowledge, networks, technical know-how, and a trusted community.

This access translates into hands-on mentorship, strategic guidance across go-to-market, hiring, and fundraising, as well as warm introductions to regulators, customers, and talent. These elements are particularly critical for first-time founders navigating the complexity of Nigeria's startup landscape.

But support must also extend beyond the tactical. The emotional resilience required to build here is significant. That's why we intentionally cultivate safe, founder-first communities through curated retreats, group sessions, and peer learning forums. Sometimes, the right room makes more of a difference than the right cheque.

PEVCA LR: Ventures Platform has backed some of the most exciting companies in the ecosystem. What have you learned about spotting resilient founders, and how do you evaluate startups in uncertain or volatile environments?

Dotun: In volatile economic environments like ours, resilience isn't just a virtue, it's a prerequisite. Resilient founders show a bias for action but also know when to pause and reflect. They're data-informed, customer-obsessed, and deeply mission-aligned.

In uncertain or volatile environments, unit economics reigns supreme and resilient founders understand this quite well. These founders continue to meticulously structure their businesses with robust fundamentals. They also exhibit different characteristics including: an unwavering commitment to fundamental business principles, sophisticated cash management protocols, and an unrelenting focus on achieving sustainable profitability. Also, spotting them is quite easy: they take a more sophisticated approach to business development, prioritizing sustainable, measured growth over the previously prevalent "blitzscaling" methodology that dominated the ecosystem.

In these markets, we also double down on evaluating the startup's adaptability: How do they respond to shocks? But most importantly - are they building "painkillers" that remain essential even in downturns? This is because those who iterate intelligently and stay close to the customer tend to thrive.

PEVCA LR: Mobilising local capital has long been a challenge for early-stage funds. What shifts (structural, cultural, or regulatory) do you think are necessary to deepen local LP participation in venture capital?

Dotun: Three key shifts are needed:
Structurally, we need more aggregation vehicles that reduce risk exposure for local investors - especially high-net-worth individuals who want VC exposure without taking early-stage concentration risk.
Culturally, there must be a shift in mindset from real estate and treasury-focused investing to backing innovation as a long-term asset class. That begins with education - storytelling around successful outcomes, demystifying the VC model, and showing real returns.

With regards to regulation, pension fund guidelines need continued reform to enable greater allocations to VC. We're seeing progress here, but more clarity and frameworks for risk mitigation will be key.

PEVCA LR: How do you engage with pension or institutional investors who may be unfamiliar—or even hesitant—about venture as an asset class?

Dotun: Education is the foundation. When engaging these institutions, we focus on building trust through data and track record. We present venture not as a speculative bet, but as a portfolio diversifier with asymmetric upside - especially when approached through a disciplined fund strategy.

We also emphasize alignment with national priorities: innovation, job creation, and industrial competitiveness. VC isn't just capital for founders - it's catalytic capital for the economy. When institutional investors see that, the conversations shift meaningfully.

PEVCA LR: You've played an active role in shaping ecosystem policy conversations. What are some of the most constructive ways founders and fund managers can engage with regulators?

Dotun: Constructive engagement starts with empathy and clarity. Founders and fund managers must approach regulators not just as watchdogs, but as partners in development. That means taking the time to understand their constraints and aligning proposals with national economic goals.

It also helps to engage early and often, and not just when issues arise. Whether through industry associations like PEVCA or informal roundtables, consistent dialogue creates mutual literacy. And when engagement is data-backed and solution-oriented, it's far more productive.

PEVCA LR: Are there specific regulatory improvements you believe would significantly ease capital formation, cross-border operations, or founder mobility in Nigeria?

Dotun: Yes, three come to mind:

First, streamlining foreign exchange processes for fund flows and repatriation would ease investor anxiety and improve liquidity.

Secondly, harmonising startup registration and compliance frameworks across federal and state levels would reduce administrative bottlenecks, particularly for growth-stage startups expanding locally.

Finally, we need more robust founder visas and work permit frameworks across Africa. Talent and capital must flow freely if we're to build truly Pan-African businesses.

PEVCA LR: Ventures Platform invests across the continent. What patterns or trends are you observing in other African markets that Nigeria can learn from, especially in terms of innovation policy or fund manager support?

Dotun: Although, we are yet to invest in Rwanda, we have been watching and are seeing encouraging policy shifts in the market. Same as Egypt where we have invested in MoneyHash. In these markets, their governments are proactively co-investing alongside private funds, creating regulatory sandboxes, and digitising key services.

Kenya has also made strides in fintech regulation through clear licensing paths, which has reduced investor uncertainty. Nigeria can learn from this clarity, responsiveness, and collaboration that exist in these markets. Additionally, tax incentives for early-stage investments like those in South Africa, could catalyze more domestic participation in our ecosystem.

PEVCA LR: How do you think ecosystem builders can foster greater collaboration across fund managers, regulators, and ecosystem enablers to accelerate sustainable startup growth?

Dotun: Ecosystem builders must play the role of translators and conveners. Often, these stakeholder groups speak different languages - legal, financial, policy - but share the same end goal. Building consistent, multistakeholder platforms where priorities can be harmonized is critical.

Secondly, we must invest in shared infrastructure, whether that's open data sets, founder toolkits, or digital policy trackers, that make it easier to build and govern at scale.

Lastly, collaboration must be incentive-aligned. When success is defined collectively, actors move from siloed efforts to systems thinking.

PEVCA LR: What is one major blind spot in Nigeria's startup policy or funding environment that we're not talking about enough, but should be?

Dotun: A major blind spot is local market absorption capacity. We often focus on capital access or regulatory clarity, but don't talk enough about domestic demand and procurement.

Government and large corporations are under-leveraged buyers of local innovation. If we created clear pathways for startups to become vendors or partners in public and private sector transformation, we'd accelerate scale and signal legitimacy to the broader market.

PEVCA LR: As the Nigerian tech ecosystem matures, what role should VC funds play in building long-term institutional capacity, not just returns?

Dotun: VCs must evolve from capital allocators to institution builders. That means supporting not just portfolio companies, but the enabling environment - through policy advocacy, talent development, and ecosystem infrastructure.

At Ventures Platform, we see this as part of our mandate. Whether it's convening stakeholders, collaborating on policy and governance initiatives, or backing startups to serve underserved regions, we believe returns and resilience go hand in hand. Long-term prosperity requires more than exits - it requires strong institutions that outlast the hype cycle.

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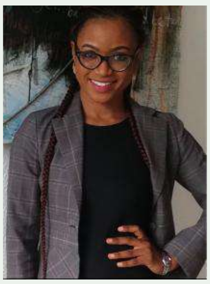
Private Equity and Venture Capital Investments in Nigeria: Tax, Regulatory, and Practical Considerations


Asiata Agboluaje


Inepaimi Ayah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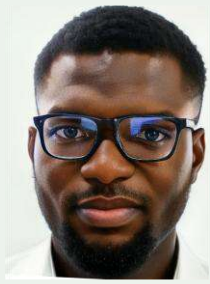
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Introduction

This article analyses the tax, regulatory, and practical considerations relevant to private equity (PE) and venture capital (VC) investments in Nigeria. It provides an overview of the legal landscape applicable to investments in startups and enterprises, while outlining both the opportunities and challenges that may arise in this dynamic market environment.

Given the recent widespread changes to the tax and regulatory landscape in Nigeria, a thorough understanding of the pertinent frameworks is imperative for PE and VC investors seeking entry, expansion or exit from within the Nigerian market, as it enables compliance, supports the optimisation of investment strategies, and helps maximise returns.
In addressing these, we will evaluate the tax, regulatory and practical issues surrounding the major phases of venture capital and private equity investments.

1. Angel and Seed Stages

This is the preliminary idea formation stage which involves partnerships, patent registration, amongst others. It also entails the period of getting the products off the shelf and commencing commercial production.

1.1 ***Legal/Regulatory considerations***

a) Companies and Allied Matters Act 2020 (CAMA)

One major regulatory consideration for PE and VC investors in Nigeria is adherence to the provisions of CAMA as administered by the Corporate Affairs Commission (CAC). Key considerations here include:

(i) Deciding on an appropriate investment vehicle - incorporated companies and limited liability partnerships are recognized under CAMA.

(ii) Ensuring proper share structures and authorized share capital that align with their proposed investment including adherence to requirements on minimum issued share capital, directorship, and company secretary, post-incorporation filing, and other obligations under CAMA.

b) Nigeria Start-up Act 2022 (NSA)

Here, start-ups (a company in existence for less than 10 years which has innovated digital assets) which have fulfilled certain conditions set out in section 13 of the NSA are entitled to a certification which is advantageous to the company and its investors.

c) Relevant permits and licences for operation

The relevant startups and enterprises are urged to obtain all relevant licences for operation. This is important to set a proper foundation for continuous operations.

d) Exit Strategies

Having a clear exit strategy is vital for realizing returns on PE and VC investments. Common exit options include:

(i) **Initial Public Offering (IPO):** IPOs are considered the ideal exit strategy as they allow investors to sell their shares on the stock market, providing liquidity for investee companies and achieving substantial returns.[23] However, navigating the legal and regulatory framework for public companies can be complex, as they usually have rigorous compliance and reporting

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[23] Mark John, 'PE/VC Exit Strategies: IPO vs. Trade Sale vs. Secondary Purchase', 16 February 2025, https://privatemarketlab.com/pe-vc-exit-strategies-ipo-vs-trade-sale-vs-secondary-purchase/

requirements. [24] Furthermore, IPOs can be complex, time-consuming and expensive.

(ii) **Trade sale:** This is the most common exit route for PE/VC investors as it can be executed faster and provide immediate liquidity, sparing investors the time constraints and complex regulatory obligations that come with IPOs. The buyer may also be willing to pay a premium for the business, especially if it adds value and aligns with their existing operations. However, finding the right buyer can be difficult and the negotiation process can be rigorous, especially if the market is competitive or the company operates in a niche industry. [25]

(iii) **Secondary sale**: A more recent trend is the use of a secondary sale, where an investor sells its stake in the company to another financial investor. This method offers flexibility and can be structured to meet the needs of both existing and incoming investors. However, because the buyer is typically another investor, the pricing and negotiation can be challenging, resulting in more conservative valuations.

1.2 Tax Considerations

a) Tax Registration

At incorporation companies are registered for tax with records at the Federal Inland Revenue Service (FIRS)

b) Income tax considerations

At the angel stage, the status of the investee company is likely to be a "small company[26]" in Nigeria. **Under the Companies Income Tax Act (CITA), for small companies with turnover of up to NGN25 million, the tax rate is 0% and 20% for companies with turnover above NGN25 million but below NGN100million.**

Under the Nigerian Tax Act, a small company will be subject to 0% tax while companies with an annual turnover exceeding NGN100 million are subject to a corporate income tax rate of 30% on the profits of the company.[27] This allows for the consolidation of efforts to impact growth.

c) Value Added Tax (VAT) and Withholding tax (WHT)

VAT: VAT is a consumption tax levied on the supply of chargeable goods and services at a rate of 7.5%. An investee company that supplies taxable goods or services is obligated to charge VAT on its. However, companies that do not make taxable supplies above NGN25 million in a calendar year are not required to register for, charge or remit VAT or file VAT returns.

WHT: WHT is an advance payment of income tax deducted at source (at the specified rates) from payments made to individuals and companies. Small companies are exempt from the obligations to deduct tax at source if the supplier has a valid TIN and the value of the transaction is NGN2 million or less during the relevant calendar month.

d) Filing returns

Investee companies who meet the NGN25 million threshold are obligated to render monthly VAT returns to the FIRS on all VAT incurred by or collected by it. The returns are to be filed on or before the 21st day following the month of collection. Note that, the NTA exempts small companies from filing VAT

[24] Ibid
[25] n 21
[26] Under current law, a company with annual turnover of less than NGN25m. Under the Nigeria Tax Act, a company with annual turnover below NGN100 million and asset less than NGN25million

[27] Section 9 & 40, Companies Income Tax Act, Cap. C21, LFN 2004 (CITA) (as amended by the Finance Acts)

returns. Also, the NGN25 million threshold has been abolished under the NTA, as all companies are expected to register for tax purposes.

For WHT, the amount deducted at source is to be remitted to FIRS or the relevant state tax authorities (where deducted from an individual or business name) not later than the 21st day of the month following the month of payment. As stated earlier, small companies are exempt from the obligation if the conditions are met.

1.3 Practical realities

a) **Accounting records/record keeping:** The investee company is urged to keep accurate and audited accounting records. This is important as a legal requirement under CAMA and for ease of reporting. It will also boost investor confidence in the company.

Failure to keep records could make it difficult to track the performance of the company and this may lead to financial mismanagement and poor decision making for the company.

2. Growth/ Funding Stage

This is the stage where the business scales and starts making money through additional investment from VC and PE investors.

2.1 *Legal/Regulatory considerations*

In addition to the considerations under the Angel/Seed stage, a major legal consideration is whether there would be direct equity investment or share acquisition.

Furthermore, this phase typically heralds foreign PE/VC investments. Thus, it is imperative for foreign investors to ascertain the relevant regulatory requirements linked to foreign investments. These include obtaining Certificate of Capital Importation (CCI) in respect of foreign capital brought into Nigeria. In addition to serving as a confirmation of legal entry of the investment, CCI guarantees unhindered repatriation of the investment and proceeds (net of applicable taxes).

Foreign shareholding also triggers registration with the **Nigerian Investment Promotion Commission (NIPC) and obtaining a business permit.**

2.2 *Tax considerations*

a) **Income tax:** Considering it is at this stage that the investee company starts generating major revenues, the company may fall within the bracket for a higher tax rate of 30%.

There is a provision for a minimum effective tax rate (ETR) of 15% for multinational groups and companies with an aggregate turnover of NGN20 billion and above in the relevant year of assessment.[28]

b) **Capital gains:** investment at this stage could be in the form of additional equity or acquisition of existing shares. In this regard, it is important to ascertain the tax impact of any capital gains realised.

***Current law*:** Under the extant Act, the sale of shares and other investments is subject to capital gains tax (CGT) at 10%.[29] However, gains from the disposal of shares in a Nigerian company are exempt from CGT where the sale proceeds are less than NGN100 million in any 12 consecutive months or the proceeds from such disposal are reinvested within the same year of assessment in the acquisition of the shares in the same or another Nigerian company.[30]

[28] Section 6(3) NTA
[29] Capital Gains Tax Act, Cap. C1, Laws of the Federation of Nigeria, 2004
[30] Section 30, Ibid (as amended by the Finance Act 2021)

NTA: Pivotal changes in the Nigerian tax landscape, under the Nigeria Tax Act as it relates to CGT are as follows:

(i) Matching CGT rate with that of income tax.

(ii) increase in the threshold for exemption of gains on disposal of shares from NGN100 million to NGN150 million.

(iii) Divestments by Angel investors, VCs and PEs from a "Start Up", with relevant certification, after a two-year holding period will be exempt from CGT.

(iv) Extension of CGT to indirect disposal of shares in Nigerian companies – shares disposed of in offshore intermediary holding companies may trigger CGT.

c) **Withholding Tax (WHT):** Dividends, interest, and royalties paid to investors are subject to withholding tax at rates ranging from 5% to 10%, depending on the nature of the payment and the residency status of the recipient.[31] On the other hand, dividends received by a Nigerian resident company from another resident company are subject to withholding tax at source as the final tax for the recipient company.[32]

d) **Investor jurisdiction and double tax treaties:** A key consideration in determining investment jurisdiction is the presence of double tax treaties. Nigeria has double taxation treaties with several countries including the United Kingdom, South Africa, the Netherlands and France. These treaties provide legal and tax assurances for foreign PE and VC investors by preventing double taxation of returns on investment and providing a guarantee of capital repatriation.

e) **Tax incentives**: PE/VC investors should urge investee companies to explore all available tax incentives. Under Nigerian law, these include tax holidays, exemption of certain income from tax, etc.

2.3 *Practical realities*

a) **Unavailability of CCI for the acquisition of locally held equity by foreign investors:** In the event of the acquisition of shares held by local investors by foreign investors, the investment will not be eligible for CCI, and this may affect the ease of repatriation of capital/returns on investment. Thus, investors need to evaluate specific situations and devise structures that address this issue.

b) **Unavailability of foreign currency:** Unavailability of foreign currencies may pose a challenge for foreign investors who intend to repatriate their investments.

3. Profit Extraction and Exits

At this stage, PE and VC investors operate in a multi-layered regulatory and tax environment in Nigeria.

3.1. *Regulatory considerations*

a) **Companies and Allied Matters Act (CAMA)**

In addition to the consideration in earlier stages, the provisions of CAMA need to be evaluated for capital raise, divestment, mergers and acquisitions. The rules will also be important in evaluating issues surrounding categorisation of debt financing, mezzanine financing, preference shares and ordinary shares, etc.

b) **Investment and Securities Act 2025 (ISA), and the Securities and Exchange Commission (SEC) Rules**

ISA 2025 introduces a new regime for PE and VC in Nigeria by broadening the statutory

[31] First Schedule, Deduction of Tax at Source (Withholding) Regulations 2024

[32] Regulation 6(3), ibid

definition of Collective Investment Schemes (CIS) to include PE and VC funds.[33]

The ISA further authorises the SEC to recognise a wider range of legal forms, including limited partnerships, trust structures, and contractual schemes. This alignment with international practice provides structural flexibility for domestic and cross-border fund sponsors. Highlights of the provisions of the ISA on private equity and venture capital investments include:

(i) **Registration requirements:** PE and VC funds must register with the SEC and comply with its reporting and disclosure requirements. However, PE funds with a target size of NGN5 billion or less are exempt from full SEC registration, though such PE funds are required to file governing documents and obtain a no-objection from the SEC before raising capital.[34]

(ii) **Investment restrictions**: ISA 2025 allows private equity funds to invest up to 70% of the fund's assets in a single portfolio company, a substantial rise from the previous 30% limit. [35] SEC also imposes certain restrictions on the types of investments that PE and VC funds can make.

c) **National Office for Technology Acquisition and Promotion (NOTAP) Act**

Under Nigerian law, certain agreements between foreign PE/VC investors and Nigerian investee companies which results in a transfer of technology from the PE/VC investor to the investee company will require NOTAP approval.[36]

Failure to register a qualifying agreement triggers penalties and may preclude the investee company from making any payments to the investor under such agreements through authorised channels.

d) **Central Bank of Nigeria (CBN) Regulations**

The CBN regulates the flow of foreign exchange in and out of Nigeria. PE and VC investors that import foreign capital into Nigeria for investment purposes, whether equity or loan, are guaranteed unconditional repatriation of dividends, profits and return on investment, where such funds are imported through licensed banks, converted into naira, and a certificate of capital importation (CCI) is obtained within 24 hours of the inflow.

e) **Federal Competition and Consumer Protection Commission (FCCPC)**

Nigeria's antitrust regulator – the FCCPC – administers the merger control regime in Nigeria. PE and VC transactions that result in a change in control of a Nigerian company may trigger mandatory FCCPC notification and approval requirements.

3.2. Tax considerations

a) **Interest on long-term loans**

The incentive on interest on foreign-sourced loans based on the repayment period as well as the grace period (moratorium) has been excluded from the NTA. Thus, from January 2026, interest on loans issued to Nigerian companies will be subject to WHT at the applicable rate of 10%. It is expected that existing loans that qualify for the incentive will continue to enjoy the incentive on the interest payable until the expiration of the tenor of the loan.

[33] Section 150, Investments and Securities Act 2025
[34] Rule 558, Securities and Exchange Commission (Consolidated)Rules and Regulations 2013 (as amended)
[35] Rule 560, Securities and Exchange Commission (Consolidated) Rules and Regulations 2013 (as amended)
[36] Section 5, National Office for Technology Acquisition and Promotion (NOTAP) Act 2004

3.3. Practical considerations

a) **Due diligence**

Investors must assess the following before investing in target companies:

(i) **Financial health**: Many businesses, particularly those in the early or growth stages, may lack audited financial statements or depend on informal accounting practices. Consequently, investors need to perform comprehensive financial due diligence on the target company's financial statements, tax documentation, and cash flow to validate reported revenue, margins, and liabilities.

(ii) **Management team**: The proficiency and experience of the management team are fundamental to a company's success. Investors are encouraged to assess the team's historical performance as well as their capacity to implement the business strategy effectively. This assessment should also consider the robustness of internal controls and the efficiency of operational processes.

(iii) **Legal and regulatory compliance**: Investors must scrutinize legal standing, permits, and past regulatory infractions, as well as potential.

(iv) **Reputational and ESG risks**: In an increasingly ESG-conscious investment climate, reputational checks are critical. Background checks on founders and key stakeholders can uncover past associations that could damage the fund's reputation. Furthermore, environmental and social risks such as unsafe working conditions or environmental violations must be assessed to ensure the reputation of the investor.

b) **Valuation Constraints**

Investors face challenges in arriving at fair valuations, largely due to limited market data, inconsistent financial reporting and an underdeveloped capital market. Additionally, persistent currency volatility and inflation affect projections and reduce the reliability of future cash flow estimates. As a result, investors must apply conservative assumptions, adjust for risk and factor in potential delays in exits or realization of earnings.

3.4. Post-deal and integration considerations

In addition to traditional due diligence, valuation, and exit planning, PE and VC investors operating in Nigeria must also consider less apparent, but equally significant, M&A factors, which we have highlighted below:

a) **Post-investment governance and integration:** Investors frequently underestimate the challenges involved in harmonising the perspectives of local founders with those of institutional investors. The absence of established governance frameworks within startups can result in disputes regarding decision-making authority, reporting requirements, or strategic growth objectives following a transaction. Consequently, it is essential to negotiate comprehensive shareholders' agreements that articulate board composition, reserved matters, and performance-based triggers to mitigate potential post-acquisition misalignments.

b) **Cultural and operational integration:** This presents significant challenges, particularly in transactions involving foreign investors or strategic acquisitions. Variations in communication styles, decision-making speed, and risk tolerance can lead to operational friction. Proactively engaging with founders and key personnel at an early stage fosters mutual trust and clarifies post-investment roles, thereby promoting smoother transitions and supporting the retention of local talent.

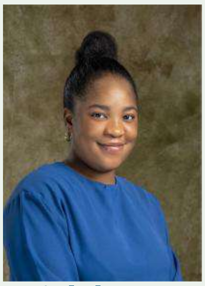
c) **Currency and macroeconomic volatility:** This poses significant challenges for Nigerian M&A transactions. Fluctuations in exchange rates may diminish actual returns. Few transactions employ **hedging strategies** or mechanisms such as local currency-denominated earn-outs to address these risks; therefore, the use of local financing and hedging instruments is becoming increasingly crucial.

d) **Dispute resolution mechanisms:** Given the delays being experienced in the Nigerian court system, investors should ensure that transaction documents include clear alternative dispute resolution clauses and pre-agreed escalation pathways. This is particularly important in joint ventures or multi-investor rounds where alignment may fray over time.

Conclusion

Nigeria presents compelling opportunities for PE and VC investors, particularly in its vibrant start-up ecosystem. Navigating the tax, regulatory, and operational landscape is key to unlocking value. By aligning with legal frameworks, embracing due diligence, and planning for post-deal realities, investors can succeed in this dynamic frontier market.

Operational and Legal Pitfalls First-Time Founders Overlook in Nigeria's Startup Ecosystem



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Imagine two friends launching a fintech startup in Lagos. Their product works and early users are signing up. An angel investor is about to commit, until due diligence finds cracks: no formal co-founder agreement, the developer never assigned the code's IP, no formal company registration, and informal contracts. The investor walks away. This scenario is all too common. Nigeria's startup ecosystem is booming; Lagos is consistently ranked a leading tech hub and Nigerian tech startups raised over $400 million in 2024 alone. Yet while founders often focus on product market fit, investor traction, and rapid growth, they frequently overlook the operational and legal foundations needed to build fundable, sustainable ventures.

Studies show that nearly 60% of Nigerian startups fail within their first three years. While legal missteps are a significant contributor, they often intersect with a broader set of issues such as weak product-market fit, financial mismanagement, poor team dynamics, inadequate technical expertise, and unrealistic business models. Many first-time founders, driven by innovation and growth, frequently overlook critical "back office" work: formalizing the business entity, securing intellectual property (IP), negotiating clear co-founder agreements, and setting up governance and compliance structures. These oversights can quickly snowball into disputes, loss of investor confidence, or worse still, business shutdown as a result of regulatory infractions. This article highlights the common blind spots and pitfalls first-time founders in Nigeria face and offers practical advice to help navigate the legal and operational terrain more confidently.

Formalize Your Startup's Legal Entity and Structure

Many founders delay formally incorporating their startup, thinking they can "legalize" later. This is risky. While Nigeria's legal framework—especially under CAMA 2020—now offers a variety of entity types such as business names, private and public companies, and even limited partnerships, not all provide the same protections. For most startups intending to raise external capital, a Private Limited Liability Company (Ltd) remains the most appropriate vehicle. It limits personal liability, provides shareholding flexibility, allows equity fundraising, and signals credibility to investors. Incorporation also clarifies tax obligations and enables regulatory compliance from the outset.

Register Early: File with the CAC from Day One. A registered company can enforce contracts in court; an informal venture cannot. Regulatory filings also often unlock licenses and permits later. Many founders believe they can "legalize later," but an unregistered business has no legal life and cannot protect contracts. Registering early protects founders and builds investor trust.

- **Choose the Right Structure:** Most venture-backed startups form an LLC (Ltd). Unlike sole proprietorships or partnerships, a Ltd shields personal asset if the startup is sued or goes bankrupt. It also allows issuance of shares to investors and employees. Ensure your articles of association accommodate future fundraising (e.g. pre-authorizing enough share capital and allowable shareholder classes). While some entrepreneurs may initially register as a business name for ease or affordability, it's important to convert to a Ltd early, especially before raising external funding or entering into significant commercial agreements.

- **Separate Finances:** From the first Naira you spend, use a dedicated company bank account. Even with a business name registration, you can open a corporate account, so there's no excuse for mixing personal and business funds. Blending personal and business finances destroys the corporate veil and creates tax headaches. Maintain clean financial records and simple accounting (or use an accounting software). When investors or auditors review your books, sloppy records will raise doubts. Good financial hygiene, proper bookkeeping and timely CAC filings is as important as your product pitch.

By formalizing the legal entity and maintaining it (e.g. filing annual returns on time), founders avoid a host of early headaches and signal readiness for investors.

Establish Clear Co-Founder and Ownership Agreements

Startups often begin among friends or colleagues and "think" equity splits verbally. But as the business grows, such informal arrangements can explode. Without a written founders' agreement or shareholder pact, misunderstandings over roles, equity, and exits will derail the company.

- **Define Roles and Equity Early:** Explicitly document each founder's contribution, title, and equity percentage. Use a vesting schedule (commonly four years with a one-year cliff) so that founders earn their shares over time. This prevents someone from leaving early with most of the company. Avoid permanent 50/50 splits unless you also have a clear tie-breaker mechanism or decision rules.

- **Include Key Provisions:** A comprehensive founders' agreement or shareholder agreement should cover vesting, IP assignment, decision-making (e.g. board voting or officer roles), dispute resolution, and exit scenarios (what happens if a founder leaves or sells). Nigeria law recognizes these agreements, but they must be in writing to be enforced. Without them, even a single co-founder departing can trigger a legal battle over ownership.

- **Use Legal Counsel:** Engage a startup-experienced lawyer to draft or review founder agreements. They can help tailor standard clauses (vesting, drag-along rights, etc.) to your situation. Investors will also look for this document, in fact, due diligence often begins by asking "what if a co-founder bails? Having this sorted is a mark of professionalism.

Protect Your Intellectual Property (IP)

Your IP code, brand, designs, algorithms is often your startup's most valuable asset. In Nigeria's competitive market, failing to secure it can be disastrous. Many entrepreneurs develop software and brands without ever registering or assigning rights, leaving them vulnerable.

- **Secure Domain Names:** Reserve domain names and social handles upfront to prevent cybersquatters. Losing "yourname.ng" or "yourbrand.com" to someone else is an avoidable headache.

- **Assign IP on Creation**: Ensure any code, logo, or content created for the startup is explicitly assigned to the company. If you hired a developer, designer, or even a contractor, have them sign an IP assignment or "work-for-hire" agreement. Under Nigerian law, creators own their work unless they assign it. If this step is skipped, the company may not own its own product!

- **Register Core Trademarks:** Pick a unique company and product name, and register it with the Nigerian Trademarks, Patents and Designs Registry. A registered trademark protects your brand and makes it harder for imitators to confuse customers. Many founders assume "I'll do it later," but delaying registration can mean someone else snags the name in your key market.

- **Consider Copyright and Patents:** Code and written content are automatically copyrighted in Nigeria, but you should still document ownership. For truly novel inventions, explore patent protection. For most tech startups, focus on trademarks and copyrights (for software, consider code escrow or token licenses).

Neglecting IP "safeguards" is a common blind spot. Many entrepreneurs forget IP protection entirely, leaving brands and inventions exposed. To avoid this pitfall, treat IP early as a fundamental part of your business strategy, it's a legal moat around your innovation.

Obtain Necessary Licenses and Regulatory Compliance

Nigeria's regulatory landscape is fragmented and complex. Failure to navigate it can shut down a startup. Founders often push products to market without realizing sector-specific licenses, leading to fines or enforcement.

- **Map Your Industry's Regulators:** Identify which bodies govern your sector. For example, fintech startups handling payments must secure licenses from the Central Bank of Nigeria (CBN); such as Payment Service Provider (PSSP) or Mobile Money Operator (MMO) approvals. Healthcare or pharma startups need approval from NAFDAC or relevant health councils. Edtech companies may need approval if providing official certification. Even logistics businesses can face state transport regulations. If your startup involves foreign investment, also consider registering with the Nigerian Investment Promotion Commission (NIPC) to access incentives and ensure smooth regulatory engagement.

- **Apply Early for Licenses:** Some licenses can take months, so plan for them during product development. Operating without a required license exposes you to regulatory action. For instance, the CBN can fine fintechs or order closure if caught operating unlicensed. Founders, please note that "doing business without permits can lead to fines or closure". Also, where no specific license exists for your product, but your sector is regulated, consider requesting a "No Objection" letter from the relevant authority to avoid future regulatory pushback.

- **Data Privacy Compliance:** If your startup collects user data, comply with Nigeria's data protection laws. The Nigeria Data Protection Regulation (NDPR, now succeeded by the 2023 Data Protection Act) mandates strict data handling: obtain user consent, secure data, and publish a privacy policy. Non-compliance invites heavy fines and erodes user trust. As experts warn, startups must treat data privacy from Day One.

- **Tax Registration:** From launch, register for the necessary taxes. At a minimum, register with the Federal Inland Revenue Service (FIRS) for Corporate Income Tax (CIT) and the relevant state tax authority for Personal Income Tax (PIT). If you sell goods or services, register for Value Added Tax (VAT) and obtain a Tax Identification Number (TIN) for the company. Many founders overlook VAT registration or file annual returns late, incurring penalties.

- **Ongoing Compliance:** Staying compliant is not a one-off. Keep up with regulatory updates (e.g. fintech sandbox rules, new NDPA provisions) and file statutory returns on time. Missing CAC annual returns or tax filings will accumulate interest and jeopardize your good standing. A tidy compliance record is crucial when seeking investment or partnerships.

In short, treat licensing and regulation as part of your product roadmap, not an afterthought. Engage lawyers or compliance experts early to map out obligations and timelines.

Maintain Robust Corporate Governance and Record-Keeping

First-time founders often run startups by gut feel, improvising policies. While this agility helps early growth, formal governance practices should start from the first hired employee. Lack of governance breeds inefficiency and investor suspicion.

- **Set Up a Board or Advisors:** Even a small startup should have some decision-making body. If formal board directors aren't feasible, regularly convene a founders' meeting or advisory board. Document key decisions in meeting minutes. This demonstrates structure and accountability.

- **Document Everything:** Use minutes and resolutions for major decisions (issuing shares, approving budgets, taking loans). Maintain an up-to-date statutory file: shareholder register, director resolutions, share certificates, and copies of filings. When investors request documents (due diligence), having this paperwork ready impresses them.

- **Separate Roles:** Clearly distinguish founder roles and responsibilities. Avoid blurred lines between director actions and personal actions. For instance, if a founder signs a contract on behalf of the company, it must be as a company director, not personally. Clarity here avoids conflicts of interest and personal liability.

- **Financial Controls:** Establish simple financial controls as you grow. Use accounting software or a professional bookkeeper. Do not rely on cash or unrecorded transactions. A "messy back office" signals that the founder is vision-focused but execution-lacking.

- **Audit Trails:** Keep receipts, invoices, and contracts for all transactions. Nigeria's regulatory bodies (like FIRS or CBN) can audit at any time, and investors often audit during fundraises. Good record- keeping from the start makes these processes painless.

Weak governance can sink a startup just as surely as market competition. Poor governance "can result in conflicts, mismanagement, and legal disputes" that threaten survival. Building governance processes early, board oversight, clear records, and fiduciary discipline will pay off in resilience and investor confidence.

Manage Hiring and Team Legally and Strategically

As your startup gains traction, you'll add team members. Many founders under-hire (doing everything themselves) or over-hire (bringing on casual workers without contracts). Both extremes create risks.

- **Employment vs. Contractor:** Classify workers correctly under the Labour Act. Misclassifying a long- term helper as a contractor to avoid taxes or benefits can backfire with fines or back-pay claims. If a person is full-time and under your direction, use an employment contract and handle PAYE (Pay- As-You-Earn) tax and pension contributions.

- **Contracts and Policies:** Issue written employment contracts, even for early hires. Contracts should include job scope, compensation, probation terms, confidentiality clauses, and IP assignment. Also have NDAs ready for sensitive positions. Relying on word-of-mouth agreements is a recipe for disputes.

- **Statutory Obligations:** Register the company for pension (PFA) and the National Housing Fund (NHF) as required, and remit employee deductions each month. Provide any mandated benefits (depending on state laws). Keeping up with labor regulations not only avoids fines, but it also attracts better talent.

- **Equity Incentives:** If promising equity to key hires, structure it via an official Employee

Stock Option Plan (ESOP). Informal promises of shares ("you'll own 2% after 3 years") often fall through, breeding resentment. An ESOP with a defined pool, vesting terms, and cap (approved by other shareholders) ensures fairness.

- **Smart Growth:** Founders sometimes over-hire, thinking it signals growth. But premature headcount raises burn rate without product-market fit. Hire for critical skills and have clear hiring plans tied to milestones. Overstaffing early can inflate costs without productivity gains.

Building a team requires as much planning as building your product. Getting Labor law and HR practices right from the outset avoids expensive lawsuits and fosters a motivated workforce.

Maintain Financial Discipline: Tax, Funding and Ownership Records

Finally, clear financial structuring and funding readiness are essential.

- **Tax Planning:** Nigeria's multiple taxes (CIT, VAT, withholding taxes, etc.) can surprise unaware founders. Estimate tax liabilities in pricing and budgeting. File returns on schedule to avoid interest. Hiring a part-time accountant or tax consultant early can pay dividends.

- **Cap Table and Funding:** Keep a clean, up-to-date cap table from incorporation. Document every share issuance, loan, convertible note, or SAFE properly. If you raise money, file share allotment forms with CAC. Avoid informal equity swaps or verbal promises of shares. For example, issuing a convertible note requires clear terms (valuation caps, conversion rights) agreed in writing. Losing track of who owns how much is a huge red flag to investors. As one advisor quipped, "if an investor asked for your cap table today, could you show it in five minutes?" If not, fix it.

- **Future Dilution:** Plan your authorized share capital and ESOP pool with fundraising in mind. Overly small initial share capital can force costly amendments later; overly large can complicate valuation. Get legal advice on optimizing your share structure.

- **Exit Readiness:** While early-stage founders focus on growth, consider the long term. Include standard exit provisions in agreements: drag-along/tag-along rights for major transactions, right of first refusal on share transfers, and liquidation preferences for investors. These clauses protect both founders and investors when liquidity events occur. Preparing your governance and records for potential M&A or IPO due diligence is also wise early on.

A startup that is financially organized and investor-ready gains trust. Proper bookkeeping, tax compliance, and transparent capitalization show that the team can execute operational details, not just innovate products.

Conclusion: Legal Rigour Drives Sustainable Growth

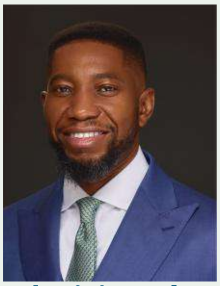
Nigeria's startup scene is full of promise, but founders must balance innovation with sound structure. The excitement of launching a business can lead first-time entrepreneurs to downplay formalities but cutting corners in legal and operational areas invites serious consequences: regulatory penalties, investor walkouts, or co-founder wars.

To thrive, founders should build with legal awareness. With early planning, regular audits, and expert advice, startups can turn compliance into a competitive edge. In short, treat legal readiness as part of your product readiness.

By proactively addressing these common pitfalls, Nigerian startups can turn legal and operational compliance from a bottleneck into a competitive advantage.

DUALE, OVIA & ALEX-ADEDIPE

DEAL STRUCTURING IN NIGERIA: LEGAL CONSIDERATIONS FOR EARLY-STAGE AND GROWTH-STAGE INVESTMENTS.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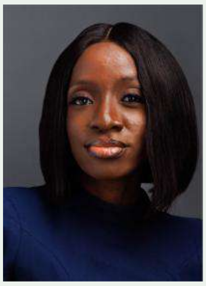
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Introduction

Amidst the sweeping economic reforms in 2023, fuel subsidy removal and unification of the foreign exchange rates, the Nigerian investment climate remains welcoming to investors. This is no coincidence, as the International Monetary Fund remarked that the Nigerian economy has, since 2024, adjusted to the reforms and improved.[1] Thus, the private equity market continues to leverage the economic situation of the country for its growth. With around 3,360 active startups as of 2024 (the highest in Africa),[2] over 157 venture capital funds,[3] $54 billion in venture capital investments in early-stage and growth-stage rounds in the last 5 years,[4] over $400 million in startup funding in 2024,[5] and Nigerian private equity deals currently projected to close at US$382.36 million in 2025,[6] private equity investment opportunities in Nigeria are promising. A total of $100 million raised in disclosed funding during Q1 2025,[7] including Moniepoint's $10 million for strategic investment, Raenest's $11 million Series A Extension, and LemFi's

$53 million Series B round,[8] further indicates that there are more investment opportunities in Nigeria for investors to maximise. The hotspots for these investments include financial technology, the power sector, e-commerce, healthcare, clean energy, and transportation.

While the outlook is promising, adopting strategic legal standards is crucial for protecting investors' interests and ensuring significant rewards. The risk that investee entities will suffer losses or cease operations entirely further underscores the importance of adopting prudent legal strategies. A cautionary example is the recent shutdown of Okra, a leading African open banking startup and cloud services provider, after raising over $16.5 million in funding within its 6 years of existence.[9] Therefore, while private equity investments can be highly attractive and profitable, the legal frameworks surrounding these investments are vital for not only safeguarding investors and mitigating losses but also for maximising potential benefits. Focusing on early-stage and growth-stage investments, this article examines best practices for structuring early-stage and growth-stage deals in Nigeria, focusing on how investors can reduce exposure, protect capital, and maximise value.

Deal Structuring

Deal structuring is central to every successful private capital transaction. It defines how capital is deployed, rights are allocated, risks are managed, and returns are realised. A well-structured deal is a key determinant of value protection, business scalability, and the viability of exit opportunities. An effective structure ensures that investor interests are aligned with the investee company's strategic goals and operational realities. It clarifies ownership, establishes governance frameworks, provides necessary investor protection, and facilitates smooth exits. Where structuring is weak, whether due to poor documentation, inadequate safeguards, or unclear expectations, even the most promising investments can be derailed by disagreements over decision-making authority, lack of financial transparency, failure to meet performance milestones, or resistance by founders to oversight or strategic input.

Importantly, deal structuring is not static. It must reflect the evolving realities of a company as it matures. A structure appropriate for a Series A round, typically marked by smaller cheque sizes, limited governance, and flexibility for founders, may prove inadequate at Series C, where institutional investors demand defined exit strategies, board rights, and investor protections tailored to larger capital inflows. As risk profiles and operational complexity shift, so must the legal and commercial arrangements structuring the deal.

Integral to this process across both stages is legal due diligence. Effective deal structuring depends heavily on the insights surfaced during due diligence, which inform both commercial negotiation and legal risk allocation. Regardless of the stage, investors must conduct thorough checks into the company's legal standing, governance structure, regulatory compliance, intellectual property ownership, contractual obligations, tax exposure, employment arrangements, and any actual or potential disputes. Due diligence helps verify that the investee company has a sound legal foundation and that there are no hidden liabilities or structural deficiencies that could impair the investment.

The results of this process often influence key structuring decisions such as the choice of investment instrument, the inclusion of protective provisions, the scope of investor rights, and the conditions to closing. Where red flags are identified, deal terms can be adjusted to mitigate risk through covenants, indemnities, or post-investment undertakings. Without comprehensive due diligence, even a well-negotiated deal can expose investors to avoidable legal and financial risks. The sections that follow outline key structuring considerations at both early and growth stages.

Structuring Considerations for Early-Stage Investments

Early-stage investments involve the strategic deployment of capital in emerging businesses with high growth potential. At this stage, the investee has progressed from ideation, developed a viable product or service, and begun to validate market fit. While these investments offer the potential for outsized returns, they also carry heightened risks, making legal structuring essential. Investor decisions are often informed by the founders' vision and the perceived scalability of the business. Accordingly, legal structuring at this stage must balance flexibility with sufficient investor protections, creating a framework that supports growth while anticipating future capital raises and exit opportunities.

Key considerations include:

1. Choice of Investment Instrument

At the early stage, investors often adopt flexible instruments such as convertible notes, SAFEs, or direct equity to simplify deal execution and defer valuation discussions. These tools enable capital injection without immediately pricing the company, while preserving the investor's right to future equity as the business grows. However, selecting the right instrument requires careful attention to terms like conversion mechanics, valuation caps, and dilution exposure, as these will influence the investor's position in subsequent funding rounds.

2. Founder Equity and Vesting

Founders are central to the early success of a business, but without structured equity arrangements, investors face the risk of premature exits. Incorporating mechanisms such as vesting schedules, reverse vesting, or clawback clauses helps ensure long-term founder commitment and alignment with investor timelines. From an investor's perspective, these tools reduce the risk of investing in a team that may not stay the course.

3. Governance Rights

While early-stage investors typically avoid exercising excessive control, it remains important to establish a governance framework that provides visibility and allows for strategic input. This can be achieved through mechanisms such as information rights, board observer seats, and consent rights over critical matters, including additional capital raises, major expenditures, and changes to the company's business direction. These rights allow investors to stay informed and participate in key decisions without undermining the autonomy of the founders. When carefully structured, they help maintain a balance between investor oversight and the need for operational agility.

4. Intellectual Property (IP) Ownership

A startup's value is often tied to its proprietary technology or processes. For investors, ensuring that all intellectual property is legally assigned to the company is a fundamental protection. Founders and key employees should be contractually required to execute IP assignment agreements, particularly where software, trademarks, or proprietary platforms are core to the business model. This minimises the risk of IP-related disputes and protects investor interests in future financing or exit scenarios.

5. Future Funding Protections

Early-stage investors risk significant dilution in later rounds if their rights are not clearly structured. Including pre-emptive rights, pro-rata participation rights, and, where applicable, anti- dilution protections, helps preserve their ownership stake as the company raises additional capital. These protections should be calibrated to reflect the size of the investment and the investor's strategic role, ensuring fairness without deterring future investors.

Structuring Considerations for Growth-Stage Investments

At the growth stage, companies have typically achieved product-market fit, demonstrated revenue traction, and are seeking larger capital injections to scale operations, enter new markets, or expand product offerings. The legal and commercial considerations at this stage differ significantly from those at the early stage. Investors, often institutional, are more risk-sensitive and require stronger governance structures, defined rights, and exit strategies. As deal size and complexity increase, the legal framework must be robust enough to protect larger capital commitments, while remaining flexible enough to accommodate operational realities and long-term scalability.

Structuring considerations include:

1. Enhanced Governance and Board Representation

Growth-stage investors typically require formal board seats rather than observer rights. These seats provide direct influence over strategic decisions and oversight on financial and operational matters. Board composition is a critical part of structuring, as it reflects the balance of control between investors and founders.

2. Exit Rights and Liquidity Mechanisms

At this stage, investors often require clear exit pathways. This may include rights such as drag- along provisions or redemption rights after a defined holding period. These terms help ensure that investors can realise returns within a defined timeframe, especially in markets where exits are less predictable.

3. Protective Provisions and Veto Rights

Larger investments call for stronger downside protections. Investors may negotiate veto rights over key decisions such as mergers and acquisitions, additional fundraising, or changes to business strategy. These provisions are essential to prevent value erosion and preserve alignment between investor and management interests.

4. Performance-Based Milestones

Investors may link additional funding tranches or rights to the achievement of specific operational or financial milestones.

These mechanisms ensure that capital is deployed efficiently and provide leverage for continued performance at scale.

5. Structuring for Future Rounds or Exits

Growth-stage investors must anticipate further rounds or eventual exits. Structuring should consider liquidation preferences, participation rights, conversion mechanics, and valuation adjustment clauses that will affect investor returns during exits, particularly in secondary sales or trade exits.

PREPARING FOR EXITS: STRUCTURING WITH THE END IN MIND

Exit readiness is a critical element of deal structuring that should be addressed at the point of investment, not postponed until an opportunity arises. For early and growth-stage investors, clearly defined exit mechanisms help mitigate illiquidity risk and create a path to recover capital within a predictable timeframe. Two essential structuring tools at this stage are liquidation preferences and redemption rights, which serve both protective and strategic purposes.

1. Liquidation Preferences

A liquidation preference sets out how proceeds from an exit event, such as a sale, merger, or winding up, will be distributed among shareholders. It ensures that investors recover their capital, and in some cases, a multiple of it, before proceeds are shared with founders or other shareholders. For instance, a 1x non-participating liquidation preference allows the investor to recover the amount invested before any other distributions. A participating preference allows the investor to receive their original investment plus a share of the remaining proceeds. These terms become particularly important in lower-than-expected exit valuations or down-round scenarios. These preferences should be clearly documented in the shareholders' agreement and, where appropriate, reflected in the company's Articles of Association to support enforceability.

2. Redemption Rights

Redemption rights provide a mechanism for investors to require the company to buy back their shares after a certain period, typically where an exit has not occurred within the expected investment horizon. While rarely exercised, these rights offer a degree of capital protection and can prompt discussions around liquidity events or third-party sales. For example, an investor may negotiate the right to require redemption of their shares at a fixed internal rate of return after five to seven years. To be effective, redemption rights should be supported by clearly defined triggers, valuation mechanisms, and agreed-upon timelines.

Recommendations and Conclusions

Whether at the early or growth stage, deal structuring plays a pivotal role in shaping investment outcomes. The key to successful structuring lies in anticipating the legal, commercial, and operational realities of the business, while aligning investor protections with long-term value creation.

At the early stage, structuring should focus on flexibility, founder alignment, and safeguards that support future growth, such as clear IP ownership, vesting arrangements, and governance visibility. At the growth stage, the legal framework should evolve to reflect increased capital exposure, institutional expectations, and more complex exit scenarios. This includes robust shareholder protections, clear exit rights, and well- defined governance structures.

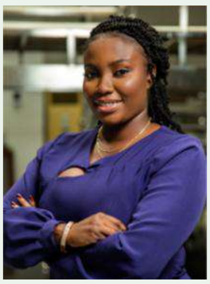
To strengthen deal structuring practices in Nigeria's evolving investment landscape, investors should:

- Structure with the full investment lifecycle in mind, from entry to exit.
- Tailor investment instruments and governance frameworks to the maturity of the company.
- Build in practical rights that reflect commercial realities without stifling innovation.
- Anticipate follow-on rounds and exit scenarios when negotiating early terms.
- Ensure legal documentation is commercially coherent and future-proofed.

Ultimately, structuring is not a one-size-fits-all exercise. Each deal must be approached on its merits, with legal and commercial terms designed to balance protection, flexibility, and scalability. As Nigeria's private capital market continues to expand, the adoption of thoughtful, well-negotiated structures will remain critical to unlocking long-term value and enabling successful outcomes for both investors and founders.

Detail

Antitrust Considerations in PE Buyouts: Deal Clearance Under the Federal Competition and Consumer Protection Act



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The Intersection of Private Equity and Antitrust Laws in Nigeria

The Nigerian economic landscape has witnessed a significant surge in Private Equity (**"PE"**) activity, with buyouts becoming an increasingly prominent feature of mergers and acquisition (**"M&A"**) transactions – from Verod Capital acquiring a 65% stake in i-Fitness, to the 80.01% stakeholding acquisition of Olam Agri Holding by Saudi Agricultural and Livestock Investment Company (**"SALIC"**) (Saudi Arabia's sovereign wealth fund),[37] indicating that there has been increased local and international investment activities across industries and sectors.

These PE-led transactions, usually involving the acquisition of controlling shares in companies and the consolidation of multiple businesses under a single fund, are powerful drivers of economic growth and restructuring. However, the nature of PE transactions often results in concentration of economic power, which brings them under the purview of antitrust (also known as competition) law regulation. In the context of PE transactions, antitrust laws are concerned with whether a buyout would reduce competition in a particular market, lead to monopolistic behaviour, or harm consumers by reducing choices or increasing prices.

In Nigeria, these activities and transactions are primarily governed by the Federal Competition and Consumer Protection Act 2018 (**"FCCPA"**), enforced by the Federal Competition and Consumer Protection Commission (**"FCCPC"**). Every PE buyout has the potential for market concentration and a significant impact on competitive dynamics, necessitating rigorous antitrust scrutiny and mandatory deal clearance to ensure that these transactions foster, rather than hinder, a fair and efficient market. Therefore, for investors and PE firms, understanding the FCCPA's robust merger control framework is a strategic imperative, crucial for facilitating seamless exits and optimising returns on their investments.

The FCCPA's Merger Control Framework

The FCCPA, together with the Merger Review (Amended) Regulations 2021 (the **"Regulations"**) and the Merger Review Guidelines 2020 (the **"Guidelines"**) establish the framework for regulating competition across all sectors of the economy. A key component of the statute is the merger control regime, which is designed to ensure that M&A transactions do not substantially lessen or stifle competition or create monopolistic structures that harm consumers or the market.

The concept of control under the FCCPA is broad and includes;

- the beneficial ownership of more than one-half of the issued share capital or assets;[38]
- entitlement to cast a majority of votes at a general meeting or the ability to directly or indirectly control majority votes,[39]
- ability to appoint or veto the appointment of a majority of directors of the target company;[40]
- a relationship where one company is a holding company and the other is its subsidiary;[41]
- in the case of a trust, the power to control most of the votes of the trustees, appoint most of the trustees, or appoint or change most of the beneficiaries of the trust;[42]
- the ability to significantly influence the company's decisions or policies in a way that is comparable to someone who exercises any of the direct forms of control mentioned above.[43]

[37] White & Case advises SALIC on US$1.78 billion acquisition of additional stake in Olam Agri | White & Case LLP
[38] Section 92 (2)(a) FCCPA
[39] Section 92(2)(b) FCCPA
[40] Section 92(2)(c) FCCPA
[41] Section 92(2)(d) FCCPA
[42] Section 92(2)(e) FCCPA
[43] Section 92(3) FCCPA.

Notwithstanding the above, the FCCPC is required to be informed of mergers that meet the notification threshold before they are executed for Large Mergers (see below) must be notified to the FCCPC before the implementation of such transactions. The merger classifications in Nigeria are:

Large Mergers	The combined annual turnover of the acquiring and target companies in, into, or from Nigeria equals or exceeds ₦1,000,000,000 (One Billion Naira) or annual turnover of the target company in, into, or from Nigeria equals or exceeds ₦500,000,000 (Five Hundred Million Naira)[44] in the financial year preceding the transaction.
Small Mergers	Any merger below the threshold of a Large Merger

Small mergers generally do not require notification unless the FCCPC specifically requests that a notification be made within six months of implementation, where FCCPC suspects anti-competitive effects.[45] Notably for PE transactions, the acquisition of a minority shareholding (less than 25%) may trigger FCCPC review as often times, it confers the ability to materially influence the target company's competitive behaviour or policy on the investor.[46] This is assessed on a case-by-case basis, considering factors like special voting rights, veto rights, board representation, and information rights.[47]

The Regulations capture and regulate mergers which evolve over time, specifically addressing situations where control is incrementally gained, ensuring that such 'creeping acquisitions' do not bypass regulatory scrutiny. Where an initial investment did not trigger mandatory notification, a subsequent increase in influence, whether through additional shares, board seats, or other governance rights, that shifts the investor's status from a passive holder to one with material influence or control, will necessitate a new merger review by the FCCPC. To prevent avoidance of compliance, a series of control-acquiring transactions within two years are treated as a single event, dated by the latest transaction. This allows the FCCPC to assess the cumulative competitive impact. The acquisition of Olam Agri Holdings by Saudi Arabia's SALIC exemplifies this multi-stage approach. SALIC initially bought 35.43% of Olam Agri in December 2022, then agreed to acquire an additional 44.58% by February 2025, resulting in an 80.01% controlling stake. This progression unequivocally constitutes a "new relevant merger situation" under the Regulations. Given these transactions occurred within two years, the FCCPC would consolidate them as a single event dated February 2025, ensuring a complete evaluation of SALIC's evolving influence and control and preventing any regulatory circumvention.

Antitrust Risks Unique to Private Equity Buyouts

PE buyouts present distinctive antitrust risks due to the strategic, often multi-sector nature of their investments. As PE firms expand their footprint across industries, sometimes acquiring multiple companies within the same value chain or sector, regulators are increasingly scrutinizing such transactions for their potential to harm market dynamics.

[44] Section 1 FCCPA Notice of Threshold for Merger Notification
[45] Section 95 FCCPA.
[46] Section 6(4) of the Regulations
[47] Section 6(2) of the Regulations

- ***PE-led Consolidations and Roll-up Strategies***

One of the primary concerns arises from PE-led consolidations. Unlike traditional corporate acquisitions aimed at operational integration, PE firms often pursue investment portfolios that span related or competing businesses. This portfolio-level strategy may introduce risks such as market concentration, common ownership of competing firms, and the use of minority stakes to exert de facto control. Such consolidations may trigger competition concerns by leading to higher prices, reduced choice for consumers, and stifled innovation, as the merged entity faces less competitive pressure.

- ***Minority Acquisitions and Control***

Minority acquisitions by PE firms may also raise antitrust concerns. The FCCPC's interpretation of control extends beyond simple majority shareholding. It contemplates an investor's ability to gain material influence over company's policy.[48] Therefore, a PE firm acquiring a seemingly non-controlling stake may be deemed to have acquired 'control' in a competition context, necessitating mandatory notification and review. This is a unique challenge for PE transactions, as their investment structures often involve complex governance arrangements designed to protect their investment and influence strategy, which may inadvertently trigger competition law obligations.

- ***Merger Assessment: Key Considerations for PE Investors***

(a) Market Definition

In reviewing a PE buyout, the FCCPC considers the market in which the target plays. The aim is to delineate the boundaries of competition by identifying the relevant product markets *(i.e. the specific products or services that genuinely compete)* and the relevant geographic market *(i.e, the area where this competition occurs)*. For PE firms, this is particularly complex because their investments often target niche markets or span various, sometimes related, sectors. Accurately defining the market is crucial, as it forms the foundation for assessing market power, determining competitors, and ultimately judging whether the deal could lessen or stifle competition. To do this, the FCCPC employs economic tools such as the Small but Significant Non-transitory Increase in Price (**"SSNIP"**) test, which assesses whether consumers would switch to alternatives in response to a small price increase. [49] The clearer the market definition, the easier it becomes to understand the scope of competitive pressure faced by the merging parties.

(b) Competitive Assessment

This is undertaken to determine how the proposed PE buyout will affect competition within the defined market. The key question at this stage is whether the proposed PE acquisition is likely to Substantially Prevent or Lessen Competition (**"SPLC"**). [50] This requires evaluating factors such as market shares, barriers to entry for new competitors, the existence of countervailing buyer power that could resist price increases, and potential efficiencies that the merger might generate, often measured using the Herfindahl-Hirschman Index (**"HHI"**). [51] This assessment becomes notably complex for PE firms because the FCCPC will aggregate the market shares of all relevant portfolio companies under the same PE

[48] Regulation 6(4) of the Regulations.
[49] Regulation 26 of the Regulations.
[50] Paragraph 4.3 of the Guidelines.
[51] Regulation 27 of the Regulations

fund.[52] This aggregation can significantly inflate the apparent market concentration of the PE firm's overall holdings, even if individual portfolio companies are relatively small, thereby increasing the likelihood of competition concerns.

(c) Anti-Competitive Harms

These are referred to as "theories of harm", and they help the FCCPC predict how a merger could negatively impact consumers or competitors. A common concern is unilateral effects, where a dominant merged entity can independently raise prices or reduce quality; coordinated effects, where the merger facilitates collusion among remaining competitors; foreclosure, particularly in vertical mergers, where the merged entity might deny rivals access to essential inputs or distribution; and the risk of reduced innovation, quality, or choice for consumers. These risks are particularly relevant in the PE context as it is typical for PE firms to acquire companies in the same industry over time. While each transaction may seem harmless in isolation, the cumulative effect can be significant, resulting in stealth market consolidation. The FCCPC is increasingly alert to these scenarios and may scrutinize even minority acquisitions if they convey material influence or expand a PE firm's competitive footprint in sensitive sectors.

Navigating the Deal Clearance Process

Successfully navigating the deal clearance process demands careful planning and execution, emphasizing robust preparation from the earliest stages.

1. Pre-Deal Due Diligence and Assessment

Before initiating any transaction, parties should conduct thorough due diligence. This involves:

(i) Mapping the market to understand the competitive landscape, identify direct and indirect competitors, and assess market shares. Early identification of potential issues allows for proactive strategies to mitigate them.
(ii) Reviewing portfolio interests to evaluate whether existing holdings may cumulatively raise competition concerns.
(iii) Assessing notification thresholds to confirm whether the transaction meets the FCCPA's mandatory filing thresholds based on turnover, asset values, or control acquisition.
(iv) Identifying potential red flags such as overlaps in product lines, geographic markets, or supply chain relationships that may trigger a detailed FCCPC review.

2. Pre-Notification Consultation

The FCCPC encourages parties to engage in pre-notification consultations, particularly for complex transactions or when there is uncertainty about notification requirements or potential competitive issues. This informal engagement allows parties to discuss the proposed transaction with the FCCPC, seek clarification, and gain early insights into the Commission's likely approach to the merger.[53]

3. Robust Notification Preparation

Preparing the formal merger notification which present a clear and compelling narrative of the transaction, highlighting its pro-competitive benefits (e.g., efficiencies, innovation, public interest gains) and addressing any potential competition

[52] Paragraph 6 of the Amended Merger Regulation.

[53] Regulation 10 of the Regulations

concerns upfront. Documentation includes, but is not limited to:

(i) detailed descriptions of the merging parties, their corporate structures, and ownership;
(ii) copies of the definitive transaction;
(iii) audited financial statements for the preceding financial year for all relevant entities;
(iv) internal documents assessing the merger's rationale, market conditions, competitive landscape, and potential synergies;
(v) information on market shares, competitors, and barriers to entry in the relevant markets;
(vi) any reports prepared for the purpose of assessing the merger's competitive impact.

4. Formal Notification and Review Process

Once prepared, the notification is formally submitted to the FCCPC, along with the prescribed filing fees. After filing, the FCCPC then undertakes its review, which typically involves a Phase One investigation to determine if the merger is likely to substantially prevent or lessen competition.[54] Where concerns remain, it may proceed to a Phase Two investigation, an in-depth review of the effects of the merger on competition.[55] Parties should be prepared to engage actively with the FCCPC during this period, providing any additional data or commitments that may address concerns.

5. Decision and Implementation

The FCCPC will issue a report signifying its decision to either approve the merger, approve the merger subject to conditions or prohibit the implementation of the merger. Upon receiving approval, parties may proceed with implementation, ensuring strict adherence to any imposed conditions.

Strategic Compliance and Avoiding Pitfalls

A proactive approach to ensuring strategic compliance with the FCCPA and FCCPC regulations is paramount to mitigating structuring pitfalls and avoiding costly regulatory delays.

- An effective way of avoiding regulatory surprises is through early engagement with the FCCPC. While not always mandatory, pre-notification consultations offer invaluable benefits, as it allows parties to seek clarification and gain early insights into the FCCPC’s likely stance on a proposed transaction and build a cooperative relationship with the regulator, ultimately saving time and resources.

- A meticulously prepared notification, which proactively addresses potential competition concerns and highlights pro-competitive benefits, may expedite the review process.

- Furthermore, strategic management of transaction timelines is crucial. PE transactions are often fast paced, but regulatory review periods must be realistically factored into the overall timeline. Misjudging these timelines or attempting to accelerate a transaction without proper regulatory clearance can lead to significant delays, financial penalties, and even the unwinding of a deal.

- PE transactions often involve layered entities, joint ventures, or staggered acquisitions, all of which may complicate the review process. Common pitfalls include failing to identify notifiable transactions within complex group structures, misinterpreting control thresholds in staged or minority investments, overlooking indirect acquisitions, omitting relevant documents or misrepresenting the scope of

[54] Regulation 17 of the Regulations

[55] Regulation 18 of the Regulations.

the transaction, Failure to factor in other regulatory consents. A coordinated legal and regulatory strategy is essential to avoid these traps.

Conclusion

For PE firms, navigating this framework is not merely a compliance exercise but a strategic imperative. Early engagement with legal counsel and the FCCPC, thorough due diligence, and a clear understanding of the notification thresholds and review process are essential to avoid costly delays, penalties, and potential deal derailment, ultimately facilitating seamless exits and optimizing investment returns.

UDO UDOMA &
BELO-OSAGIE

NIGERIA REGULATORY UPDATE: THE SEC'S EXPANDED ENFORCEMENT POWERS UNDER ISA 2025: WHAT YOU NEED TO KNOW

Christine
Sijuwade

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OVERVIEW

The enactment of the Investments and Securities Act, 2025 (**"ISA 2025"**) marks a significant strengthening of the Securities and Exchange Commission's (**"SEC"** or **"Commission"**) regulatory and enforcement framework in Nigeria. Repealing the ISA 2007, the new framework expands the SEC's reach, strengthens its autonomy, and empowers it with tools to act more decisively against capital market infractions. With enormous new powers aimed at enhancing market integrity, protecting investors, and deterring misconduct, corporate entities, particularly public companies, capital market operators, and regulated entities, must align with a regulatory environment where the SEC has broader authority to intervene, investigate, and impose sanctions.

In this update, Udo Udoma & Belo-Osagie's Private Equity and Venture Capital team highlights key areas of expansion in the SEC's enforcement powers and offers practical recommendations for compliance by SEC-regulated entities, their officers, and advisers.

A. Expansion of Regulatory Oversight

One of the most significant features of ISA 2025 is the strategic expansion of the SEC's regulatory powers to encompass emerging market activities and technologies that were previously outside the scope of capital market regulation. This reflects a recognition of the evolving nature of financial markets and the need to proactively address innovations with systemic risk implications.

While the SEC has, since 2022 regulated digital assets and virtual tokens such as "securities", the ISA 2025 reinforces this position by providing express statutory backing, giving the SEC stronger footing to act against violations in the digital asset space and reducing room for legal ambiguity.

Additionally, the SEC now regulates commodities infrastructure, such as warehouse operators, collateral managers, and electronic warehouse receipts, improving the governance of commodity exchanges and reducing fraud risks. Online forex trading platforms and intermediaries are also now subject to SEC regulation, requiring licensing and compliance to operate legally.

Corporate entities operating in these sectors must ensure full compliance with the ISA and SEC rules by obtaining relevant licences or risk sanctions such as asset freezes, or regulatory shutdowns.

B. Direct Regulatory Intervention in Management

Under the ISA 2007, the SEC's express power to intervene in governance matters was primarily framed around capital market operators, with the provisions focused on individuals deemed no longer "fit and proper". The Commission could direct a suspension pending investigation but was generally required to give prior notice and reasons. While the SEC did, in practice, intervene in public companies, in certain circumstances, such actions were based on broader interpretations of its investor protection mandate rather than clearly defined statutory authority.

The ISA 2025 introduces a more assertive enforcement framework. Notably, the SEC now has expanded powers to suspend or remove directors associated with misconduct or mismanagement, appoint independent directors, and place existing directors on probation (where necessary), all with fewer procedural constraints.

This evolution marks a shift from a regime where the SEC's intervention in governance matters was primarily exercised through regulatory instruments, such as the SEC Code of Corporate Governance and general enforcement discretion, to one where those powers are now clearly codified in statute. Under ISA 2025, the SEC's authority to intervene in the management of public companies and regulated entities is no longer implied or practice-based but expressly provided for. In light of this, corporate entities, particularly public companies and regulated entities must maintain strong corporate governance practices and ensure strict compliance with applicable rules. Board and management decisions are well-documented and defensible, and a strong compliance culture is maintained, particularly with respect to disclosures and conflict of interest management.

C. Expanded Investigative Powers and Digital Enforcement Tools

The ISA 2025 significantly enhances the investigative powers of the SEC, enabling it to operate with greater reach and precision in uncovering capital market infractions. While the SEC previously had authority to investigate capital market operators and request relevant records, the new Act introduces a broader legal framework that facilitates deeper scrutiny and more technology-driven enforcement. Most notably, the ISA 2025 now expressly empowers the SEC to audit and compel the production of records and documents not only from capital market operators but also from public companies and other regulated entities. Furthermore, the ISA 2025 significantly widens the SEC's authority to investigate any person suspected of violating securities laws or engaging in unregistered investment activities. Additionally, the ISA 2025 empowers the SEC to obtain subscriber and communications data from telecom and internet service providers, marking a substantial expansion into digital surveillance and data-driven enforcement.

These innovations reflect a shift toward data-driven enforcement, allowing the Commission to more effectively trace insider trading, market manipulation and regulatory evasion. Accordingly, corporate entities must ensure their compliance, communication, and data-handling practices are audit-ready and fully transparent. Internal controls should be strengthened to support swift and accurate responses to SEC inquiries. Companies should also ensure third-party service providers, such as IT and telecom partners, adhere to security and disclosure standards. Legal and compliance teams must be trained to handle regulatory investigations involving data requests, electronic communications, and cross-party transactions. Most critically, proactive compliance reviews can help detect and correct issues before they attract regulatory scrutiny.

D. Enhanced Asset Seizure and Enforcement Measures

The ISA 2025 significantly expands the SEC's enforcement power, allowing it to take direct and immediate action against suspected violators without the procedural constraints present under the ISA 2007. While the SEC had limited ability under the ISA 2007 to initiate asset freezes or seizures (typically relying on court orders or referrals to law enforcement agencies), the ISA 2025 now empowers the SEC to impose administrative cautions and liens on assets (including shares and bank accounts) of persons or firms that have committed capital market infractions, seize property of persons (individuals and corporates) illegally carrying on capital market operations and investment schemes and seek an order of forfeiture for the recovered assets, and compel access to audit working papers and communications from external auditors during investigations. These powers are complemented by the establishment of a National Confiscation Wallet and Multi-Party Wallets to manage and safeguard forfeited digital assets.

Corporate entities must reassess their legal and compliance exposure, particularly in light of the SEC's expanded enforcement tools under ISA 2025. Internal policies should be reviewed to ensure that they align with the applicable SEC rules and the ISA, especially in high-risk areas such as licensing, disclosure, and investment structuring.

Where non-compliance occurs, whether knowingly or inadvertently, entities face the risk of significant enforcement measures, including asset freezes, office closures, or compelled production of documents.

Accordingly, beyond meeting statutory requirements, companies should also enhance their regulatory response preparedness by maintaining proper documentation, securing financial records, and establishing clear internal protocols for responding to SEC investigations. Legal and compliance teams should also be trained to handle enforcement scenarios, and auditors and external advisers should be engaged on terms that enable timely and effective cooperation with regulatory authorities. Corporate entities should also actively monitor high-risk transactions and counterparties and regularly review insurance and indemnity arrangements for directors and officers to ensure sufficient protection in the event of enforcement-related liabilities.

E. Expanded Prosecutorial Powers: From Referrals to Direct Enforcement

Previously, the SEC lacked direct prosecutorial powers and was required to refer criminal matters to external bodies such as the Attorney-General or the Economic and Financial Crimes Commission (EFCC), often delaying enforcement. Under the ISA 2025, in-house SEC lawyers may now initiate or defend criminal proceedings, with the consent of the Attorney-General of the Federation, on matters relating to the Nigerian capital market. The ISA 2025 also affirms the SEC's authority to engage private legal practitioners to prosecute offences on its behalf, further strengthening its ability to respond promptly and effectively to violations.

With the SEC now able to pursue criminal enforcement more directly, the risk of immediate prosecution for regulatory breaches has increased. Corporate entities must prioritise robust internal compliance and legal oversight, as infractions could rapidly escalate from regulatory inquiries to criminal proceedings. Legal departments should be prepared to engage early and strategically if enforcement action is initiated. Infractions should be identified by internal compliance teams, reported to senior management in accordance with the entity's internal risk escalation policy and applicable law, and remediated promptly. companies should also seek immediate legal advice at the first indication of regulatory scrutiny.

F. Introduction of Section 196 in the ISA 2025 - Prohibited Schemes

The ISA 2025 introduces the concept of prohibited schemes, including Ponzi and pyramid structures, which rely on funds from new investors to pay earlier participants and often promise unrealistically high returns with minimal risk. The ISA 2025 gives legislative support to the power of SEC to take direct enforcement action against such schemes which includes sealing off premises and obtaining court or tribunal orders to freeze and forfeit assets to the Federal Government. Notably, the ISA 2025 allows the SEC to recover enforcement costs from both the scheme's assets and the personal assets of those involved, regardless of how those assets were acquired. The SEC may also recover investigation costs through the Attorney General's office. These measures significantly enhance the Commission's ability to clamp down on fraudulent investment operations and bolster investor protection.

Corporate entities, particularly fund managers, fintechs, and investment platforms, must now exercise greater care in how they raise capital and market investment opportunities. Overly aggressive promotions, exaggerated return projections, or poorly structured offerings, especially when targeting retail investors, may fall within the regulatory radar. Robust governance, transparent fund use, and legal compliance are critical to avoid being classified as or associated with a prohibited scheme under the new framework.

CONCLUSION

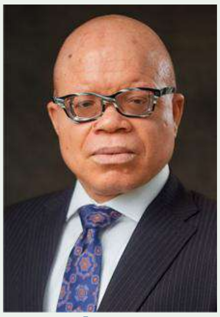
The ISA 2025 marks a turning point in the capital markets regulation, significantly expanding the SEC's enforcement powers. With broader powers to intervene in management, initiate direct enforcement actions, and scrutinise corporate conduct across public companies and regulated entities, the SEC is positioned as a far more active and assertive market regulator.

For corporate entities, this calls for a fundamental shift in compliance posture. Passive or reactive approaches to regulation will no longer suffice. Instead, corporate entities must now adopt a forward-looking governance strategy by strengthening internal controls, anticipating potential regulatory intervention, and ensuring that board-level decisions can withstand regulatory scrutiny.

With heightened regulatory expectations and a regulator empowered to act swiftly, corporate entities must prioritise proactive governance, compliance planning, and timely risk assessments. Companies that invest in proactive compliance and sound governance will be best equipped to meet regulatory demands and sustain trust with investors and regulators.

UDO UDOMA &
BELO-OSAGIE

A REVIEW OF THE SEC'S NEW RULES ON ISSUANCE AND ALLOTMENT OF DEBT SECURITIES BY PRIVATE COMPANIES



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Introduction

1.1 The Securities and Exchange Commission ("**SEC**") recently released the *Rules on the Issuance and Allotment of Private Companies' Securities* (the "**Rules**"). This marked a significant regulatory development in Nigeria's private capital markets on the issuance of securities (which refer to fixed income securities (bonds, debentures and alternative asset classes such as sukuk) by private companies. The Rules, which became effective on 24th April 2025, aim to formalise procedures for debt securities issuance by private companies and introduce regulatory oversight on debt capital-raising activities, which have historically taken place outside the SEC's regulatory scope.

1.2 The SEC and the Rules derive their authority and validity from section 308 of the Investments and Securities Act 2025 (the "**ISA 2025**") which provides that any "company", local or foreign, supranational body or other approved entity shall not issue debt securities to the public without the prior review and approval of the SEC. Section 357 of the ISA 2025 adopts the definition of the term "company" as defined in the Companies and Allied Matters Act, 2020 (as amended) ("CAMA"), which defines a company to include companies (both public and private) registered under the CAMA. Under the repealed Investments and Securities Act 2007 (as amended) (the "**ISA 2007**"), specifically sections 54 and 67, only securities issued by public companies and securities of collective investment schemes were subject to registration with the SEC. Private companies were neither previously required to register offerings, nor were they permitted to offer securities through public offers. Section 308 of the ISA 2025 has now expanded the SEC's regulatory oversight to include public offerings of debt securities by private companies. This development is important for private equity, venture capital and other investors whose investee companies may seek to raise funds through the issuance of debt securities to qualified investors through public offering and intend to have such securities noted or listed on a securities exchange. Such investee companies intending to do that now have one more hurdle to cross – register the debt securities with the SEC.

2. Scope and Applicability of the Rules

2.1 The Rules apply to the issuance of debt securities by private companies through public offers or other modes of issuance that may be approved by the SEC[56]. In addition, the Rules apply to all exchanges and platforms and capital market operators involved in the trading, quotation, or admission of a private company debt securities[57]. The public issuance of equity securities by private companies remains expressly prohibited under Section 22(5)(a) of the Companies and Allied Matters Act 2020 (as amended) (which provides that a private company shall not, unless authorised by law, invite the public to subscribe for any share or debenture of the company) and the Rules[58].

2.2 Furthermore, the Rules apply where the 'public offer' by a private company is: (a) published, advertised or disseminated in a newspaper, broadcast, cinematograph, internet media or any other means by which the public is made aware of the offer; (b) made to anyone or circulated among persons on the terms that the person or persons to whom it is made may renounce or assign the benefit of the securities to be obtained in favour of any other person or persons; (c) made to or circulated among members or debenture holders of the

[56] Rule 2(a)
[57] Rule 2(b) and (c)
[58] Rule 7(a)

company concerned or clients of the person circulating information on the offer or in any other manner; or (d) made to one or more persons to acquire securities dealt in by a securities exchange or the invitation states that an application has been or shall be made for permission to deal in those securities on a securities exchange.

3. Key Requirements Under the Rules

The Rules contain the following key requirements for the issuance of debt securities by a private company:

3.1 SEC Registration

Private companies are now required to register proposed debt securities offerings, which fall within the definition of a public offer under the Rules, with the SEC by filing a completed registration Form SEC 6. The form will be filed alongside the relevant draft prospectus, trust deed, vending agreement, corporate authorisations, constitutional documents, financial accounts, evidence of payment of applicable fees and other documents as may be required by the SEC.[59]

3.2 Issuer Eligibility and Offer Limits

To be eligible to issue debt securities, a private company must (a) be duly incorporated in Nigeria and not in default of any existing debt obligation; and (b) have a minimum of 3 (three) years of operational history (where the company has been in existence for less than 3 (three) years, a guarantor who is eligible under the Rules must guarantee the issuance). The only stated exception to this rule on eligibility is a private company which was set up by a state or municipal government for the express purpose of issuing bonds.[60]

Furthermore, private company issuers can undertake up to 3 (three) separate debt issuances within a year, provided that the total amount raised does not exceed ₦15 billion for that year. Where a private company intends to issue any further debt securities, it shall be required to re-register with the Corporate Affairs Commission as a public company.[61]

3.3 Other Obligations

In addition to registration and eligibility requirements, the Rules impose several ongoing obligations on private company issuers. Such obligations include the filing of allotment reports, quarterly and annual reporting on financials and use of proceeds, compliance with a prescribed code of conduct, and obtaining SEC approval for listing (if applicable).[62]

3.4 Restrictions

Asides the requirements that private companies cannot issue their shares to the public and only qualified investors (that is, an institutional investor or high net worth individual as defined in the SEC's rules) may participate in the debt issuances, the Rules also provide that only registered capital market operators shall be parties to debt issuances by private companies[63], and the securities purchased in a public offer may only be traded on a recognised securities exchange[64]. Furthermore, in relation to the allotment of the securities, any previous offer by the issuer must have been concluded or aborted before a fresh issuance of securities is done[65]. Where any offer of debt securities

[59] Rule 9
[60] Rule 5(a)
[61] Rule 8(d)
[62] Rules 11,12, 15 and 16
[63] Rule 7(c)
[64] Rule 7(e)
[65] Rule 11(a)(i)

by a private company under the Rules has less than 50% subscription from qualified investors, the offer shall be aborted and the SEC notified[66]. This means that for an offer to be deemed successful, it must have at least 50% subscription by qualified investors. The issuer is also restricted from using the issuance proceeds for any other purpose aside that which is stated on the offer documents, except where it has obtained the prior approval of SEC to do so[67].

4. Penalties for Non-Compliance with the Rules

Failure to comply with the requirements under the Rules may attract the imposition of significant sanctions on the defaulting parties by the SEC.

These sanctions include monetary penalties of at least ₦10 million and an additional ₦100,000 for each day that the violation continues[68]; suspension or withdrawal of the registration of any capital market operator involved[69]; disgorgement of proceeds or income from the transaction[70]; or rescission of the transaction. Where it is deemed by the SEC to be in the public interest, the SEC could ratify the transaction[71]. The SEC may also impose any other sanction that it considers appropriate in the circumstances[72].

5. Implications for Private Companies

The introduction of the Rules fundamentally changes the regulatory landscape for private companies seeking to raise debt capital from qualified investors. The key implications of the Rules are as follows:

5.1 Retrospective Registration of Existing Debt

Private companies with existing unregistered debt securities which are held by qualified investors and fall within the scope of the applicability of the Rules as outlined in paragraph 2.2 above, are required to apply to the SEC for registration within 3 (three) months of the Rules' commencement. This means that by 24th July 2025, unless the SEC extends the period, non-compliant issuers may be subject to applicable penalties.

While such existing securities were legally issued under the former regime of ISA 2007, the new requirement raises practical and legal concerns, especially considering the extensive documentation and procedural demands for registration. A more nuanced approach may be needed to avoid undue regulatory burden being imposed on affected private companies.

5.2 Increased Regulatory Compliance

If they intend to issue debt securities through public offers, private companies must now operate within a formal and rigorous regulatory framework, with substantial requirements for registration, disclosure obligations, and ongoing compliance.

This marks a significant shift from the previous regime under the ISA 2007, where private companies were largely exempt from SEC oversight, a flexibility that was once considered as one of the key advantages of remaining private. With the new Rules, this regulatory exemption no longer applies, and private companies will face increased compliance costs, extended timelines for capital raising, and enhanced internal governance obligations when seeking to issue debt securities through public offers.

[66] Rule 11(a)(iii)
[67] Rule 14(a)
[68] Rule 17(a)(i)
[69] Rule 17(a)(ii)
[70] Rule 17(a)(iii)
[71] Rule 17(a)(iv)
[72] Rule 17(a)(v)

5.3 Issuance Cap and Public Company Conversion

The Rules introduce a cap of ₦15 billion on total annual debt to be raised by private companies[73], thereby limiting the scale of capital that can be accessed annually. Private companies with larger financing needs will then need to either convert to public company, which has a significant governance and disclosure implications, or raise capital through the issuance of equity which could result in the dilution of the interest of existing shareholders.

5.4 Uncertainty Around Public Offers

Although the Rules refer to "public offers" as a permissible mode by which private companies may issue debt securities, they ultimately limit participation in such securities issuances to qualified investors. This internal inconsistency introduces interpretive uncertainty that could affect the legal structuring of transactions that will be offered to qualified investors through "public offers". Until the SEC provides further clarification, issuers and their advisers may need to adopt a conservative approach in designing the structure of offerings and identifying qualified investors and ensuring that the offering is only made to them.

5.5 Enforcement Mechanisms

The penalty provisions in the Rules are robust and significant. Non-compliance could trigger the imposition of steep monetary fines, reputational risk, suspension, and even SEC-imposed reversal of transactions. This makes full compliance with the Rules essential for all stakeholders involved in the issuance of debt securities by a private company through public offers.

6. Private Placement of Debt Securities by Private Companies

6.1 Private Placement of Debt Securities

We have set out above the instances that the Rules regard as public offer of the issuance of debt securities. One of the instances is where the offer is made to one or more persons to acquire securities dealt in by a securities exchange or the invitation states that an application has been or shall be made for permission to deal in those securities on a securities exchange. Based on the provisions of Rules 9 and 2(a), private placement of debt securities by private companies will only fall within the scope of the Rules and be subject to the SEC registration requirements where the debt securities involved (a) are renounceable or assignable; (b) are advertised, etc; (c) are circulated to clients or debenture holders; or (d) will be traded on a registered securities exchange. Consequently, other private placement transactions which do not contemplate that the securities will be renounceable, advertised, circulated to clients/debenture holders or traded on a registered securities exchange will not, in our view based on the existing Rules, be registrable with the SEC as they would not qualify as a 'public offer' under the Rules.

6.2 Relevance to Private Equity, Venture Capital and other Investors Investee Companies

The above changes in the legal regime will not be relevant to investee companies (of private equity or venture capital investors) that will only seek to raise funds by issuing debt securities on a private placement basis. They will still be able to do that without registration. Where such investee companies, however, seek to raise funds through the

[73] Rule 8(d)

issuance of debt securities to qualified investors through public offering and intend to have such securities noted or listed on a securities exchange, the securities will need to be registered with the SEC.

7. Conclusion

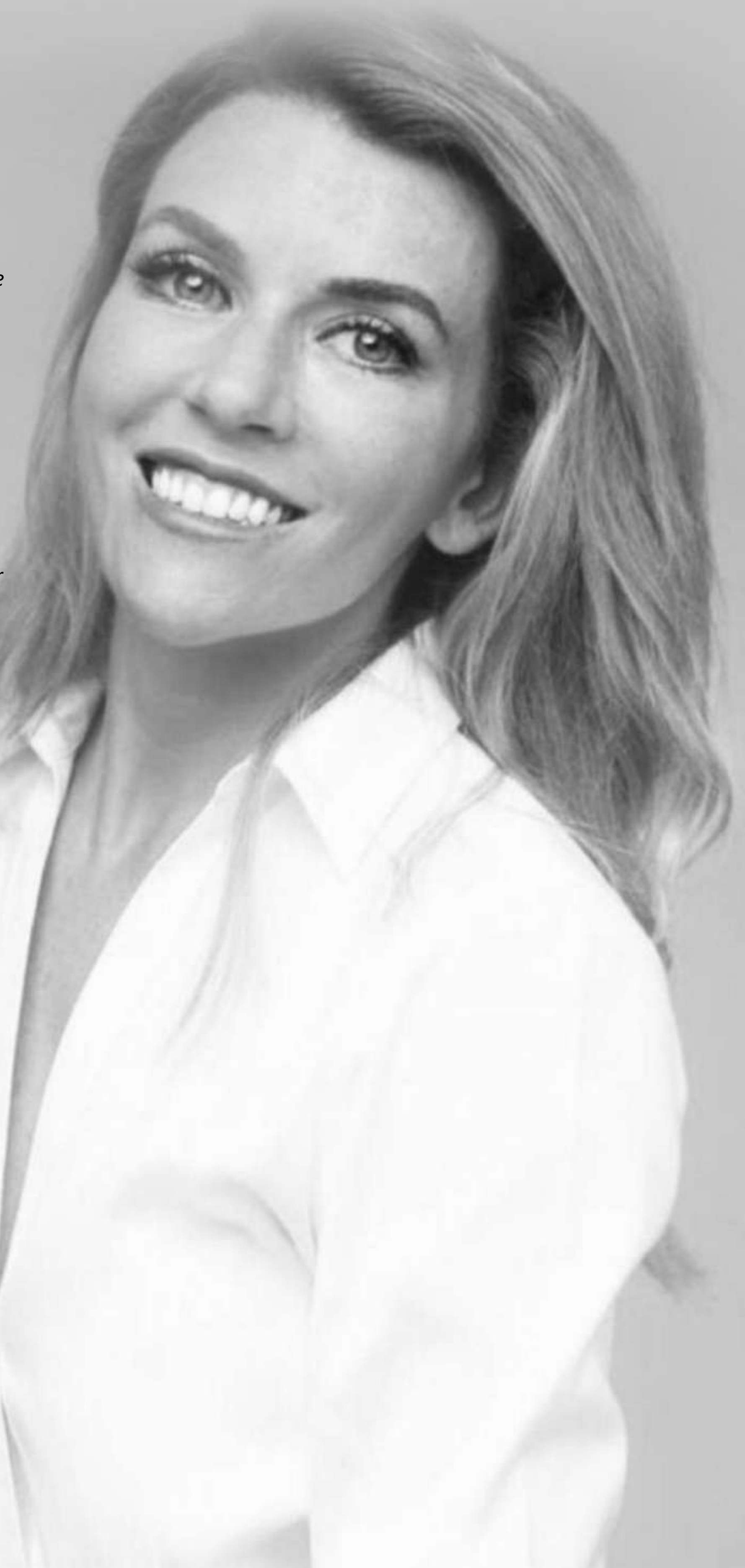
The introduction of the Rules underscores the SEC's intent to enhance regulatory oversight and investor protection, even in relation to private companies issuing debt securities through public offers. While the move aligns with international trends toward increased transparency for issuances of debt securities by private companies, it also places considerable responsibilities on private company issuers and their advisers. As the SEC begins the process to implement the Rules, we would expect continued clarity and possible adjustments, will be critical to address any ambiguities and to provide clear guidance to affected persons. These efforts will ensure that private companies can effectively engage with the evolving market framework while maintaining regulatory compliance and fostering investor confidence. Lastly, the Rules may not apply to the private placement of debt securities by private companies if the offering of such securities does not satisfy any of the requirements to be deemed a 'public offer'.

CEO SPOTLIGHT

In Conversation With

Lexi Novitske

GENERAL PARTNER AT NORRSKEN22



From Lagos to Global Scale: Lexi Novitske on Local Insight, Unicorn Backers, and the Next Phase of African VC

When Lexi Novitske first arrived in Nigeria in 2012, she wasn't planning to stay. What began as a sabbatical turned into a deep commitment to one of Africa's most dynamic markets. "Where there are big problems, there are big opportunities," she says — and that principle has shaped her investment philosophy ever since.

Today, as General Partner at Norrsken22, Lexi is helping chart a new course for growth-stage investing across the continent. Her team, stationed in key African innovation hubs, brings decades of local experience to the table — but perhaps their most compelling edge is their "unicorn board": over 30 founders of billion-dollar companies who actively support Norrsken22's portfolio companies, offering mentorship and global perspectives on scaling.

Lexi's reflections are both pragmatic and future-focused. She shares why agent networks are still vital in bridging digital and physical finance, how Nigeria's maturing ecosystem has moved beyond "growth at all costs," and why fintech is poised for deeper integration through stablecoins and strategic acquisitions. Drawing from a portfolio that includes TymeBank, Nala, Mono, and Brimore, she highlights lessons in timing, sustainability, and disciplined growth.

As Nigeria moves toward broader financial inclusion and venture capital recalibrates post-peak, Lexi believes the winners will be those who master nuance — local realities, cultural context, and market fundamentals — while building with global scale in mind.

PEVCA LR: What drew you to Nigeria in 2012, and how has your experience shaped your investment approach?

Lexi: I originally came to Africa on a sabbatical, wanting to explore a region I knew little about, having grown up in the U.S. Once I arrived, I was struck by the sheer scale of the market and the number of challenges that both consumers and businesses faced daily. As an investor, I saw that where there are big problems, there are big opportunities. Nowhere was this more true than in Nigeria—one of Africa's largest markets with immense untapped potential. The country has a young, rapidly growing population, countless inefficiencies, and a lack of transparency, but also an incredible entrepreneurial drive. Seeing how local founders are tackling these challenges has shaped my investment approach, emphasizing the importance of investing in businesses that solve real problems and have the potential to scale.

PEVCA LR: How does Norrsken22's Africa Technology Growth Fund leverage local expertise to scale Nigerian businesses?

Lexi: At Norrsken22, our entire team is based on the continent, spread across key hubs like Lagos, Nairobi, Cape Town, and Johannesburg, with plans to expand to Cairo. Our partners have decades of experience investing in African tech and working with operators to tackle issues like regulations, talent acquisition, and partnerships. Having a local presence helps us understand cultural nuances and market dynamics, which is crucial when companies are expanding across regions. One of our biggest strengths is the relationships we've built on the ground—these connections help our companies move quickly and navigate challenges effectively. We believe being engaged with the local ecosystem is key to scaling businesses successfully.

PEVCA LR: What unique value do Norrsken22's billion-dollar-plus company founders bring to investee companies?

Lexi: Our fund is backed by over 30 founders of billion-dollar tech companies who are not just investors but also actively support our portfolio companies. We call this group our "unicorn board," and they bring invaluable experience, having navigated their own challenges in scaling businesses—often in similar sectors to our investees. They provide mentorship and insights on critical topics like customer acquisition, global compliance, and growth strategies. What's exciting is that many of them see Africa as a future growth market, and their involvement helps them better understand the landscape. This creates a unique dynamic where they're both guiding our startups and learning how they might eventually enter the market themselves—potentially through acquisitions.

PEVCA LR: Over the past decade, what significant changes have you witnessed in Nigeria's tech ecosystem?

Lexi: When I first arrived, the tech ecosystem was still in its early days, with a few established players like Interswitch. Today, it's a completely different landscape. The first wave of startups tackled basic infrastructure challenges like data availability, payment systems, and identity verification. Over time, we've seen more international investors come in—some with a solid understanding of the market, others learning as they go. This has brought both opportunities and challenges. We've seen some big wins with companies achieving scale and generating exits for investors. More recently, the ecosystem has matured, with more realistic expectations around growth and profitability, and a focus on sustainable business models.

PEVCA LR: How will Nigeria's expanding infrastructure and online access impact fintech growth?

Lexi: Over the past decade, digital infrastructure in Nigeria has improved significantly. Internet access is more widespread, data speeds are faster, and—most importantly—costs have come down, making it easier for people to adopt digital solutions. It's now cheaper to shop online, access telemedicine, and even get an education digitally. This shift has huge implications for fintech, driving financial inclusion and making digital banking more accessible. However, there's still a gap between the digital and physical worlds. Agent networks, for example, play a crucial role in helping fintech companies reach people who still rely on cash and traditional banking methods.

PEVCA LR: What drives your investment decisions in Nigerian fintech and enterprise software?

Lexi: We take a top-down approach, starting by looking at major trends in consumer behavior, regulation, and global shifts. From there, we narrow down to specific subsectors and analyze the key players at different stages. We prioritize scale and exit potential but also focus on factors like hard currency revenue, strategic partnerships, and the ability to expand regionally by leveraging existing infrastructure. Local realities, such as limited access to debt capital and currency fluctuations, also play a big role in our decision-making. We're always assessing whether a company can navigate these challenges and build a sustainable, scalable business.

PEVCA LR: Share success stories from your portfolio companies.

Lexi: We've had some incredible successes at Norrsken22, including TymeBank, one of the fastest-growing neobanks in the world. It's a great example of how an African-founded company can expand globally, with its successful entry into the Philippines. Another standout is Nala, which started as a consumer-focused remittance platform but is now expanding into B2B cross border transactions. What makes Nala special is the trust they've built with their customers, leading to strong organic growth through referrals. These success stories highlight how the right combination of market understanding, product fit, and strategic execution can drive massive growth.

PEVCA LR: What lessons learned from backing 25+ companies, including Brimore, Tribal Credit, Mono, and Sabi, can you share?

Lexi: Our experience with Singularity/Acuity taught us valuable lessons. We learned the importance of timing the market— for operators raising capital at the peak of the cycle can sometimes backfire if valuations are too high. We also saw firsthand the pitfalls of "growth at all costs," where companies scaled rapidly without strong unit economics. We have since places greater emphasis on building sustainable businesses with solid fundamentals from the start, focusing on customer acquisition costs and long-term value.

PEVCA LR: What's your projection for VC investing in Nigeria's fintech sector growth in 2025 and beyond?

Lexi: I think we'll see continued consolidation, especially in consumer fintech and B2B payments. There's a growing interest in stablecoin-based payments and crypto savings products for the local market, and I expect regulators to become more open to these innovations as they gain global acceptance. We're also likely to see more strategic acquisitions, with larger players acquiring fintech companies in cross-border payments and financial infrastructure. Additionally, traditional businesses will likely partner with fintechs to roll out financial products to their existing customers, leveraging their established networks for growth.

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