PRIVATE EQUITY AND VENTURE CAPITAL ASSOCIATION, NIGERIA

PEVCA LEGAL & REGULATORY BULLETIN · ISSUE 05

NIGERIA'S PRIVATE CAPITAL LIFECYCLE

Execution, Governance, Exits and Returns

Across Private Equity, Venture Capital and Private Credit

THE INVESTMENT LIFECYCLE

→01	→02	→03	→04
MOBILISE	**DEPLOY**	**MANAGE**	**RETURN**
Raising domestic capital	Matching instrument to deal	Governance and alignment	Exits and realisation

20 contributions · 31.3tn pension pool · US$810.7m deployed in 2025 · 81 African exits

Private Equity and Venture Capital Association, Nigeria

Legal & Regulatory Committee · Issue 05 · 2026

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IN THIS ISSUE

FOREWORD - 04

Folake Elias-Adebowale | Dipo Okuribido

THE ₦31 TRILLION QUESTION: CAN NIGERIAN PENSION FUNDS LEGALLY ALLOCATE TO PE/VC - 08

NORRSKEN22 | Precious John-Adeyemi

FAMILY OFFICES AND HIGH-NET-WORTH INDIVIDUALS AS THE NEW LP FRONTIER - 15

DUALE, OVIA & ALEX-ADEDIPE | Adeniyi Duale | Mildred Eze | Melody Ibegbulam | Wuraola Oyeniyi

SIDE LETTERS IN NIGERIAN PRIVATE CAPITAL FUNDS - 21

SOLT LEGAL | Timothy Davies | Mojisola Fashola

CARRIED INTEREST IN NIGERIAN PRIVATE CAPITAL FUNDS - 26

DETAIL COMMERCIAL SOLICITORS | Nkem Adigwe | Anthony Ezeamama | Tolulope Olayiwola

CO-INVESTMENT RIGHTS IN NIGERIAN PRIVATE EQUITY AND VENTURE CAPITAL FUNDS - 32

SOLT LEGAL | Mojisola Fashola | Chidiebere Obialor

BUILDING NIGERIA'S PRIVATE CREDIT MARKET - 36

G.ELIAS | Kuburat Abubakar | Victoria Akingbemila | Michelle Chikezie | Abdulrasaq Davies

VENTURE DEBT IN NIGERIAN STARTUPS: WHO CAN LEND, ON WHAT TERMS, AND WHAT CAN HAPPEN WHEN IT GOES WRONG? - 43

NORRSKEN22 | Precious John-Adeyemi

THE OFFSHORE FLIP: HAS NIGERIA DONE ENOUGH TO KEEP STARTUPS ONSHORE? - 49

ANDERSEN | Adeyemi Adediran | Similoluwa Ajani | Patience Aliu

WHEN THE FOUNDER UNDERPERFORMS: PRE-WIRING CRAM-DOWN AND RESCUE-CAPITAL RIGHTS IN NIGERIAN PRIVATE EQUITY - 56

VEROD | Dipo Okuribido

EMPLOYEE SHARE OPTION PLANS IN NIGERIAN STARTUPS: WHAT THE TAX, CORPORATE AND REGULATORY FRAMEWORK ACTUALLY PERMITS- 63

DETAIL COMMERCIAL SOLICITORS | Temidayo Ajayi | Favour Ebhoaye | Blessing Udoh

FCCPC MERGER CONTROL IN 2025: WHAT THE COMMISSION'S ENFORCEMENT RECORD TELLS US ABOUT DEAL RISK AND HOW TO MANAGE IT - 69

DUALE, OVIA & ALEX-ADEDIPE | Adeniyi Duale | Mildred Eze | Chukwuebuka John Okoli | Ogechi Wachukwu

PORTFOLIO COMPANY GOVERNANCE IN A DISTRESSED ENVIRONMENT - 75

ÆLEX | Chinyerugo Ugoji | Onyinyechi Chima

MANAGEMENT INCENTIVE STRUCTURES IN NIGERIAN PE BACKED COMPANIES - 84

UHURU INVESTMENT PARTNERS | Tosin Ayomo | Folakemi Oduwole | Taiwo Peters

GP-LED SECONDARIES AND CONTINUATION FUNDS - 90

G.ELIAS | Kuburat Abubakar | Michelle Chikezie | Nwanneka Okwe | Oluwaseyi Oso

W&I INSURANCE IN NIGERIAN M&A AND PE EXITS: MARKET PRACTICE, COVERAGE GAPS AND BARRIERS TO ACCESS - 96

JACKSON, ETTI & EDU | Comfort (Agboola) Adekunle

THE NGX AS AN EXIT ROUTE FOR PE-BACKED NIGERIAN COMPANIES - 102

UHURU INVESTMENT PARTNERS | Yemi Osindero | Temi Popoola

CERTIFICATES OF CAPITAL IMPORTATION: WHY THEY STILL GO WRONG, WHAT INVESTORS LOSE WHEN THEY DO, AND HOW TO PROTECT YOURSELF - 108

DELOITTE | Asiata Agboluaje | Chisom Asuzu | Inepaimi Ayah

TRANSFER PRICING AND RELATED PARTY TRANSACTIONS IN NIGERIAN PE PORTFOLIO COMPANIES - 114

DELOITTE | Joseph Alatishe | Oluwatosin Lisa

INVESTING IN NIGERIAN FINTECHS: THE LANDSCAPE AND REGULATORY APPROVALS THAT DETERMINE DEAL CERTAINTY, CHANGE OF CONTROL RISK AND EXIT OPTIONALITY - 120

JACKSON, ETTI & EDU | Cecilia Otse| Adekunle Soyibo

CREDIT SPRINTS AND EQUITY MARATHONS: EXECUTION, EXITS, AND RETURNS IN THE NIGERIAN PRIVATE CAPITAL RELAY - 125

UUBO | Solomon Adegboyo | Precious David | Folake Elias Adebowale

FOREWORD

Folake Elias-Adebowale | Dipo Okuribido

FOREWORD

H1 2026 presents a Nigerian private capital market defined not by capital scarcity, but by the practical challenge of converting capital commitment into credible execution.

AVCA's April 2026 Investor Sentiment & Outlook captures the precise tension: investment conviction remains strong (net +0.6 among LPs, +0.8 among GPs), yet 27% of LPs expect to slow commitments during 2026 while 87% plan to maintain or increase allocations over three years. The gap is not a contradiction. It reflects the shift from asking "Is capital available?" to asking "Can it work?"

This edition of the PEVCA Nigeria Legal & Regulatory Bulletin examines capital at work across the full investment lifecycle. Not capital policy or regulatory theory, but how capital actually mobilises, deploys, structures, performs, and returns in the Nigerian market as it stands in 2026.

CAPITAL MOBILISATION: UNLOCKING THE ₦31 TRILLION QUESTION

Nigerian pension funds hold ₦31.323 trillion in assets. Only 0.82% is deployed in private equity. PenCom's revised guidelines now permit up to 15% allocation to PE—a ceiling increase that tripled available headroom. Yet capital mobilisation remains constrained. Why? **Norrsken22** identifies the friction in "**The ₦27 Trillion Question**": the capital exists, but the product architecture does not yet align. Pension fund administrators face 12 rigorous qualification criteria: clear strategy, audited information, pre-defined exits, SEC-registered management, prior exit experience, and accountability. The capital is not unavailable. The qualifying instruments are underdeveloped.

This is where fund design becomes execution. **Solt Legal's analysis of fund qualification frameworks** addresses the exact problem: how do managers build instruments that satisfy both SEC and PenCom standards from inception? **Detail Commercial Solicitors' work on co-investment structures** shows how to structure multiple LP mandates within a single vehicle-when pension funds, family offices, and DFIs co-invest with different risk appetites, alignment is not negotiable detail, it is an operational requirement. The answer to these questions determines whether ₦31 trillion remains idle or flows into productive deployment.

CAPITAL DEPLOYMENT: FROM STRUCTURE TO EXECUTION

Mobilising capital is only the first step. The next challenge is deploying it through instruments that match the cash-flow profile, risk allocation, and return expectations of different investors. AVCA's customised research records over 70 Nigerian private-capital transactions in 2025, with US$810.7 million in disclosed value. The more useful question is therefore not simply whether capital is available, but how it is allocated across different instruments and mandates, and whether the resulting structures are capable of performing through the investment cycle and ultimately returning capital to investors.

Udo Udoma & Belo-Osagie's "Credit Sprints and Equity Marathons: Execution, Exits, and Returns in the Nigerian Private Capital Relay" articulates the core discipline: activity, deployment, performance and realisation are different measures. Deal count is not deployment value. Deployment value is not fund performance. Fund performance is not necessarily an LP distribution, and a valuation gain is not the same as cash returned. Realisation still depends on the exit route, tax, currency conversion, settlement mechanics, and the amount ultimately distributed.

The practical implication: in 2025, venture capital dominated by value (US$613.6 million, 49 deals); private equity was smaller but concentrated (US$167.4 million, 12 deals); and private credit was expanding but lean (US$26.1 million, 10 deals). Private credit is broadening the toolkit-working capital, acquisition finance, venture debt, infrastructure-but equity remains the core instrument. For managers, the structural question is matching capital type to cash-flow stage and risk profile.

The implication is not that one form of capital is displacing another. Private credit is broadening the financing toolkit through working-capital facilities, acquisition finance, receivables structures, infrastructure financing and refinancings. Equity remains important when businesses need patient risk capital, governance support, and exposure to long-term growth. For fund managers, lenders and sponsors, the central structuring question is therefore whether the chosen instrument is suited to the business's stage of development, cash-generation capacity, currency profile, risk allocation, and intended route to liquidity. Nigeria's next private-capital phase will depend not only on how much capital is mobilised, but on how effectively the different parts of the capital stack are matched, executed, and ultimately realised.

CAPITAL MANAGEMENT: GOVERNANCE, CERTAINTY, AND ALIGNMENT

Between mobilisation and exit sits the longest phase: managing capital through the portfolio lifecycle. **Andersen's** analysis of **GP/LP governance frameworks** addresses the immediate operational problem: when GPs control investment decisions but LPs hold ultimate capital, how do you balance autonomy with accountability? **Verod Capital's** contribution on **fund structuring** tackles reserved matters, consent thresholds, and information rights-the practical infrastructure that lets LPs monitor without paralysing GPs. **G. Elias** translates SEC and PenCom requirements into operational practice: what does "clear strategy" actually mean in documentation? What does "pre-defined exit route" require? These are not academic distinctions. They determine whether a manager can deploy capital or remains bottlenecked by regulatory uncertainty.

CAPITAL RETURN: THE BINDING CONSTRAINT

Exit remains the defining constraint on market momentum. AVCA recorded 81 African exits in 2025 and 25 in Q1 2026-the highest sustained exit count in recent years. Yet McKinsey estimates more than 16,000 buyout-backed companies were held for more than four years by end-2025. Liquidity is uneven. Holding periods are extended. For LPs, the practical issue is distributions. For sponsors, capital structure flexibility. For lenders, priority in stress. For portfolio companies, whether current financing remains workable through the next transaction. UUBO's analytical framework separates the problem into components: operating performance may create value, but market access determines liquidity and price, while legal, regulatory, and transaction architecture determines how much of that value reaches investors. Exit design at term-sheet stage, pressure-tested enforceability, currency conversion mechanics, and regulatory approvals-these are not details. They determine whether aspirational timelines become credible distributions.

THE MARCH 2026 MOMENTUM

The PEVCA Conference in March 2026 brought key regulators-including the SEC Director General-into close dialogue on deal certainty, fund qualification, and cross-border mechanics. That engagement reflects genuine openness to practitioner input. SEC Tier 3 carve-outs (₦500 million for PE, ₦200 million for VC) acknowledge that lean alternative managers carry a different risk profile. PenCom's expanded allocation framework signals recognition of PE's role in pension fund diversification.

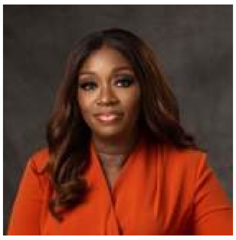
OUTLOOK: THE REAL TEST FOR 2026

Capital at work in 2026 is capital that mobilises from domestic institutional sources, deploys into strategically focused managers with operational clarity, performs through portfolio management and value creation, and returns as credible distributions. The friction is not capital availability. It is product qualification, fund architecture, execution certainty, and institutional alignment.

The contributing LRC Member firms in this edition-from Norrsken22's diagnostic on pension fund allocation, through Detail Commercial's and Solt Legal's work on qualifying structures, through ÆLEX, Andersen, Verod, and G. Elias on governance and regulatory practice, through Udo Udoma & Belo-Osagie's framework on execution and return-collectively address how capital moves through the ecosystem as it actually works in 2026.

The **Capital at Work Member Spotlights-Aruwa Capital, Sahel Capital, and UUBO**-illustrate how practitioners in the market are approaching these problems: building vehicles that attract domestic capital, structuring institutions for scale, and executing from entry through exit.

We remain focused on enabling that flow through clearer fund qualification pathways, stronger alignment between managers and allocators, better exit architecture, and regulatory clarity that supports private capital formation. We are grateful to all contributing member firms and to the SEC, PenCom, and the Central Bank of Nigeria for their continued engagement. We remain committed to strengthening investor confidence and supporting sustainable capital mobilisation, disciplined deployment, and credible returns in Nigeria.



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For: PEVCA Nigeria Legal & Regulatory Committee

About PEVCA

The Private Equity and Venture Capital Association, Nigeria (PEVCA) is a member-led organisation advancing the growth and impact of private capital in Nigeria. PEVCA serves as the industry's unified voice, driving strategic advocacy, strengthening capacity across the investment value chain, and fostering meaningful engagement among investors, policymakers, and ecosystem stakeholders.

Founded to promote the development and influence of Nigeria's private capital landscape, PEVCA is committed to upholding high ethical and professional standards, championing regulatory reforms that enable investment, creating platforms for knowledge-sharing and networking, and curating data, research, and resources that support informed decision-making and industry development.

THE ₦31 TRILLION QUESTION: CAN NIGERIAN PENSION FUNDS LEGALLY ALLOCATE TO PRIVATE EQUITY AND VENTURE CAPITAL, AND WHAT NEEDS TO CHANGE?

Norrsken22 | Precious John-Adeyemi

1. Introduction

The role of pension funds in Nigeria's PE industry has evolved drastically over the last few years, anchored mainly by changes in regulation issued by the National Pension Commission. With ₦31 trillion ($22 billion) AUM, PFAs have long preferred to allocate assets to fixed income due to high yields and a lower risk profile. However, due to high inflation, PFAs have been generating a negative real return on their fixed-income investments. Sentiments have slowly started to change as allocation to fixed income has reduced in favour of public equities and alternative investments such as real estate, PE and infrastructure funds. Before December 2010, pension fund investment in PE was non-existent. Between 2020 and 2024, actual allocation to PE averaged a mere 0.4% to 0.6% of AUM, with utilisation of permissible limits consistently lagging below 9% according to PenCom data.

This position has evolved, and in September 2025, the National Pension Commission issued its Revised Regulation on Investment of Pension Fund Assets, its most significant change to date. The new Revised Regulation tripled the maximum allowable allocation from Pension Fund Administrators (PFAs) to PE funds from 5% to 15%, introduced 12 rigorous qualifying criteria designed to raise governance standards, strengthen transparency, and deepen local economic impact.

Its February 2026 Addendum further expanded these reforms introduced in the September 2025 Regulations, raising the permitted allocation to ordinary shares (publicly listed company stock, a liquid public-market asset class distinct from private equity) across RSA Funds I, II, III and VI-Active, lifting Fund II's equity ceiling from 25% to 33% and Fund III's from 10% to 15%. The stated reason was not that pension funds wanted more equities. It was that they were drowning in cash. As the Commission noted, the shortage of qualifying alternative-asset instruments had "prevented Pension Funds from allocating funds to that asset class", leaving the investment limit underutilised and PFAs sitting on excess liquidity.

This move by PenCom has completely changed the question that has been asked for years. The ₦31 trillion question is therefore no longer "is it allowed?" It is "why, when it is allowed, does almost nothing happen?"

The Threshold Question: Can Nigerian Pension Funds Legally Allocate to Private Equity?

Yes — but the headline numbers hide the detail that matters most.
Section 5.10 of the 2025 Revised Regulation lists "Private Equity Funds registered with SEC" among the specialist investment funds pension

assets may hold, and Section 2.2 classifies private equity as an alternative investment alongside infrastructure funds and REITs. The legal architecture for allocation exists and has existed for years.

But this permission is not uniform across the system. Nigeria runs a multi-fund structure of seven funds, each with a different tolerance for variable-income instruments (assets whose returns fluctuate rather than being contractually fixed: ordinary shares, private equity, infrastructure funds, REITs and open/closed/hybrid funds, as opposed to bonds and treasury bills). This multi-fund structure is a framework that aims to match every formal worker according to age and risk profile to one of the seven funds. The regulation assigns each contributor to each of these funds. Fund I is a high-growth, more aggressive fund designed for younger contributors (<50 years) seeking maximum long-term returns with a higher risk appetite. Fund II, the fund which holds the majority of the industry's assets, is the default fund for contributors under 50 years old, offering a balanced moderate risk profile. Fund III and Fund IV are more conservative and hold the savings of every formal-sector worker aged 50 and above. The non-interest Fund VI (active) allows investment in Shari'ah-compliant PE funds. Whether a naira of pension money can touch private equity depends entirely on which of these funds it sits in. Section 9 prescribes how much each of these funds can allocate to PE.

Fund	Default Population	PE Global Limit	Variable-income Ceiling
Fund I	Opt-in, <50yrs, aggressive	15%	95%
Fund II	<50yrs	10%	75%
Fund III	>50yrs	0%	20%
Fund IV	Retirees	0%	10%
Fund V (Growth)	Micro-pension, opt-in	0%	45%
Fund VI (Active)	Non-interest, active	10% (Shari'ah-compliant PE)	75%
Fund VI (Retiree)	Non-interest, retiree	0%	10%

From the table above, Fund III is shut out of private equity altogether, and the same holds for Fund IV and the non-interest retiree fund. That is consequential, because Fund III holds the savings of every formal-sector worker aged 50 and over: the contributors nearest retirement, and the ones who have been paying in longest and therefore tend to hold the largest balances. The rationale is sound. Savers close to retirement need assets they can readily convert to cash, and private equity does the opposite, tying capital up for years before any of it is returned. But the rule carries an implication the reform debate rarely confronts: the capital actually available to private equity is nowhere near

₦31 trillion. It is confined to Fund I, Fund II and the active non-interest fund. Every estimate of how much pension money could move into the asset class has to begin from that narrower pool, not the headline total.

The Twelve Pillars: Why Qualifying Is the Real Barrier

The Commission's requirements for private equity set out twelve conditions a fund must satisfy before pension money can be committed to it. They set a deliberately high standard for governance and track record, one aimed at protecting contributors' savings.

i. **Disclosure and audit:** The fund must publish clear investment objectives and strategy, disclose how it prices its underlying assets, and produce annual financial statements audited by an FRC-registered accounting firm. Transparency is the entry ticket.

ii. **Defined exit routes:** The fund must have credible liquidity options, such as IPOs, sales to industry buyers, or buyout instruments, so pension money isn't trapped with no path to liquidity.

iii. **SEC-registered, experienced manager:** The fund has to be run by a manager versed in private equity and registered with the SEC as a fund manager—no unregistered or unproven operators.

iv. **Ten years' experience, five in PE:** Each key principal (the CEO and CIO) must have at least ten years investing or managing third-party assets, of which a minimum of five must be specifically in private equity. This is the single hardest bar for newer managers to clear.

v. **90-day exit notice for principals:** Key principals must give at least 90 days' notice before leaving, and that clause has to be written into the agreement with the PFA.

vi. **A prior, realised exit:** The principals must have already exited at least one investment from a previous fund. This requires a track record from an earlier vehicle, which most first-time managers don't yet have.

vii. **3% GP commitment (no global anchor):** If the fund has no globally recognised LP, the GP must put at least 3% of its own money into the fund, but only if it carries a minimum BBB Investment Manager Rating.

viii. **1% GP commitment (with global anchor):** If a globally known foundation, endowment, MDFO or sovereign wealth fund is already a Limited Partner, the manager's own required commitment drops to 1%.

ix. **What counts as a "global anchor":** Those anchor foundations and endowments must be at least 10 years old and hold over US$1 billion, confirmed by audited accounts.

x. **Nigerian nexus (30%):** At least 30% of the fund must go into companies or projects in Nigeria, or into companies earning up to 40% of their revenue in Nigeria.

xi. **LP-majority advisory board:** The fund must have an advisory board on which Limited Partners hold the majority of seats.

xii. **Advisory board audit role:** That same board must have standing responsibility over related-party transactions and compliance with the fund's own investment rules. It turns the board from a formality into a live governance check.

These conditions offer insight as to why PFA allocation into PE has stalled. The constraint has never been if the regulations allow it or not, but the qualifying criteria. A Nigerian PE industry still made up largely of first- and second-time funds, raising sub-$100 million vehicles, often cannot yet meet the prior-exit, five-year-PE-experience or global-anchor conditions.

The gap between what the rules allow and what funds actually invest is real, and only a few managers can yet meet the standard needed to fill it. The February 2026 addendum was a quick fix for exactly this: raising the stock-market cap gave the idle cash somewhere to go. The harder task, building a larger pool of funds that meet PenCom's requirements, takes years, because it happens one fund at a time. A rule can change overnight; a fund's track record cannot. Unless the supply of qualifying funds grows in step, the same build-up of idle cash is likely to return each time the limits are raised.

But, What About VC?

The regulation does not mention venture capital as a separate asset class. Section 2.32 defines a private equity fund broadly, covering everything "from start-ups to large buy-outs", so early-stage venture is simply treated as a kind of private equity. That is neat on paper but difficult in practice, because the same twelve conditions then apply to both. A PE fund and a VC fund are judged by identical tests: the prior-fund exit, the audited accounts, the set exit routes; even though they work very differently. VC funds expect most of their investments to fail and count on a few big winners to carry the whole fund, so a checklist built around steady track records and clean exits suits them poorly. The effect is that the rules are vague when it comes to the funds that back Nigeria's youngest fastest-growing companies, and PFAs are left to treat VC funds as too difficult to judge rather than as a recognised category with rules of their own.

Other Structural Mismatches the Regulation Does Not Solve

1. **The Regulation still thinks like a bond investor:** Nigeria's pension system was built on government bonds, and that foundation still shapes how it assesses everything else. Under Section 3.2, anything a pension fund invests in must carry a credit rating from at least two agencies, one of them Nigerian, a process inherited from the bond

market. Private equity is then made to fit the same mould: if a PE fund has no major global investor backing it, it can only qualify when its manager holds a minimum credit-style rating (a "BBB" Investment Manager Rating, under condition vii). That makes sense for a bond, where the question is simply whether you will be paid back. It makes much less sense for a PE fund, where the return depends on the manager's skill in choosing and growing companies, something a track record and reference checks capture far better than any rating. The continued reliance on ratings is a sign that private equity is still being judged with a bond-market mindset.

2. **Currency sits underneath all of it:** This is the mismatch the regulation cannot legislate away. Most African PE and VC funds raise and report in US dollars; Nigerian pension allocations are in naira. A fund can look compelling on a standalone basis and still fail at the portfolio level once the currency exposure is priced in, a point the report makes directly. The regulation gestures at hedging tools (Section 6.2.13 permits swaps solely for hedging foreign-currency exposure), but the deeper problem is that naira-denominated PE vehicles, sized and structured for a local institutional LP base, barely exist yet. Until that changes, a dollar-based fund asks a PFA to take on currency swings and Nigerian economic risk as well, on top of the ordinary risk that any fund manager might invest poorly.

The Reform Roadmap: Converting Headroom into Allocation

If the diagnosis is right – that the obstacle is the shortage of funds able to qualify and the mismatches above — then the reforms that matter are those that build up the supply of investable, pension-eligible funds and make it easier to move money into them.

1. **Professionalise the GP, using the rules already on the books:** The regulation rewards funds that adopt institutional governance, and managers should treat that as a roadmap rather than a hurdle. LP-majority advisory boards with genuine audit authority are not box-ticking; they are the structure that lets a PFA's investment committee defend the allocation internally. Managers targeting pension capital should also confront the currency problem head-on by building naira-parallel or naira-hedged vehicles, rather than asking a naira-liability LP to absorb dollar exposure it cannot match. The funds that qualify will be the funds that were built, from inception, to be qualified.

2. **Use co-investment as the on-ramp the regulation deliberately built:** The most underused door in the September 2025 rewrite is Section 6.2.10.2, which for the first time codifies pension co-investment. A PFA that has invested in a main PE fund may co-invest in specific transactions through a Special Purpose Co-Investment Vehicle set up by the GP, with exposure capped

at 50% of its commitment to the main fund, and subject to obtaining a formal "No Objection" from the Commission. Co-investment lets a PFA increase deployment into deals it can diligence directly, at lower aggregate fees, without committing blind to a larger primary fund. For the funds that qualify, this is the most capital-efficient path from headroom to deployment.

3. **Decide whether to follow the Ghana model:** The key policy question is whether Nigeria keeps simply allowing private equity or starts requiring it. Ghana chose to require it: a May 2025 directive pushed pension funds and insurers to put 5% of their assets into private equity and venture capital, with the aim of getting domestic money into the real economy. A requirement like that is a blunt tool. It can force money into a market that does not yet have enough good funds to absorb it, pushing up prices, and it can clash with a manager's duty to act in each contributor's best interest. But Nigeria's own experience since September 2025 is the strongest argument that simply allowing private equity is not enough: the limits were raised and the money still sat in cash. Any serious reform discussion has to weigh a Ghana-style requirement against the danger of forcing demand into a market that still cannot supply enough qualifying funds, which would only push the same idle-cash problem up a level. The order matters. Requiring pension funds to invest before more funds can qualify, would simply crowd their money into the few that already meet the conditions. The supply of qualifying funds has to grow first; any mandate should come after, not before.

The ₦31 Trillion Question Answered

Two things are now happening at once, and together they will shape what comes next.

The first is recapitalisation. Under PenCom's September 2025 Regulation, every PFA must reach a ₦20 billion minimum capital base (up from ₦5 billion) by June 2027, or lose its licence. Non-compliant operators will exit, by merger or by revocation. The pension industry that emerges in mid-2027 will be smaller, better capitalised, and under more pressure to generate real returns to justify the capital its shareholders have been forced to commit. Fewer, larger PFAs are exactly the kind of investor that can afford in-house teams who understand private equity and similar assets, and that have a financial reason to pursue higher returns rather than leave money sitting in safe government debt.

The second is the deployment gap, made visible by the February addendum. The excess liquidity the Commission redirected into ordinary shares is likely to reoccur every time the alternatives ceiling rises faster than the supply of qualifying funds.

The convergence of the two is the opportunity. The answer to the ₦31 trillion question is that the law already permits the allocation for the funds that count. What it does not yet permit is for that allocation to find enough homes. The barrier has moved from the regulation's limits to its qualifying criteria. Closing that gap is not a matter of raising the cap again. It depends on building up more managers who can meet the standard, creating naira-based funds, treating venture capital as its own distinct category, and deciding — as a matter of policy — whether Nigeria waits for that supply to grow or moves to require it.

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FAMILY OFFICES AND HIGH-NET-WORTH INDIVIDUALS AS THE NEW LP FRONTIER: SUITABILITY, DOCUMENTATION, AND INVESTOR PROTECTION UNDER NIGERIAN LAW

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INTRODUCTION

The profile of investors participating in private capital funds is evolving across Africa, with family offices and high-net-worth individuals ("**HNIs**") increasingly emerging as an important source of capital. As development finance institutions, pension funds, and foreign institutional investors adopt more selective allocation strategies, fund managers are increasingly turning to private wealth to bridge fundraising gaps and diversify their limited partner ("**LP**") base. In Nigeria, this trend has been reinforced by growing domestic wealth, an expanding private capital ecosystem, and increasing investor interest in alternative asset classes.

At the same time, the legal and regulatory framework governing fundraising from these investors has undergone significant reform. The enactment of the Investments and Securities Act 2025 ("**ISA 2025**"), together with the Securities and Exchange Commission's ("**SEC**") 2025 amendments to its Rules and Regulations, has fundamentally reshaped the regulatory landscape for private funds. Investor classification, eligibility requirements, disclosure obligations, and fundraising practices that were once governed largely by market convention are now subject to more detailed statutory and regulatory oversight.

As family offices and HNIs assume a more prominent role in private fundraising, their participation is no longer merely a commercial consideration. It now raises important legal and regulatory questions relating to investor eligibility, suitability, disclosure standards, onboarding procedures, and the scope of investor protection obligations owed by fund managers.

This article examines the legal and regulatory framework governing fundraising from Nigerian family offices and HNIs, with particular focus on investor classification, suitability requirements, disclosure obligations, documentation standards, and emerging regulatory risks.

1. FAMILY OFFICES AND HNIS AS AN EMERGING LP CLASS

Recent fundraising trends show that private wealth is becoming an increasingly important source of capital in private markets across Africa. According to AVCA's 2025 Activity Report,[1] overall fundraising has declined compared to previous years, even though investor interest in private equity and venture capital remains strong. In this more competitive environment, family offices and HNIs are playing a growing role alongside traditional institutional investors. This shift reflects broader changes in global capital allocation. Family offices and wealthy individuals are increasingly active in alternative asset classes such as private equity, venture capital, real estate, and infrastructure. In Nigeria, this trend is reinforced by macroeconomic conditions, including currency volatility and foreign exchange constraints, which have encouraged greater interest in alternative and diversified investments.

Despite this growing importance, neither the ISA 2025 nor the SEC Rules provides a distinct regulatory regime for family offices. Instead, their treatment depends on structure and activity. A single-family office managing only one family's wealth will generally fall outside the collective investment scheme ("CIS") framework under sections 150 and 151 of ISA 2025, to the extent it does not pool third-party capital. However, a multi-family office that pools and manages capital for multiple families may fall within the scope of a CIS or fund management activity and therefore be subject to registration and regulatory oversight.

Accordingly, family offices investing in private funds are subject to the applicable SEC investor classification framework, while those pooling capital for multiple investors may, depending on their structure and activities, be treated as collective investment schemes or otherwise fall within the regulatory scope of ISA 2025 and the SEC Rules.

2. DEFINITION OF SOPHISTICATED INVESTORS UNDER NIGERIAN LAW

Investor classification is central to the regulation of private fundraising in Nigeria. The SEC Rules distinguish between retail investors, sophisticated investors, high-net-worth individuals ("HNIs"), and qualified institutional investors, with different categories attracting different levels of regulatory protection and access to investment.[2]

Under the SEC Rules, a sophisticated investor is a person who has at least three (3) years' experience of actively investing in the capital market and understands the relationship between risk and return.[3] The classification is intended to identify investors who possess sufficient investment knowledge and experience to assess investment opportunities and associated risks without the level of regulatory protection ordinarily afforded to retail investors.

In contrast, HNIs are defined primarily by net worth thresholds, focusing on financial capacity rather than investment expertise. Institutional investors, such as pension funds and insurers, are regulated entities presumed to possess both sophistication and risk management systems.

In practice, private equity and venture capital funds are typically restricted to qualified investors and structured as private placements. Accordingly, eligibility to participate in certain private fund offerings may depend on whether an investor qualifies as a sophisticated investor, an HNI, or a qualified institutional investor under the applicable SEC Rules. For family offices, classification depends on structure: single-family offices managing proprietary wealth may be treated as HNIs or sophisticated investors, while multi-family offices pooling third-party capital may be regulated as collective investment schemes.

Investor classification is complemented by a suitability assessment at onboarding, including verification of financial capacity, investment experience, and regulatory compliance. Under ISA 2025, private funds remain subject to collective investment scheme regulation even where access is limited to qualified investors, meaning classification governs participation, not regulatory oversight.

3. INVESTOR PROTECTION AND DISCLOSURE REQUIREMENTS

Investor protection remains a central feature of Nigeria's regulatory framework for private funds, notwithstanding the participation of sophisticated investors such as family offices and HNIs. While investor eligibility determines who may participate in a fund, fund managers remain subject to disclosure, suitability, onboarding and asset protection obligations designed to promote transparency, accountability, and investor confidence.

a. Disclosure Obligations and Offering Materials

Qualified investor status does not relieve fund managers of their disclosure obligations. Offering materials must provide sufficient information to enable investors to assess the nature, risks, and terms of the investment. ISA 2025 reinforces these obligations through its disclosure framework for collective investment schemes and imposes liability for material misstatements and omissions in offering documents under sections 161 and 162. Investor protection is further reflected in sections 152, 153, and 154 of ISA 2025, which impose obligations relating to the administration of collective investment schemes, disclosure to investors, and the duties of fund managers. Together, these provisions promote transparency, accountability, and the protection of investors' interests throughout the life of the fund.

b. KYC and Ultimate Beneficial Ownership

Fund managers must verify that prospective investors satisfy applicable eligibility requirements and comply with know-your-customer ("KYC") and anti-money laundering obligations. For HNIs, this includes verifying the relevant net worth and sophistication criteria. Where investments are made through family office structures, additional beneficial ownership checks may be required. The Money

Laundering (Prevention and Prohibition) Act 2022 and the beneficial ownership regime under CAMA 2020 require transparency regarding the persons who ultimately own or control investment vehicles. Accordingly, source-of-funds, source-of-wealth, and beneficial ownership verification are key components of the investor onboarding process.

c. Accountability for Client Assets

Investor protection is further strengthened by provisions that criminalise the misappropriation or misuse of client assets and impose significant penalties, compensation obligations, and civil liability for violations relating [4] to collective investment schemes. For managers exercising broad discretion over illiquid, long-dated positions, this elevates asset segregation, access controls, and auditable transaction trails from good practice to legal necessity.

4. DOCUMENTATION STANDARDS

The documentation expected of a Nigerian PE or VC fund raising from qualified investors has become increasingly prescriptive, and several items are now effectively non-negotiable.[5]

(a) Information memorandum / private placement memorandum. Main offering document setting out fund terms and risk disclosures, subject to SEC disclosure standards and liability for misstatements or omissions.

(b) Regulatory filings/approvals: Fund documents are filed with the SEC and may require regulatory "no objection" prior to fundraising.

(c) Conflict of interest policy: Sets out how conflicts between the manager, investors, and portfolio companies are identified and managed.

(d) Valuation policy: Provides the methodology for valuing portfolio assets, subject to consistency, documentation, and periodic review.

(e) Side letters: Used by family offices and HNIs to negotiate additional rights such as reporting, co-investment, or MFN protections.

(f) Subscription agreement: Captures investor eligibility representations and AML, source-of-funds, and beneficial ownership verification.

(g) Limited Partnership Agreement (LPA): Governs the relationship between the GP and LPs, setting out the commercial, governance, and economic terms of the fund. The ILPA Principles 3.0 remain an important benchmark for private fund documentation and governance. The Principles are organised around the themes of alignment of interests, governance, and transparency, and address matters such as carried interest, clawback obligations, management fees, key person provisions, fiduciary duties, advisory committee practices, and fund expenses. Family offices should consider these principles when negotiating LPAs and side letters, including most-favoured-nation protections.

5. REGULATORY GREY AREAS TO NAVIGATE NOW

a. Foreign-Fund Solicitation and the Limits of Reverse Solicitation

Section 193 of the ISA 2025 restricts the marketing of foreign collective investment schemes to Nigerian investors without SEC approval and imposes significant penalties for non-compliance. In practice, however, foreign fund managers may seek to accept investments from Nigerian investors on the basis that the investment was initiated by the investor rather than through any marketing or solicitation by the fund, a concept commonly referred to as "reverse solicitation".

The difficulty is that neither the ISA 2025 nor the SEC Rules define reverse solicitation or provide guidance on the circumstances in which an investment may properly be regarded as investor-initiated. This creates a regulatory grey area, particularly where there has been prior contact between the fund and the investor or where the investor became aware of the fund through indirect marketing activities. Until further guidance is issued by the SEC, reliance on reverse solicitation should be approached cautiously and supported by clear evidence that the investment opportunity originated with the investor.

b. Private placement vs public offer risk

Although ISA 2025 permits broader fund structures, excessive or uncontrolled marketing may convert a private placement into an unauthorised public offer. Strict investor targeting and controlled distribution remain essential.

c. Thresholds, fees and the SEC's 2025 guidance

The two-tier registration regime, SEC registration for PE funds above ₦5 billion, and a "no objection" process for those at or below it, requires managers to form an early, defensible view of target fund size, since it dictates the entire authorisation pathway. The fee caps (2% management and expenses, 20% performance, measured on the amount raised in Nigeria) are now hard limits, and following PEVCA's own enquiries, the SEC's October 2025 Interpretative Guidance Note clarified that the 2% cap applies to the fund manager's fees and expenses rather than to expenses incurred at the fund level. For HNI-heavy funds, the allocation of expenses between manager and fund level should be addressed transparently in the documentation.

CONCLUSION

The rise of Nigerian family offices and high-net-worth individuals reflects a growing shift in the private capital landscape, with domestic wealth becoming an increasingly important source of fund capital. However, under ISA 2025 and the SEC Rules, investor sophistication does not reduce regulatory oversight, but rather reinforces requirements on disclosure, governance, and investor protection.

Accordingly, fund managers and family offices must operate within a more structured regulatory framework, where compliance and discipline determine successful participation in Nigeria's evolving private capital market.

[1] AVCA (African Private Capital Association), 2025 African Private Capital Activity Report (released March 2026).
[2] SEC Rules on Crowdfunding, 2021
[3] ibid
[4] ISA 2025, s. 169, expressly criminalising misappropriation or misuse of client assets, with penalties of the greater of ₦50 million or four times the profit derived, daily default fines, mandatory investor compensation with interest, and potential suspension or revocation of registration; s. 155(3) supports a private right of action for CIS violations.
[5] SEC Rules, Rules 557, 558, 560, 561, 562 and 563 (as amended on 24 April 2025, implemented May 2025), and the SEC Interpretative Guidance Note on Rules 558, 560(b) and 560(c) issued in October 2025 following enquiries from the Private Equity and Venture Capital Association of Nigeria.

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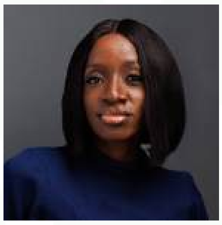

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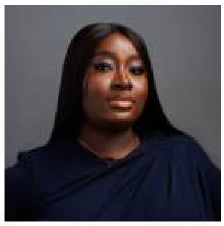

Wuraola Oyeniyi

SIDE LETTERS IN NIGERIAN PRIVATE CAPITAL FUNDS: WHAT LIMITED PARTNERS ARE ACTUALLY ASKING FOR AND WHAT GENERAL PARTNERS CAN LEGALLY AGREE TO

SOLT Legal | Timothy Davies | Mojisola Fashola

1.0. Introduction[1]

A side letter is a binding agreement that supplements a private fund's core documents in relation to a specific investor, enabling sophisticated limited partners (**LPs**) to secure bespoke protections without amending the fund's governing documents. As side letters become commercially indispensable in the growing Nigerian private capital market, general partners (**GPs**) must carefully balance investor preferences with administrative efficiency and equitable treatment across the LP base. Ultimately, GPs should carefully evaluate each commitment, both for its operational implications and potential impact on other investors.

2.0. Common Side Letter Terms

The terms of a side letter typically depend on factors such as the type of investor, the fund's structure, and its investment strategy. While these factors influence negotiations, institutional investors often present a relatively standard set of requests. Some of the most common are considered below:

2.1 Most Favoured Nation

A most favoured nation (**MFN**) clause gives an investor the right to benefit from more favourable terms granted to other investors in the same fund. In effect, it allows an investor to elect rights granted to another investor in a side letter, even though those rights were not expressly granted to it. For first-close investors, especially those with large commitments, this helps to ensure that they do not end up with less favourable terms than subsequent-close investors.

MFN provisions remain widely demanded because they help address the information asymmetry inherent in closed-end fund formation. MFN rights are therefore typically tied to a GP's disclosure obligations. To be effective, the clause obligates the GP to disclose side letters entered into with other investors, so the electing investor may choose any relevant benefit.

From a Nigerian fund governance perspective, MFNs are generally enforceable as contractual rights, provided the constitutive fund documents permit side letters. The practical challenge lies in the administrative complexity. A broadly drafted MFN clause can become a rolling re-papering obligation, requiring the GP to circulate side letters after each closing, track investor elections and update documentation, creating additional administrative burden on the GP.

GPs should therefore resist "global parity" drafting and instead define MFN scope carefully.[2] They may limit MFN eligibility by commitment thresholds, so that an investor may only elect terms granted to investors with equal or smaller commitments. GPs should also negotiate election timeline and exclude rights that are peculiar to an investor's legal, regulatory, or tax circumstances. These guardrails ensure specific provisions are not extended to a broader investor base.

To mitigate the risk of breaching confidentiality obligations in the fund documents, GPs should reserve the right to disclose only the material terms of side letters. Rather than circulating copies of individual side letters, the GP will typically compile and summarise the key provisions in a disclosure matrix or spreadsheet distributed to all LPs holding MFN rights. This approach enables the GP to redact proprietary or identifying information, including the investors' names, addresses, and any details that could compromise investor anonymity, while still providing sufficient transparency for MFN elections.

2.2. Excuse and Exclusion Rights

Excuse rights allow an investor to opt out of a specific investment without being in default, where participation would breach law, internal policy, sanctions rules, or investment limits. These rights are particularly important for development finance institutions, public institutions, pension-linked investors, and ESG-focused investors, who often require exclusions from certain sectors or jurisdictions.

While this clause is justifiable and unavoidable for most institutional investors, the key negotiation and drafting issue for GPs is precision. A defensible excuse right should be triggered by a clearly defined category, rather than enabling an investor to cherry-pick deals. GPs should also consider the possible implications of granting excuse rights. For example, if a fund's investment strategy is to invest in West Africa (particularly Nigeria, Ghana, and Senegal), and an investor with significant commitment requests to be excused from all non-Nigerian investments, the investor may ultimately be excused from a substantial portion of the fund's portfolio. This has material consequences for fund accounting, reporting, and portfolio management.

From a Nigerian law perspective, there is no general prohibition on granting excuse rights in a private fund. However, GPs must ensure that the fund documents permit non-participation in certain investments and that this does not constitute a default or breach of fiduciary duties to both the excused investor and the non-excused investors.

2.3. Sector Allocation Limits

Similar to excuse and exclusion rights, investors are increasingly negotiating sector allocations in side letters. These provisions restrict LPs' exposure in certain sectors or require that a minimum portion of the LP's commitment be deployed in designated sectors. For instance, some investors impose caps on the percentage of their commitments that may be invested in sectors such as oil and gas. Conversely, investors may require that a minimum allocation be committed to sectors that align with their strategic or ESG priorities. Recent market trends indicate that renewable energy and technology are among the sectors most frequently identified for preferential allocation.

GPs should carefully assess any proposed sector-allocation requirements against the fund's investment policy and mandate to ensure alignment. Side letter obligations that are inconsistent with, or more restrictive than, the fund's investment strategy may create operational challenges, compliance risks, and potential conflicts between investor requirements and the GP's fiduciary duties to the fund as a whole.

2.4. Concessions on Management Fee

LPs often seek management fee concessions in their side letters. These requests are most common among anchor investors, and LPs making significant commitments to the fund. Fee concessions may take several forms. The most straightforward is a reduction in the management fee rate applicable to the LP's commitment. For instance, a reduction of the standard 2% per annum rate to 1.5% or 1.75%. Other concessions include step-downs in management fees after certain thresholds, such as the end of the investment period, have been reached.

GPs should carefully consider the operational implications of granting investor-specific fee concessions and ensure that the methodology for calculating reduced fees is clearly documented. GPs should also consider the cumulative effect of multiple fee concessions on the fund's overall economics and operating budget. While management fee concessions can be an effective tool for attracting strategic investors and securing early commitments, excessive concessions may materially reduce the income available to support the management and operations of the fund.

2.5. Co-Investment Rights

Investors interested in co-investment opportunities often request this to be clearly provided in their side letter. This allows investors to gain increased exposure to a fund's attractive assets in a fee-efficient manner. Beyond the right to participate in co-investment opportunities, investors are increasingly requesting the right to be offered these opportunities in priority – either by first look or participation rights based on commitment size or strategic status.

A GP may grant co-investment rights but should ensure that such rights are permitted by the fund documents, and that proper disclosures are made. Thus, when negotiating, GPs should avoid granting unfettered priority undertakings unless the allocation process is clearly documented, objective, and subject to availability, timing, confidentiality, concentration limits, and conflicts-management policy.

2.6. Enhanced Reporting, ILPA[3] Terms, and AIFMD[4]-Style Disclosure

Enhanced reporting is one of the most requested and commonly granted investor protections in side letters. Investors use this request to vary the frequency, content or format of the standard reporting the fund is obligated to provide under the fund documents. The scope of enhanced reporting requirements may vary from one investor to another. Common requests include portfolio-level financial data, Environmental, Social and Governance (ESG) data, development impact metrics, regulatory audit reporting, bespoke templates aligned with internal systems or international frameworks.

Although these provisions are generally acceptable, GPs should assess the operational and administrative implications of providing these additional reports. GPs should also avoid committing to deliver information they do not control. A prudent drafting technique is to commit to providing information 'reasonably available' to the GP and 'reasonably required' subject to confidentiality, applicable law, and the rights of other investors.

2.7. Advisory Committee Seats

Advisory committee (AC) seats are attractive because they offer institutional investors oversight without conferring formal management authority. Investor requests now extend beyond seat entitlement to include observer rights, replacement rights, quorum sensitivity, enhanced information flow, insurance coverage and even veto-like consultation rights.

There is nothing legally objectionable in granting AC representation, but GPs must resist any drift toward converting the AC into a shadow decision-making or control body. AC rights are usually acceptable where they preserve the committee's 'advisory' function, such as conflicts, valuation methodology, extensions of term, waivers, related-party matters, and certain borrowing or concentration issues. The real risk arises when AC involvement expands into broad approval rights, which can blur the distinction between oversight and management of the fund.

3.0. Conclusion

Side letters are a vital component of the fundraising process, but poor management can severely disrupt a fund's operations. As investors increasingly demand protection, GPs must align these requests with their fund's regulatory framework and operational capacity. To manage this effectively, GPs should treat side letters as complementary supplements to the core fund documents and establish workflows to ensure key operational obligations in side letters are recorded, monitored, and tracked for compliance.

[1] SOLT Legal provides fractional general counsel services to leading private equity and venture capital fund managers, including Kuramo Capital Management LLC, Moremi Capital Management LLC, and Sahara Impact Ventures Limited.
[2] For example, a GP may limit MFN rights to apply to only specific economic terms rather than all side letter provisions.
[3] The Institutional Limited Partners Association (ILPA) is a global trade association that represents institutional investors in private equity and sets standards for transparency, governance, and reporting.
[4] The Alternative Investment Fund Managers Directive (AIFMD) is a regulatory framework established by the European Union (EU) to regulate the management and marketing of alternative investment funds within the EU

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CARRIED INTEREST IN NIGERIAN PRIVATE CAPITAL FUNDS: TAX TREATMENT, CLAWBACK ENFORCEABILITY AND THE UNRESOLVED QUESTIONS

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Introduction

Private equity has become an important source of long-term funding for Nigerian businesses, and this has drawn closer attention to how those who manage private capital funds are remunerated. Funds may be structured in a variety of ways, including as a Limited Partnership ("**LP**"), Limited Liability Company ("**LLC**"), Limited Liability Partnership ("**LLP**"), or trust structure. Depending on the structure adopted, the recipient of the performance-based reward may be a General Partner ("**GP**"), a fund manager or another designated management or carry vehicle.

One means of rewarding the persons responsible for sourcing investments, managing portfolio companies and generating returns for investors is through carried interest (the "**carry**"). Carried interest generally entitles its recipient to a share of the profits generated by the fund once specified performance thresholds have been met. Although the legal form of the entitlement differs across fund structures, its economic purpose remains the same: to align the interests of fund managers with those of investors by linking compensation to the performance of the fund.

Carry is the share of a fund's profits paid to its managers in return for sponsoring and running the fund and for maximising its returns. In Nigeria, it is typically 20 per cent[1] of the fund's overall profits, payable only after the investors have recovered their capital and the agreed hurdle rate has been met.

The real difficulty is that Nigerian tax law contains no specific provision directed at carried interest. It is a settled principle, however, that earnings are taxable unless specifically exempted. Therefore, in the absence of any specific tax treatment of carried interest, the general Nigerian tax rules will apply.

A key question to ask is whether carried interest is a reward for services, a share of partnership profit, or a gain on the disposal of investments? The answer to this question requires a close analysis of the Nigeria Tax Act 2025 **("NTA").**

This article works through those issues: what carried interest is and why its classification matters; how it is likely to be treated under the NTA across personal income tax, company income tax and withholding tax mechanisms; the enforceability and tax consequences of clawback, and the case for a clear statutory footing.

1. Understanding Carried Interest and Why Classification Matters

The classification of an earning is

pivotal in determining how it is taxed. The manner in which carry is taxed most often depends on the structure of the fund itself. Under this segment, we will analyse the various fund structures available and how carry can be taxed under them.

a. Limited Partnership

Under a Limited Partnership, the partnership is generally treated as a tax-transparent or pass-through vehicle. Accordingly, the partnership itself is not subject to tax on its profits. Instead, the income and gains of the partnership are taxed directly in the hands of the partners as though they had invested in the underlying portfolio companies directly. The nature of the income realised by the partnership therefore determines the applicable tax treatment in the hands of each partner, whether personal income tax, company income tax, or tax on chargeable gains (i.e. capital gains tax).

For example, where the partnership derives income in the form of interest, dividends, or similar returns, the carried interest allocated to the fund manager may be characterised as income. Conversely, where the partnership's profits arise from the disposal of investments held by the fund, the carried interest may be characterised as a chargeable gain.

It is noteworthy, however, that the distinction between income and gains has become less significant under the Nigerian Tax Act 2025. Prior to the Act, chargeable gains were generally subject to capital gains tax at a separate rate of 10%. Under the current regime, gains are taxed within the broader income tax framework. Consequently, an individual is taxed on such gains at the applicable personal income tax rates, subject to the same progressive bands as other income, up to a maximum rate of 25 per cent. Similarly, corporate taxpayers are taxed under the company income tax regime.[2]

As a result, carried interest will often attract a broadly similar tax burden irrespective of whether it is characterised as income or as a chargeable gain, unless a specific exemption, relief, or preferential treatment applies. Nevertheless, the classification remains important, as it determines the applicable tax rules, including the availability of particular exemptions, deductions, and reliefs.

b. Limited Liability Partnership

An LLP is a body corporate created under Part B of the Companies and Allied Matters Act 2020 (as amended) ("**CAMA**"). Section 746(1) defines it as a body corporate formed and incorporated under CAMA, with a legal personality separate from that of its partners. It is therefore the LLP, and not its members, that carries on business, holds assets and receives income from the underlying investments. An LLP is also required to have designated partners, who are responsible for ensuring compliance with certain statutory obligations imposed on the LLP under CAMA.

Section 118 of the Nigeria Tax Act 2025 includes an LLP within the definition of a "company".

Accordingly, the LLP is generally treated as a separate taxable person. Where the fund is structured as an LLP, carried interest is allocated in accordance with the LLP Agreement or any other agreement governing the carried interest arrangement.

Where the carried interest is funded from dividend income received by the LLP, the dividend will ordinarily constitute franked investment income under section 51(3) of the Nigeria Tax Administration Act 2025. In that case, section 51(4) permits the LLP to set off the withholding tax already suffered on the underlying dividend against any withholding tax obligation arising on the onward distribution of that income. Consequently, where the carried interest is paid from such dividend income, it should not ordinarily suffer an additional withholding tax burden merely because the dividend passes through the LLP before being distributed.

c. Limited Liability Company

Where the fund is incorporated as a company under the Companies and Allied Matters Act 2020, it is treated as a separate taxable person and is subject to company income tax under the Nigeria Tax Act 2025.

Where carried interest is payable to a person entitled to receive carry under the fund documents, the tax treatment will depend on the status of the recipient. If the recipient is an individual, the carry may be subject to personal income tax. If the recipient is a company, the carry will generally form part of the company's taxable profits and be chargeable to company income tax, unless a specific exemption or relief applies.

This differs from a limited partnership structure, where the carry may retain the character of the underlying income or gains realised by the fund. In a company structure, the company is taxed as a separate entity, and a corporate recipient of carry is taxed on its total profits in accordance with the provisions of the Act.

The NTA imposes company income tax ("CIT") on the total profits of a company and provides relief for qualifying small companies. Under the Act, a small company is one with an annual gross turnover of ₦100 million or less and total fixed assets not exceeding ₦250 million. A qualifying small company is subject to CIT at the rate of 0%, while companies that do not qualify for the exemption are generally subject to CIT at the rate of 30%. In addition to CIT, a company is liable to Development Levy at the rate of 4% of its assessable profits, subject to the provisions of the Act.

Accordingly, where the entity receiving the carried interest is a company, the carry will generally be subject to this corporate tax framework. However, the franked investment income considerations discussed above may also be relevant where the carry is funded from dividend income that has already suffered withholding tax.

2. Key Considerations for Structuring Carried Interest

a. Clawback Provisions and Their Tax Consequences

Depending on the structure adopted, carry may sometimes be distributed on a deal-by-deal basis. However, a fund's performance is rarely uniform across its life cycle. Carry may be paid from early successful deals, only for later investments to underperform. The purpose of a clawback provision is to address this imbalance.

The operation of a clawback is best illustrated by example. Assume a fund disposes of its first two investments at a profit and distributes carried interest in respect of those gainful exits. If the remaining investments subsequently perform poorly, the LPs may recover less than their contributed capital despite the carry recipient having already received carry. A clawback provision requires the carry recipient to repay the excess carry so that its ultimate entitlement is determined by reference to the overall performance of the fund rather than the outcome of individual investments.

Notwithstanding this contractual framework, clawback provisions give rise to a distinct tax concern. By the time a clawback obligation arises, the carry recipient may already have paid tax on the carried interest received, whether as personal income tax, company income tax, or withholding tax. If the carry recipient is subsequently required to repay part or all of that carry, it may have borne tax on an amount that it does not ultimately retain.

Neither the Nigeria Tax Act 2025 nor the Nigeria Tax Administration Act 2025 contains specific provisions dealing with the tax treatment of clawback repayments. Consequently, where carried interest has been recognised as taxable income, and tax has been paid, a subsequent repayment does not automatically reverse the tax consequences of the original receipt.

It may, however, be argued that a clawback repayment constitutes a loss for the purposes of sections 27(6) and 28(3) of the NTA 2025. Since the repayment arises directly from the arrangement under which the carried interest was earned, the GP may contend that the amount represents a loss and is therefore deductible in computing its total income.

b. Structuring Considerations

The following are structuring considerations:

i. One means of addressing clawback risk is to defer a portion of carried interest through an escrow or holdback arrangement until it is reasonably certain that no future clawback obligation will arise. This reduces the likelihood that a fund manager will be required to repay amounts that have already been taxed and distributed.

ii. Another protection is to provide contractually that any clawback amount is calculated net of taxes and other statutory deductions already paid by the fund manager. Under such an arrangement, the fund manager is required to return only the amount actually retained after tax rather than the gross amount originally received.

iii. The choice of vehicle through which carried interest is received is also relevant. Carried interest received directly by an individual may be subject to personal income tax at rates of up to 25 per cent. By contrast, where the recipient is a company, the carry generally forms part of the company's taxable profits and may be subject to company income tax at 30 per cent, together with the applicable development levy, subject to any available exemptions or reliefs. Where the recipient is a qualifying small company, the applicable company income tax rate may be 0 per cent.

iv. The tax treatment of carried interest may also be affected by the legal vehicle through which it is received. As discussed above, carried interest received through a limited partnership is generally taxed in the hands of the partners and derives its character from the underlying income or gains realised by the fund. By contrast, carried interest received through a limited liability partnership may be subject to the distinct rules applicable to LLPs under the NTA 2025, including the treatment of distributions made through that vehicle.

While careful structuring cannot eliminate all uncertainty created by the absence of specific legislative provisions on carried interest, it can significantly reduce the scope for disputes and provide greater certainty as to the economic allocation of tax risk among the parties.

Conclusion

Carried interest is economically central to private capital yet legally undefined for tax purposes. By bringing gains and income within the same tax bands, the NTA 2025 has narrowed the practical significance of how carried interest is classified and structured. In many cases, the applicable tax rate will be the same whether the carry is characterised as investment income, a capital gain, or ordinary income. However, the reforms have not removed the underlying uncertainty, nor have they addressed the related issues of clawback enforceability and the taxation of carried interest that is subsequently repaid.

For now, the burden falls on careful drafting. Fund documents should state clearly the nature of the carried interest, the operation of any clawback mechanism, and the allocation of tax liabilities where carry is returned. The better solution, in time, is legislative. A concise statutory provision defining carried interest and prescribing its tax treatment would do more to enhance Nigeria's attractiveness as a destination for private capital than any amount of interpretive effort directed at a statute that, at present, does not address the issue directly.

[1]Rule 560(d), Securities and Exchange Commission Rules and Regulations, as amended by the New Rules and Sundry Amendments 2025 (total performance fee of a private equity fund not to exceed 20% of the sum raised in Nigeria).
[2] Section 58 and the Fourth Schedule of the NTA.

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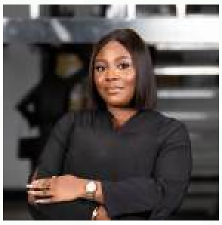
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CO-INVESTMENT RIGHTS IN NIGERIAN PRIVATE EQUITY AND VENTURE CAPITAL FUNDS

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1.0. Introduction[1]

Globally, co-investment rights have become a cornerstone of private equity and venture capital **(PEVC)** funds. By investing alongside funds in targeted transactions, limited partners can enhance portfolio exposure while reducing their blended cost of capital. Reflecting on these global trends, Nigeria's maturing private market is experiencing increased participation from sophisticated local and international investors who are strongly negotiating co-investment allocations.

Although commercially valuable in unlocking capital from investors, co-investments require legal and structural oversight. Fund sponsors must balance fundraising momentum against the structural risks inherent in these dual-track transactions – particularly, deal allocation issues, disclosure alignment, and regulatory constraints. A clearly articulated and institutionalised policy will help general partners avoid fiduciary exposure and operational vulnerabilities.

2.0. Understanding Co-investments

Co-investment rights in PEVC are contractual rights that allow limited partners (**LPs**) to invest in portfolio companies alongside the main fund, in addition to their capital commitment to the main fund. A co-investment arrangement generally permits certain investors in a PEVC fund to participate directly in investment opportunities sourced by the general partner (the **GP**). Co-investments can be structured as a direct co-investment into the target portfolio company alongside the main fund, or indirect co-investment through a specialised Co-Investment Vehicle (**CIV**).

Co-investments enhance access to attractive, proprietary and diversified deals, giving LPs the advantage of benefitting from the deal sourcing, diligence, and value creation expertise of PEVC firms. Co-investments have the potential to generate superior net returns driven by reduced or nil management and performance fees compared to traditional funds. For GPs, co-investments provide a mechanism to deploy increased capital into attractive portfolio companies, while maintaining fund concentration limits.

Portfolio companies, particularly those undergoing capital-intensive operations or multi-country expansion, often require financing that exceeds most funds' concentration limits. Typically, limited partnership agreements cap a fund's exposure to a portfolio company at a fixed percentage of total fund commitments, typically 15% to 20%. By structuring co-investments, the GP can anchor highly competitive or capital-intensive deals without breaching these concentration limits, thereby maintaining strategic control of the opportunity while preserving the main fund's dry powder. Co-investments also strengthen the GP's relationships with strategic LPs.

3.0. Common Co-investment Models

GPs can adopt a range of co-investment structures depending on regulatory complexity, tax efficiency, and administrative burden. The two most common models are:

3.1. The CIV Model

In this model, the GP establishes a dedicated co-investment vehicle (a CIV) to pool capital from its fund and one or more co-investors. The CIV then invests directly into the portfolio company. Key advantages of the CIV model include full ring-fencing of liabilities, tailored economic terms (such as alternative fee or carry arrangements), and alignment of specific governance rights for co-investors. However, the structure also has some drawbacks, including high administrative and regulatory overhead, additional entity incorporation and maintenance costs, and separate tax filing obligations.

3.2. Direct Investment

Under the direct investment model, the co-investor invests directly in the portfolio company alongside the main fund, becoming a shareholder in the portfolio company. This structure is adopted by LPs seeking direct involvement in the portfolio company through board participation.

The direct investment model offers some advantages over the CIV model, including a lower cost profile, nil holding vehicle overhead, and the absence of asset-pooling complexities.

On the other hand, direct investment presents some disadvantages. It can clutter the portfolio company's cap table and complicate exit execution since the GP cannot unilaterally bind the co-investors without negotiating detailed shareholder agreements.

4.0. Documentation Framework for Co-investments

The legal enforceability of co-investment arrangements rests on a tightly integrated suite of agreements. The core documentation stack typically includes the main fund's LPA, relevant side letters, and the constitutional documents governing any co-investment vehicle.

4.1. Limited Partnership Agreement

No co-investment arrangement can be implemented unless the main fund's LPA expressly permits it. The LPA must contain enabling provisions that empower the GP to offer co-investment opportunities, establish CIVs, and allocate associated expenses. Co-investment rights are typically not guaranteed to all investors in a fund. It is common for first-close or strategic investors to negotiate preferential co-investment access. The GP, on the other hand, typically seeks to retain discretion to allocate co-investments to investors who, beyond providing capital, can contribute expertise, de-risking benefits or upside value creation support to a portfolio company.

4.2. Side Letter

LPs typically negotiate specific co-investment rights, which are codified in bilateral side letters. These clauses must be crafted with precision to avoid constraining the GP's flexibility. Side Letter co-investment provisions generally fall into two categories:

- **Hard Co-Investment Rights:** Grants the LP a binding right to participate in any co-investment opportunity. This is typically reserved for anchor LPs contributing a significant percentage of the fund's target size. To manage deal execution delays, counsel must ensure these clauses contain a strict 'deemed declined' timeline, typically 5 to 10 business days.

- **Soft Co-Investment Rights:** The GP covenants to use commercially reasonable efforts to consider the LP for co-investment opportunities. This provides maximum flexibility to the GP and carries minimal execution risk.

4.3. Shareholders' Agreement

Where the CIV model is adopted, the GP and co-investing LPs will set up a CIV and execute a shareholders' agreement to govern their investment in the portfolio company. Key considerations in the Shareholders' Agreement of a CIV include:

- **Board Composition:** PEVC funds must carefully assess the board composition of the CIV and the portfolio company. Subject to investment size, co-investors may negotiate the right to nominate directors to the portfolio company. Where a board seat is not feasible, a co-investor may negotiate for board observer rights to ensure visibility into board deliberations and ensure that the co-investor's interests are considered;

- **Approval Rights:** Co-investors often negotiate veto or approval rights over major CIV or portfolio company decisions to protect their investments. These rights must be carefully considered to ensure minimal impact on the ability of the portfolio company to make timely decisions; and

- **Information Rights:** Co-investors should negotiate robust information rights in relation to the portfolio companies to effectively monitor their investments and meet internal reporting obligations.

5.0. Regulatory Framework for Co-investment

While no legislation directly regulates co-investments in Nigeria, the Revised Regulation on Investment of Pension

Fund Assets issued in September 2025 (the **Regulation**), establishes an operational framework for co-investments by Pension Fund Administrators (**PFAs**). One of the key requirements of the Regulation is that co-investment arrangements must be executed through a GP-established Special Purpose Co-Investment Vehicle (**SPCV**). The SPCV, which operates like a CIV, must have a clearly defined legal status, governance framework, rights and obligations. The governance framework is expected to clearly define respective roles and responsibilities of the GP and the co-investing PFAs, including rights, risk management protocols, pre-emptive rights, liquidity and exit structures. The Regulation further requires that a PFA may not invest more than 50% of its commitment to the main fund into the SPCV, and any such commitment must remain within the overall investment limits prescribed by the Regulation.

6.0. Conclusion

Co-investment rights are a powerful mechanism for expanding investment capacity, facilitating larger transactions and strengthening relationships between fund managers and their limited partners within Nigeria's private capital ecosystem. It can also offer investors deeper involvement with portfolio companies. However, its implementation should be managed through the adoption of a structured and institutionalised framework that addresses allocation policies, conflict-management protocols, documentation standards and regulatory compliance.

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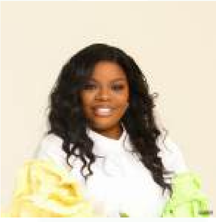

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BUILDING NIGERIA'S PRIVATE CREDIT MARKET: THE LEGAL AND REGULATORY ARCHITECTURE THAT DOES NOT YET EXIST

G. Elias | Kuburat Abubakar | Victoria Akingbemila | Michelle Chikezie | Abdulrasaq Davies

Introduction

Over the past two decades, private credit has evolved from an alternative source of finance into a central pillar of global capital markets. Its rise was largely catalysed by the aftermath of the 2008 global financial crisis, which ushered in stricter capital requirements and heightened regulatory scrutiny for traditional banks. As banks retreated from certain segments of the lending market, alternative lenders stepped in through private credit to fill the financing gap, providing businesses with access to capital that was increasingly difficult or expensive to obtain through conventional banking channels.[1] What began as a niche asset class has since become a multi-trillion-dollar industry, with the global private credit market surpassing US$2.1 trillion in assets and committed capital by 2023.[2]

At its core, private credit refers to debt financing provided by non-bank lenders directly to companies, micro, small and medium-sized enterprises ("**MSMEs**"), and projects through privately negotiated arrangements.[3] The appeal of private credit lies in its flexibility. It enables lenders and borrowers to structure financings tailored to their specific commercial realities while often providing faster access to capital and more competitive pricing than traditional financial institutions.

However, Nigeria's private credit market is emerging and differs significantly from global mature markets with key limiting challenges. This article interrogates the current state of Nigeria's private credit market, examines the legal and regulatory gaps that continue to impede its growth, and identifies the reforms necessary to unlock the market's full potential.

Nigeria's Current Private Credit Market Infrastructure

Lending as a concept is not new to the Nigerian market, nor is it sparsely regulated. Businesses have, from time immemorial, sought debt financing from traditional banks, upon fulfilling the requisite lending requirements. Larger corporates seeking alternatives to bank financing may access the capital markets through the issuance of debt securities. However, a significant financing gap persists.

MSMEs, which constitute approximately 90% of businesses in Nigeria,[4] often struggle to satisfy the stringent requirements imposed by traditional lenders, particularly regarding collateral documentation and credit history, yet are too small to access the capital markets. It is within this gap that private credit has emerged as a potential solution.

The foundation of Nigeria's traditional

lending framework is primarily contained in the Banks and Other Financial Institutions Act, 2020 ("**BOFIA**"), which regulates banking business and empowers the Central Bank of Nigeria ("**CBN**") to licence and supervise banks and other financial institutions. Commercial banks, merchant banks, non-interest banks and finance companies derive their authority to lend from licences issued pursuant to BOFIA and subsidiary regulations issued by the CBN. Private credit operates distinctly outside this banking framework as it specifically refers to non-bank lending, debt financing provided by institutions that do not hold BOFIA banking licences. There also exist the money lenders laws of the respective states in Nigeria, which, upon grant, will give the holders the ability to carry on the business of money lending in the state in which it is established. However, these laws predate modern private credit.

Unlike traditional banking, Nigeria lacks dedicated private credit legislation. The Investments and Securities Act, 2025 ("**ISA**") and the Securities and Exchange Commission Rules and Regulations (the "**SEC Rules**") regulate collective investment schemes ("**CIS**"), private equity funds and capital market operators. The Companies and Allied Matters Act, 2020 ("**CAMA**"),[5] which governs corporate borrowing powers, the creation and registration of security interests by companies,[6] corporate restructurings and insolvency proceedings,[7] provides a framework for fund entities providing private credit. In parallel, the Secured Transactions in Movable Assets Act, 2017 ("**STMA**"), which expanded the range of movable assets that may be used as collateral to include tangible or intangible property other than real property[8] and established the National Collateral Registry[9] ("**NCR**"), improved credit access for businesses, particularly MSMEs. These laws are merely happenstance or coincidental as far as private credit markets are concerned.

Accordingly, market participants are compelled to navigate a hodgepodge of banking, securities lending, corporate, insolvency and secured transactions laws in order to achieve outcomes that, in more developed jurisdictions, are supported by dedicated private credit regulations. Private credit transactions are often undertaken through private equity structures, alternative investment funds or bespoke investment arrangements that were not specifically designed for private debt strategies. This fragmentation increases transaction costs, creates uncertainty in navigating compliance and ultimately constrains the growth of the Nigerian private credit market.

Structural Weakness in Nigeria's Private Credit Market Infrastructure and Recommended Reforms

a. Regulatory Uncertainty Surrounding the Establishment and Operation of Private Credit Funds

A significant weakness in Nigeria's legal infrastructure for private credit is the structural ambiguity surrounding the establishment and operation of credit funds. Although the ISA provides a framework for CIS and other pooled investment vehicles, neither the ISA nor the SEC Rules expressly recognise or regulate private credit funds as a distinct category of investment fund.

This creates uncertainty regarding the appropriate legal and regulatory characterisation of private credit funds. In particular, it is unclear whether such funds should be established and regulated as CIS,[10] alternative investment funds,[11] or another form of investment vehicle altogether. In practice, many private credit funds establish themselves as SEC-regulated CIS to obtain regulatory coverage, though this remains a pragmatic solution rather than explicit legal authorisation. While SEC registration provides oversight of the fund structure, uncertainty persists regarding whether lending activities separately constitute regulated financial services requiring authorisation from the CBN.

Unlike traditional CIS that primarily invest in securities, private credit funds may originate, acquire, and hold loans and other credit exposures. Consequently, a private credit fund performs functions that closely resemble those undertaken by finance companies and other financial institutions ordinarily regulated by the CBN. The current regulatory framework in Nigeria provides little guidance on whether a private credit fund may engage in these lending activities solely under SEC authorisation, or whether additional licensing, approval, or oversight by the CBN and whether the Federal Competition and Consumer Protection Commission's ("**FCCPC**")[12] oversight applies to these lending activities. While each regulator performs an important statutory function, this absence of clear regulatory demarcation raises the risk of duplicative compliance obligations, inconsistent regulatory expectations, and increased structuring costs for market participants.

This regulatory ambiguity has contributed to Nigeria's private credit market remaining in emerging developmental stages, with limited scale compared to developed markets. In contrast, jurisdictions like the United States and the United Kingdom have established explicit regulatory frameworks that recognise private credit funds as distinct investment categories. In the U.S., private credit funds operate under the Investment Company Act of 1940 and the Investment Advisers Act of 1940, with the Securities and Exchange Commission (SEC) providing clear guidance on permissible lending activities without requiring separate banking licences. Similarly, the UK's Financial Conduct Authority (FCA) explicitly categorises private debt funds under its alternative investment framework, delineating FCA oversight from the Bank of England's banking regulation.

To address this, Nigeria must introduce distinct legislation for private credit funds, direct lending funds, and other private debt vehicles under the supervision of the SEC, with clear guidance on their permissible activities, governance requirements, disclosure obligations and investor eligibility criteria. More importantly, the law would expressly clarify the extent to which such funds may originate, acquire and hold loans without requiring licensing as CBN-regulated institutions. This would also effectively delineate the respective oversight responsibilities of the SEC and the CBN in relation to private credit activities, mirroring the clear regulatory demarcation where securities regulators oversee fund structures while banking regulators focus on traditional deposit-taking institutions.

b. Fragmentation of Credit Information Systems and Absence of a Unified Borrower Registry

A structural weakness in Nigeria's private credit ecosystem is the absence of a comprehensive, centralised borrower registry capable of providing real-time, consolidated information on borrower credit exposure, repayment history, and financial standing. Although Nigeria maintains credit reporting infrastructure through licensed credit bureaus and CBN regulatory initiatives, these systems remain isolated and are not fully integrated into a single real-time platform accessible across lenders. As a result, credit information is dispersed across multiple databases with varying levels of completeness and timeliness.

This lack of integration creates information asymmetry in the credit market, particularly for private credit funds and other non-bank lenders that rely on accurate credit data to price risk and structure transactions. In the absence of a unified registry, lenders may be unable to assess a borrower's aggregate indebtedness across the financial system, increasing the risk of over-leverage and mispricing of credit risk. It also increases operational and systemic risk, including undisclosed multiple borrowing, higher due diligence costs, and challenges in monitoring credit exposure. These constraints are particularly acute in private credit markets, where bespoke lending structures and illiquid exposures require high-quality borrower intelligence.

c. Absence of a Central Collateral Registration System

The multiplicity of collateral registries and their operational limitations contribute to the weakness of Nigeria's private credit ecosystem. Security interests are registered across multiple registries depending on the nature of the collateral, including the Corporate Affairs Commission ("**CAC**") Register of Charges,[13] the NCR, and the various state land registries established pursuant to state land legislation.

These registries operate independently and cover only specific classes of collateral. For example, the NCR is limited to security interests in movable assets, while the CAC Register of Charges is limited to the categories of charges specified under section 222 of CAMA. Consequently, lenders are often required to conduct searches across multiple registries to ascertain the existence, perfection, and priority of competing security interests, increasing the cost and complexity of due diligence.

The utility of the NCR is further constrained by its limited accessibility and practical scope. The provisions of STMA appear to contemplate a framework principally designed for Nigerian collateral providers and lenders. In practice, registration activities on the NCR are largely undertaken by banks and financial institutions regulated by the CBN.

This creates uncertainty as to the extent to which security interests granted in favour of foreign lenders, such as development finance institutions and private credit market participants that lack CBN licensing, are captured within the registry. The regulatory framework does not expressly clarify whether non-CBN-licensed entities can register security interests, creating a potential gap for foreign and private credit investors.

In addition, land registration systems remain largely decentralised. Not all states operate electronic land registries, and searches in certain jurisdictions continue to be subject to manual processes and administrative inefficiencies. The absence of a unified and fully digitised collateral registration framework reduces transparency, increases transaction costs, and impedes the efficient deployment and availability of private credit.

That said, Nigeria must prioritise the modernisation, digitisation and harmonisation of its existing collateral registration systems. The NCR, the CAC Register of Charges and the various state land registries should each operate as fully digitised and searchable registries with standardised registration procedures, search parameters and record formats. This would enable lenders to conduct more efficient due diligence within each category of collateral, facilitate timely

timely perfection of security interests and ultimately ease lending decisions.

d. Thin Secondary Market Infrastructure

The robustness of a private credit market is heavily dependent on the existence of a vibrant secondary market and the infrastructure needed to sustain it. A secondary market allows lenders and third-party participants to actively trade, assign or participate in private credit transactions after origination. This secondary trading enables fund managers to manage portfolio concentration, improve liquidity and recycle capital into new lending opportunities.[14] Additionally, a functioning secondary market makes institutional investors more willing to invest in private credit funds, as the existence of a secondary market for private credit assets may enable the fund to realise investments before maturity, providing investors with an indirect liquidity benefit without necessitating a sale of their interests in the fund.

e. Weak Insolvency Regime

Nigeria's insolvency regime has undergone important reforms through the insolvency and business rescue provisions introduced under CAMA, including administration,[15] company voluntary arrangements, schemes of arrangement[16] and netting provisions[17] for eligible financial contracts. These reforms represent a significant departure from the historically liquidation-focused regime and demonstrate a policy shift towards corporate rescue and business continuity.

Notwithstanding, further improvements are necessary from the perspective of private credit investors. Predictable restructuring processes supported by clearer procedural timelines and expedited enforcement mechanisms, achieved through streamlining procedures for the realisation of collateral and the establishment of specialised commercial or insolvency courts to shorten the time for enforcement. In addition, a developed secondary market is crucial for private credit funds to actively play and deploy capital, as it increases exit options for lenders and other private credit investors.

Conclusion

The Nigerian private credit market is in its developmental stages. The market is growing as companies seek financing outside constrained banking systems, but it has not yet reached the scale or maturity seen in developed markets. While private credit has the potential to serve as an important alternative source of capital for Nigerian businesses, the legal and institutional infrastructure necessary to support its growth remains underdeveloped. The absence of a dedicated regulatory framework for private credit funds, uncertainty regarding the respective regulatory mandates of the SEC and the CBN, the lack of a unified borrower information system, and the fragmentation of collateral registration mechanisms collectively increase transaction costs, impede efficient risk assessment, and create legal uncertainty for market participants. Addressing these gaps will be critical to fostering a mature, transparent, and competitive private credit market capable of supporting Nigeria's businesses.

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[5] CAMA, s. 191.
[6] CAMA, s. 191, 198, 203-204, and 222 – 230.
[7] CAMA, s. 434-442, 564-698.
[8] STMA, s. 63
[9] STMA, s. 10
[10] ISA, s. 151.
[11] ISA, s. 151(1)(d).
[12] By virtue of section 4 of the Digital, Electronic, Online or Non-Traditional Consumer Lending Regulations, 2025, the FCCPC is granted oversight over all forms of unsecured consumer lending conducted through electronic, online, mobile, or non-traditional means, and every lender or provider of monetary value as credit or advance with the expectation of return. Thus, to the extent that private credit fund managers engage in consumer lending activities, they will be captured by this regulation.
[13] The CAC Register of Charges is established under section 222 of the CAMA.
[14] Macfarlanes, "Unpacking private credit secondaries", <Unpacking private credit secondaries | macfarlanes> accessed June 19, 2026.
[15] CAMA, s. 443-549
[16] CAMA, s. 710-717
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VENTURE DEBT IN NIGERIAN STARTUPS: WHO CAN LEND, ON WHAT TERMS, AND WHAT CAN HAPPEN WHEN IT GOES WRONG?

Norrsken22 | Precious John-Adeyemi

Debt funding in African startups hit a record $1.6b in 2025, a 63% jump from 2024, with the number of deals rising 40% to 108 transactions.[1] For the first time, debt financing overtook equity in Q1 2026. Debt represented $305m of the $600m raised by African startups during the quarter, compared with just $50m during the same period in 2025. Nigeria is a part of this story, with debt funding reaching 18% of total funding in 2024. With the market increasingly getting interested in debt and as more local and international debt providers flock in, startups and debt providers must understand the regulatory landscape when it comes to debt funding in Nigeria. This article explains what the structure requires, the licences, the security mechanics, and the enforcement problems.

Who can Legally Lend?

When it comes to the question of who can lend, Nigeria does not have a clear-cut answer for this. The debt regulatory landscape in Nigeria is a layered system of federal and state-level licensing regimes, each with different rules, different regulators, and different consequences for non-compliance.

CBN-Licensed Lenders

At the federal level, the CBN licences three categories of institutions that can lend to startups without needing state-level authorisation.

The licensing question and the commercial reality diverge significantly across all three.

1. **Finance Companies:** These are the most structurally appropriate vehicle. Unlike banks, they do not take deposits, which means their regulatory design is oriented entirely around the business of extending credit. A CBN Finance Company licence confers national lending authority and carries a minimum paid-up capital requirement of ₦100m, a 12.5% Capital/Risk Weighted Assets Ratio, and a 1:10 capital-to-net-credit ceiling. For a non-bank lender deploying venture debt in Nigeria, this is the cleanest available structure.

2. **Microfinance Banks:** MFBs can lend but occupy a different policy lane. Their mandate is consumer credit and micro-enterprise finance — short-tenor, small-ticket facilities designed for individuals and small businesses. Some MFBs have extended credit to startups, particularly in fintech and mobility, but the licence limits were not drawn with growth-stage lending in mind, and the structure strains under the weight of any facility of meaningful size.

3. **Deposit Money Banks:** These carry broad lending authority and deep capital bases, but Nigerian

commercial banks have historically priced startup credit as a category they would rather not underwrite. Without hard asset collateral (land titles, inventory, equipment), most startups will not survive a bank's credit committee. A small number of banks have started developing structured products for growth-stage companies, but they remain exceptions. Venture debt in Nigeria finds its most natural institutional home in Finance Companies, not banks.

State Money Lenders Licences

Any organisation lending money as a business without a CBN licence must hold a state-level money lenders licence and must hold one for every state in which it operates, physically or digitally. The consequence of operating without one is not a fine or a warning: only licensed money lenders can bring court actions against defaulting borrowers.

The FCCPC Layer and the Occasional Lender Argument

Since 2022, any organisation conducting digital lending in Nigeria must also register with the Federal Competition and Consumer Protection Commission (FCCPC) under its Limited Interim Regulatory Framework for Digital Lending. This registration sits independently of CBN or state licences and captures any lender using tech-enabled origination or portfolio monitoring, which, in practice, covers most contemporary venture lending operations.

Nigeria's Money Lenders Laws do include one exemption worth examining: a person whose primary business is not moneylender, requires no licence. VC funds providing debt to portfolio companies have invoked this provision, arguing that their primary business is equity investment, not lending. The most active lenders to Nigerian startups (BII, IFC, etc) navigate this complexity by operating under home-country frameworks and international agreements. Their presence in the market reflects, in part, the friction that the licensing matrix creates for domestic non-bank lenders.

Enforcing Security in Nigeria's Venture Debt Landscape

The security instruments available to a venture debt provider in Nigeria (share pledges, receivables assignments, floating charges) are legally recognised and, on paper, well-established. The enforcement question is harder. Each instrument comes with conditions attached under Nigerian law, and the gap between a properly registered security interest and one that actually performs in a distress scenario is shaped by factors that most term sheets do not surface.

i. Security Over Shares: A charge over shares in a Nigerian company is legally provided for under the Companies and Allied Matters Act (CAMA) 2020. The standard structure involves the borrower delivering an undated blank share transfer form, with a board resolution pre-authorising the transfer on enforcement. The charge must be registered at the CAC within 90 days of creation; an unregistered charge loses priority to any subsequently registered one. Under the CAMA, shares have no legal existence until they are issued and allotted to a named individual, supported by a board resolution and a CAC filing. Options, vesting schedules, and convertible instruments do not produce registered shares automatically. A lender taking security over shares that exist on a cap table but not on the CAC register holds security over nothing.

ii. Security Over Receivables: The Secured Transactions in Movable Assets Act 2017 (STMA) has created a mechanism for startups to use receivables as collateral for loans. To perfect this security, the lender registers its interest at the National Collateral Registry, a CBN-supervised database of secured claims. For a startup with a steady stream of receivables, this is a workable security structure. However, a lender's claim over receivables is only as good as the startup's ability to assign those receivables in the first place. Many payment agreements may contain clauses that restrict or prohibit assignment. If those clauses apply, the lender holds a registered security interest over income that it cannot actually reach. Currency too is a risk. Most Nigerian startup revenue is earned in naira. When that revenue backs a dollar-denominated loan, exchange rate movement becomes a credit issue, not just an accounting one. A receivables book that covered the loan comfortably at closing can erode to a fraction of that coverage after six months of naira depreciation, without the underlying business deteriorating at all.

iii. Floating Charge: A floating charge over all a company's assets must be registered at the CAC within 90 days of creation. The CAMA adds a specific risk: any floating charge created within three months of a company entering winding up is presumed void, unless the lender can prove the company was solvent at the time. The burden sits with the lender. For startups, where financial distress rarely announces itself clearly, a lender extending a new facility or refinancing close to a company's deterioration may find its broadest security instrument invalidated at the exact moment it needs it most.

Subordination and the Equity Investor Dynamic

For startups that have raised equity before taking on venture debt, the question of who controls key decisions in a distress scenario is one that will likely come up. In established markets, intercreditor and subordination agreements settle these priorities contractually before the first dollar moves. In Nigeria, the conversation is typically deferred, handled, if at all, through side letters and informal understandings rather than binding terms. The lender takes senior secured status in the capital structure, meaning it is paid ahead of equity holders in any asset distribution. But in the territory between a healthy company and a formal default, the contractual framework governing the relationship between debt and equity is often thin.

The consequences show up in three places. Firstly, enforcement: under CAMA 2020, a secured creditor can appoint a Receiver/Manager without going to court, but only if the loan agreement specifically provides for it. An agreement that omits this sends the lender into litigation, where timeline uncertainty becomes a problem. Secondly, shareholder agreements: existing investors often hold veto rights over asset disposals or capital structure changes that, if not carved out at the time of the debt deal, can block enforcement even where the lender holds valid security. Lastly, information: Nigerian venture lenders rarely negotiate board observer rights or regular management accounts. By the time a covenant breach surfaces, the equity investors on the board may have been managing the distress for months.

What Happens When It Goes Wrong?

Nigeria's courts have commercial divisions and summary judgment procedures designed for faster debt recovery. In practice, contested debt actions take years; disputed covenant triggers, contested valuations, and material adverse change arguments generate enough complexity to defeat the fast-track process. Lenders who plan to litigate their way to recovery should price that timeline into the deal upfront.

Out-of-court receivership is the more viable route where the loan agreement is properly drafted, and the charge is correctly registered.

The receiver takes control of the company's assets and distributes the proceeds in priority order. The limitation is on the asset side: for a tech startup whose value sits in software, user relationships, and contracts, realising that value through a receivership depends on finding an acquirer willing to buy a distressed business at a meaningful price, which is not guaranteed.

What The Law Has Not Yet Resolved

The gaps in Nigeria's venture debt framework are not evenly distributed. They concentrate at the intersection of debt and equity, and around asset types that Nigerian law has not yet resolved in a startup context.

i. Convertible instruments: Most Nigerian startups carry convertible notes or SAFEs from early investors. These instruments occupy an ambiguous position in a capital structure that also includes senior secured debt: they are not yet equity, so they carry no voting rights, but their economic claims on the company sit at an indeterminate priority relative to the debt. Nigerian law does not supply a default answer. Where the priority question is not addressed in the transaction documents, a distress scenario can produce a genuine standoff between the convertible note holders and the senior lender, destroying value for all parties in the process.

ii. IP security: The STMA permits security over intangible assets, but the enforceability of a charge against IP that is partially licensed, co-developed with third parties, or built on open-source components with restrictive terms is genuinely unsettled. A lender with a registered security interest over a startup's codebase may discover on enforcement that the most commercially valuable features are not freely assignable, either because of third-party IP embedded in the product, contractor moral rights, or client development agreements that limit transfer. The NCR registration creates a perfected interest; it does not guarantee the underlying asset is what the lender assumed it to be.

iii. Multi-jurisdiction structures:
Most Nigerian startups operate across multiple markets, with holding companies in Cayman or Delaware and Nigerian operating entities one layer below. A lender taking security over the Nigerian OpCo's assets may have no reach over IP held at the HoldCo level, revenue sitting in foreign-currency accounts, or customer contracts governed by the laws of another jurisdiction. Which court has enforcement authority, which law governs the priority of competing claims, and whether a Nigerian court order compels action in a foreign jurisdiction are questions that Nigerian law in this context has not yet answered.

iv. DFI workout dynamics:
Development Finance Institutions are the most active venture lenders in Nigeria but operate under mandates that are not purely commercial. A DFI's response to a stressed portfolio company may be shaped by development objectives, relationships with the Nigerian government, or internal approval processes that are opaque to co-investors and equity holders. The absence of standardised intercreditor terms between DFI lenders and equity investors means that distress resolution is negotiated rather than rule-governed, and negotiated outcomes, in that context, tend to favour the party with the most leverage and the least urgency.

Conclusion

The case for venture debt in a startup's capital mix is real: it extends runway without dilution, and as startups build revenue track records, lenders have more to underwrite against. What the market has not yet built is the infrastructure to support it cleanly. The licensing gaps, security conditions, and enforcement limitations in this article are not arguments against the asset class; they are the work that needs to happen before each deal closes. Founders who have not read the enforcement provisions in their loan agreement, equity investors who have not addressed subordination before debt goes in, and lenders without a clear licensing position are all carrying risk they may not have priced.

With more venture debt deals closing across Nigeria and the broader African market, the necessary legislation and market practice will follow. They usually do. The more pressing question is whether the deals being structured today are built carefully enough to survive until that infrastructure catches up.

[1] https://www.wearetech.africa/en/fils-uk/news/tech/debt-financing-overtakes-equity-for-african-startups-for-first-time

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THE OFFSHORE FLIP: HAS NIGERIA DONE ENOUGH TO KEEP STARTUPS ONSHORE?

Andersen | Adeyemi Adediran | Similoluwa Ajani | Patience

Introduction

Over the last decade, one of the defining features of Nigeria's technology ecosystem has been the widespread adoption of offshore holding company structures. Across fintech, e-commerce, and software startups, founders seeking international venture capital often establish parent companies in jurisdictions such as Delaware in the United States or the Cayman Islands, while retaining Nigerian operating subsidiaries.

This restructuring process, commonly known as an offshore flip, occurs where shareholders of a Nigerian company exchange their shares for shares in a newly incorporated foreign holding company, which becomes the parent entity of the business. The practice has become a defining feature of venture-backed structuring in emerging markets, attracting both criticism for perceived value migration and support as a response to global capital market expectations.

Despite regulatory reforms, including the Nigeria Startup Act 2022 (the "**Startup Act**") and foreign exchange reforms introduced by the Central Bank of Nigeria, offshore structures remain widely used among venture-backed startups. The debate has further intensified following the Nigeria Tax Act 2025 (the "**NTA 2025**"), which expands Nigeria's taxing rights through indirect transfer provisions applicable to offshore disposals linked to Nigerian assets.

Against this backdrop, the key question is why offshore flips persist and whether recent legal and tax reforms have materially changed their commercial rationale. This article examines the legal, commercial, and tax drivers behind offshore flips and assesses whether purely Nigerian structures are becoming more attractive to founders and investors.

Why Delaware and Cayman Continue to Dominate

The continued dominance of offshore structures is driven primarily by global venture capital market practice rather than domestic regulatory gaps. Below are key considerations:

1. Investor Familiarity and Venture Capital Preferences: International venture capital funds operate within established legal and commercial frameworks. Many international investors have invested through Delaware corporations or Cayman exempted companies for decades and are familiar with the rights, protections, and governance mechanisms available under those jurisdictions. Standard venture financing documents, shareholder rights arrangements, anti-dilution protections, liquidation preferences, and convertible instruments are all structured around legal concepts that investors understand and can evaluate with confidence.

These jurisdictions offer highly developed corporate governance frameworks that accommodate venture capital transactions through mechanisms such as preferred shares, liquidation preferences, anti-dilution protections, shareholder rights agreements, employee stock option plans, convertible notes and Simple Agreements for Future Equity (SAFEs).

2. Strong Corporate Governance and Legal Predictability:

Another key attraction is legal predictability. Delaware has developed one of the world's most sophisticated corporate law systems, supported by extensive judicial precedent on shareholder rights, director duties, mergers, and corporate governance. The Cayman Islands similarly provide flexible corporate structures commonly used for international investment vehicles.

Although Nigeria's corporate framework has improved through reforms such as the Companies and Allied Matters Act (CAMA) 2020, some investors continue to consider issues such as dispute resolution, enforcement of shareholder rights, and the treatment of complex venture arrangements when choosing investment structures.

3. Fundraising Efficiency

Offshore structures also simplify fundraising. Startups raising from multiple international investors often find it easier to attract capital through jurisdictions already familiar to investors and their advisers.

Many venture capital and private equity funds are themselves structured through offshore vehicles and may have internal requirements or investment mandates favouring recognised jurisdictions. As a result, offshore incorporation can reduce transaction costs, shorten timelines, and improve execution certainty.

4. Exit Flexibility

Exit strategy is another important consideration. Venture capital investors typically invest with future exits in mind, whether through acquisitions, strategic sales, secondary transactions, or public listings.

Delaware and Cayman entities are familiar to global acquirers and capital markets, making them more efficient vehicles for cross-border transactions. For startups targeting international expansion, these structures may provide greater flexibility than purely Nigerian structures.

5. Nigerian Regulatory and Commercial Constraints

Nigeria's regulatory environment also influences structuring decisions. While reforms such as the Startup Act, CAMA 2020, and foreign exchange reforms have improved the investment environment, investors continue to evaluate issues around capital mobility, regulatory coordination, and execution certainty.

Importantly, offshore structuring is not necessarily a rejection of Nigeria. Rather, it reflects an attempt to align local businesses with the expectations of global capital markets.

Exchange Control and the Legality of Offshore Flips

Contrary to popular belief, Nigerian law does not prohibit startups from establishing offshore holding companies, nor does it prohibit Nigerian founders from owning shares in foreign entities. They are fundamentally corporate structures that must comply with Nigeria's exchange control framework.

Foreign investment and capital flows are primarily regulated through the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, the Investments and Securities Act 2025, the Nigerian Investment Promotion Commission Act, CBN Guidelines and Circulars, and the Foreign Exchange Manual.

Structurally, a typical offshore flip involves founders and existing shareholders exchanging their equity in a Nigerian operating company for shares in a newly formed offshore holding company. Upon completion, the offshore entity becomes the parent company, while the Nigerian business continues as an operating subsidiary with minimal disruption to day-to-day operations.

Where foreign investors invest in the offshore holding company, the Nigerian subsidiary remains subject to local regulatory, tax, and corporate requirements with limited operational change. The CBN's role arises when capital is brought into Nigeria, requiring investors to route funds through authorised dealers to obtain a Certificate of Capital Importation, which supports future repatriation of dividends, profits, and exit proceeds. Following the transaction, the Nigerian company becomes a foreign-owned subsidiary and may trigger additional requirements such as NIPC registration, business permits, and expatriate quota approvals.

Has the Nigeria Startup Act 2022 Changed Anything?

The Startup Act is a key policy intervention aimed at strengthening the innovation ecosystem. It seeks to improve regulatory coordination, facilitate access to funding, encourage innovation, and provide incentives to attract investment into the technology sector. A central feature is the startup labelling framework, which formally recognises eligible startups and provides access to defined incentives while improving engagement between startups, investors, and government institutions.[1]

From an investor perspective, the Act signals a shift in policy direction: Nigeria is actively positioning itself as supportive of technology-driven businesses and venture capital investment. However, while it improves the regulatory narrative, it does not fundamentally change the commercial drivers behind offshore structuring.

International investors continue to prefer jurisdictions such as Delaware and Cayman due to entrenched market factors, including familiarity with corporate structures, established venture financing ecosystems, investor protection mechanisms, governance certainty, and ease of exit. These considerations are rooted in global market practice and are not addressed by startup-specific legislation alone.

Broader reforms continue to evolve alongside the Startup Act. The Investments and Securities Act 2025 strengthens capital market infrastructure, enhances transparency, and aligns Nigeria's regulatory framework with international standards, while recent Central Bank of Nigeria foreign exchange reforms aim to improve liquidity and transparency in capital flows.

Together, these reforms improve the investment environment but do not yet eliminate the structural reasons for offshore incorporation.

Similarly, the NTA 2025 reflects a more calibrated approach to investment and value creation. It reinforces an investment-promotion exemption for categories such as angel investors, venture capital firms, private equity funds, accelerators, and incubators, with potential relief on gains from disposals in labelled startups subject to holding period requirements.[2] This reflects an effort to balance taxation of Nigerian-linked value with incentives for early-stage investment.

Taken together, these reforms meaningfully improve Nigeria's investment landscape. However, the decision to incorporate offshore remains largely driven by global venture capital market realities rather than domestic regulatory constraints. The Startup Act improves operating conditions, the ISA 2025 strengthens the capital markets framework, and FX reforms support capital mobility, but none yet replicate the commercial advantages of established offshore jurisdictions.

The long-term question is therefore not whether Nigeria can restrict offshore flips, but whether continued reforms can make Nigerian structures sufficiently competitive that founders and investors choose them for their commercial value, rather than their necessity.

Tax Considerations: Has the Advantage Changed?

Tax considerations have historically reinforced the preference for offshore holding structures.

Jurisdictions such as the Cayman Islands are commonly used because they provide tax-neutral vehicles that reduce intermediary taxation between investors and investment returns. Many Africa-focused venture capital and private equity funds are also domiciled in jurisdictions such as Cayman, Mauritius, or Luxembourg, making offshore structuring familiar and operationally efficient for international investors.

Delaware structures, while not tax-neutral in the same way, remain attractive because they offer a legal and tax framework that is well understood by U.S.-based investors and institutional capital providers.

At the investor level, dividend taxation, capital gains treatment, withholding taxes, and the risk of multi-layer taxation can materially affect returns. As a result, investors typically favour structures that provide certainty and minimise tax leakage.

However, the tax rationale for offshore structures is evolving. The increasing need to prove economic substance before claiming offshore tax benefits has become a key consideration for companies. In addition, the NTA 2025 introduces indirect transfer provisions that may subject gains realised by non-resident investors from the disposal of shares in an offshore holding company to Nigerian tax where the value is substantially derived from Nigerian assets. It also expands Nigeria's taxing rights[3] where offshore disposals result in a change in ownership or control of a Nigerian company.[4]

For private equity and venture capital investors, this narrows the traditional distinction between onshore and offshore exits. Transactions executed offshore may still attract Nigerian tax exposure where underlying value is attributable to Nigeria.

Accordingly, while offshore structures may continue to offer governance, fundraising, and exit advantages, their tax benefits are less absolute than in the past. Founders and investors should therefore avoid assuming that offshore incorporation eliminates Nigerian tax exposure. Offshore structures may still trigger capital gains tax, stamp duties, transfer pricing obligations, permanent establishment risks, and multi-jurisdictional reporting requirements.

The implication is not that offshore structures are obsolete, but that structuring decisions are increasingly driven by commercial objectives, investor requirements, regulatory compliance, and exit strategy rather than tax arbitrage alone.

Are Onshore Structures Becoming Viable?

Despite the prevalence of offshore flips, onshore structures may be appropriate in certain cases. Startups focused primarily on the Nigerian market, raising capital from domestic investors, and without immediate international expansion plans may find a Nigerian corporate structure sufficient. Local ecosystem conditions are also improving, with increasing domestic venture capital participation, expanding capital pools, and ongoing regulatory reforms strengthening the investment environment.

The NTA 2025 may further influence structuring decisions. If offshore exits involving Nigerian businesses are increasingly subject to Nigerian taxation regardless of holding jurisdiction, the historical tax advantage of offshore structures may be reduced. This does not render Delaware or Cayman structures obsolete, as investor familiarity, fundraising efficiency, and exit mechanics remain key drivers. However, founders and investors may increasingly assess whether the additional cost and complexity of offshore structures deliver proportionate commercial value.

Ultimately, structuring decisions remain strategic, shaped by fundraising plans, investor profile, expansion strategy, and exit objectives.

Conclusion

The continued use of offshore flips by Nigerian startups reflects commercial realities rather than regulatory deficiencies alone.

While the Startup Act and other foreign exchange reforms may have strengthened the domestic innovation ecosystem and improved aspects of capital mobility, the NTA 2025 has also introduced a new dimension by narrowing some of the historical tax advantages associated with offshore structures. However, these developments do not appear to have fundamentally displaced the core drivers of international venture capital, particularly investor familiarity and exit certainty.

The policy challenge for Nigeria is therefore not to discourage offshore incorporation, but to make Nigerian structures sufficiently competitive that offshore migration becomes a commercial choice rather than a structural necessity. Until then, offshore flips are likely to remain a feature, not a flaw, of Nigeria’s venture capital ecosystem.

[1] Section 29 (2) Startup Act, 2022.
[2] Section 163 (1) (m) of the NTA.
[3] Section 46 and 47 of the NTA.
[4] Section 47 of the NTA.

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WHEN THE FOUNDER UNDERPERFORMS: PRE-WIRING, CRAM-DOWN, AND RESCUE-CAPITAL RIGHTS IN NIGERIAN PRIVATE EQUITY

Verod | Dipo Okuribido

A practitioner's note on structuring founder dilution and rescue capital at entry while the weather is still fair rather than negotiating it in the storm.

Every investor has lived through the deal that goes wrong slowly. Not the fraud or the sudden blow-up, those at least announce themselves, but the good company, with the good founder, that simply drifts. The numbers soften. A milestone slips, then another. And one ordinary morning the management accounts land carrying the question nobody at the table wants to say out loud: what happens now?

Most of the writing that claims to answer that question is borrowed from venture capital, and most of it tends to be about the wrong problem. The venture literature assumes a busy cap table, a sequence of priced rounds, and a market of outside investors competing to lead the next one. The instruments it frets over, ratchets, pay-to-play, full versus weighted-average anti-dilution, are calibrated for that world. African private equity does not live in that world. Our version of the problem is plainer, more human, and the standard toolkit is largely silent on it.

This note is about that plainer problem: the ordinary growth-equity deal in which the founder underperforms, the business needs capital it cannot raise on its own, and the investor must decide whether and how to dilute the person still running the company. The argument runs in three movements. First, that the protections most investors rely on are useless in precisely this situation. Second, that the real constraint is not the choice of instrument but consent and timing. Third, that the only reliable answer is to build the cram-down and rescue-capital architecture into the deal at entry, before anyone is in distress, and before the founder's leverage is at its height. It closes where it must: on the limit of how far any of this can be pre-wired before the law pushes back.

The real scenario

The shape of it is familiar to anyone who has done a few of these. A fund takes a significant minority, sometimes a slim majority, in a founder-led company. The founder stays on to run it, and that is usually the right call: she knows the business, the market and the people in a way no incoming investor can, and her continuity is part of what was bought. The deal is papered, sensibly, to keep her motivated and in the chair.

Then performance drifts. Revenue misses. Working capital tightens. A covenant trips, or a marquee contract walks. The company needs fresh money to survive, or to reach the next milestone, and it needs it on a timeline measured in weeks, not quarters.

Here is the cruel symmetry. The founder, whose decisions produced the shortfall, is the very person whose cooperation is now required to fix it, to approve a new issue of shares, to waive pre-emption, to vary governance terms, to sign. Her economic interest is to resist dilution. And her bargaining position, perversely, has never been stronger, because nothing happens without her and the clock is running.

She is not the villain of the piece. She rarely is. Far more often she is a capable operator who met a hard market, or scaled a notch too quickly, or ran headlong into the oldest truth in company-building: that the qualities which start a business are not always the ones that save it. None of which changes the structural fact. When the rescue is most urgent, the person best placed to block it is the person with the most to lose from it and the standard, VC-bred anti-dilution toolkit was simply never built for that fact.
This is not a cap-table problem. It is a control-and-consent problem wearing a cap-table costume.

Why the defaults fail: the consent bottleneck

Press an investor on this scenario and you will usually hear three lines of defence. Each has a hole in it, and the holes are related.

Anti-dilution protection is underdeveloped and untested. Price-based anti-dilution, the ratchet or weighted-average adjustment that re-prices the investor's stake when a cheaper round comes in, is elegant in theory and barely exercised in Nigerian practice. The Companies and Allied Matters Act No. 3 of 2020 ("CAMA") accommodates classes of shares and rights attached on issue (sections 143 to 144), but there is precious little local authority on how an automatic conversion-ratio adjustment sits with the variation-of-class-rights regime, the pre-emption rules, or the unfair-prejudice jurisdiction. Drafting to a mechanism the courts have never tested is itself a risk.

It presupposes a round that may never come. Every price-based protection is parasitic on a new financing actually happening. The ratchet only bites when somebody subscribes at the lower price; the weighted-average adjustment only recalculates against a real issue. But in the African mid-market the distressed follow-on round frequently does not materialise. There is no queue of outsiders forming to recapitalise an underperforming portfolio company in a thin market. Which produces a quiet absurdity: the very event meant to trigger your protection is the event least likely to occur. The protection is conditional on the rescue, and the rescue is the thing in doubt.

And it still, normally, needs the founder's consent at the worst possible moment. This is the one that does the damage. Even where a round can be assembled, executing it ordinarily requires the founder's cooperation: a resolution to allot, a waiver of the statutory pre-emption right in section 142 of CAMA, board approval, the signing of subscription and amendment papers. Each is a gate she can hold shut. She can extract concessions at each, or delay, or simply decline. The protection meant to discipline underperformance is, at the moment it is needed, handed back to the underperformer.

Call it the **consent bottleneck.** The investor's contractual rights are perfectly real; their exercise is conditioned on the cooperation of the one person with every reason to withhold it, at the one moment her leverage peaks. No amount of cleverness in choosing between full-ratchet and broad-based weighted-average lays a finger on this. The instrument was never the problem. The timing of consent is.

The reframe: move the moment of consent to entry

Once you see the problem properly, the answer almost announces itself. You cannot summon a rescue round into a thin market on demand, and you cannot, in the middle of the storm, manufacture a cooperation the founder has every reason to refuse. Both are facts about the world at the wrong moment. What you can move is the moment of consent.

Think of the founder's leverage as a tide. It runs highest in distress, when she wants the money, when the deal is competitive on her side of the table, when dilution is a distant rumour rather than a live threat. The discipline, then, is to gather every consent the rescue will ever need at entry: irrevocably, and in a form that outlives her later change of heart, so that when performance fails the machinery simply runs, without requiring her to agree to anything at all. The investor stops being a supplicant for consent and becomes the holder of consents already given.

That single shift changes the question. Not "how do we persuade or compel the founder when the time comes?" but "what must we already hold, and in what form, so that persuasion is never required?" The rest of this note answers that question and then marks the line beyond which the answer stops working.

The front-loaded toolkit

Five tools. Each one moves a consent from the moment of distress to the moment of entry, and each has a specific home in CAMA.

(a) Performance-keyed conversion, built into the class on issue.

The investor's instrument, preferred shares, or a dedicated class, carries, as a term of the class at the time of issue, a conversion ratio that steps up automatically when defined underperformance triggers are hit. Trigger fires; the preferred converts into a materially larger slug of ordinary shares; the founder is diluted. The doctrinal elegance is the point. Because the enhanced conversion is a right that already attaches to the class, exercising it is not a variation of class rights, it is simply the operation of a right that was always there. The founder's per-share rights are untouched; she just ends up holding a smaller slice. Drafted properly, the cram-down never engages the variation regime at all. This is the single most important structural move in the whole design, and it belongs in the Articles, not merely the shareholders' agreement, so that it binds the company itself and survives a transfer.

Suppose the founder holds 60% to the fund's 40%, the latter through a preferred that ordinarily converts one-for-one. Write in a step-up that, on a defined default, trebles the shares the fund's preferred converts into, and the founder's 60% slips to about a third the instant the trigger fires, without one fresh signature from her. The dilution is not argued for in the storm; it was agreed, in principle and in arithmetic, on the calm day the money went in.

(b) A pre-baked pre-emption waiver.

A rescue allotment to the investor will, absent a waiver, collide with section 142. Two observations. First, there is a respectable argument that section 142's pre-emption, framed in favour of "existing shareholders of the class being issued", gives the founder no statutory right over a fresh, investor-only class she does not hold. It is a good argument. It is also untested, and you do not stake a company's recapitalisation on an untested argument. So, second and decisively: take the waiver at entry, in the Articles and reinforced in the shareholders' agreement, disapplying pre-emption for any issue made under the rescue mechanics. Skip it, and you have handed the founder a statutory veto-by-delay over the very allotment that would save the company.

(c) Irrevocable powers of attorney.

This is the bluntest, and most literal, answer to the consent bottleneck. At entry, the founder grants the investor (or a nominee) a power of attorney to execute the resolutions, waivers, subscription documents and transfer or allotment instruments the conversion and rescue require, and to vote her shares in favour where needed. Nigerian law is accommodating here: a power of attorney expressed to be irrevocable and given for valuable consideration, or to secure a proprietary interest, is irrevocable and survives the donor's attempt to take it back. Coupled properly with the investor's interest, the POA takes the founder's signature off the critical path entirely. When the moment comes, her hand is not required on the pen.

(d) Objective, externally verifiable triggers. Whatever fires the machinery must be defined by hard, observable metrics, a covenant breach, a leverage or

EBITDA threshold, a missed audited milestone, a funding condition unmet by a long-stop date, never by the investor's own reading of "material adverse change." This earns its keep twice over. It strips the founder of any argument about whether the trigger actually fired; and, as the next section explains, it is the best evidence you will have that the cram-down was the agreed operation of an objective bargain rather than an opportunistic land-grab. Tie any contestable measurement to determination by the auditors or an independent expert, certificate final and binding.

(e) Investor-funded rescue, at pre-agreed terms.

Because the third-party round may never come, the sturdiest structures refuse to depend on one. The investor itself commits, at entry, to provide the rescue capital, a committed follow-on, or a convertible bridge that converts at a pre-agreed and frankly punitive valuation, on terms fixed in advance, so that there is no fresh negotiation and no fresh consent to chase when the trigger fires. Where that rescue runs through the company or leans on its assets, note that CAMA has loosened the old prohibition on financial assistance: section 183 now lets a private company assist in the acquisition of its own (or its holding company's) shares, subject to conditions, and opens further gateways where the assistance is incidental to a larger, good-faith corporate purpose. The pre-agreed price is what quietly defeats the bottleneck. The founder consented to the terms of her own dilution back when she had no earthly reason to resist them.

Put the five together, and they do a single thing. When the company finally needs saving, every consent has already been given, the price is already struck, the money is already committed, and the signatures are already authorised. The founder's distress-day leverage does not need to be overcome. It simply evaporates because there is nothing left for her to withhold.

The wall: automaticity versus enforceability

And now the honest part, the part a precedent pulled off the shelf will quietly skip.

Structured well, the machinery sidesteps the variation-of-class-rights objection for the reasons above. The wall it cannot vault is the statutory unfair-prejudice jurisdiction in sections 353 to 357 of CAMA, under which a member may petition the court for relief where the company's affairs are being conducted in a manner that is oppressive, unfairly prejudicial, or in unfair disregard of a member's interests. Two features make this the real constraint.

First, you cannot contract your way out of it. A clause purporting to have the founder waive her unfair-prejudice rights, or oust the court's jurisdiction, is not worth the paper. The protection against a successful petition is therefore never the waiver. It is making sure the conduct is not unfair in the first place.

Second, the test is fairness, not legality. That the cram-down ran exactly as the documents provide is a strong defence, but not, on its own, a complete one. Fairness is judged substantially by reference to what the parties agreed and to the terms of the Articles. A founder who signed up to objective triggers at entry, with her own advice in the room, and who is diluted because those triggers were met on audited numbers, has a thin case that the result is "unfair." But the founder-run company carries a quasi-partnership flavour, and where the whole relationship was built on an expectation of continued participation, a court has more room to find unfairness in an exclusion, and Nigerian courts keep wide remedial discretion under these sections.

So there is a genuine tension, and it is worth naming plainly. The more automatic and consent-free the machinery, the more cleanly it defeats the bottleneck, but the more it looks like something done to the founder rather than agreed by her, and the more it invites a petition. The more process you fold in, notice, a cure period, an independent valuation, a board determination, real new money rather than a bare re-allocation of equity, the more defensible the outcome, but the more friction and delay you hand back to the founder to weaponise.

The calibration is the craft, and it leans toward inoculation over speed. In practice: objective triggers certified by a third party; a notice-and-cure window short enough that it cannot become a blocking tactic; conversion that is automatic in operation yet fully evidenced by the agreed documents; and a rescue that puts real money into the business at a defensible, if painful, price, so that the transaction reads as a rescue and not an expropriation. A cram-down that visibly recapitalises a company is far harder to brand unfairly prejudicial than one that merely shuttles the founder's percentage across the table for nothing.

And there is a softer point hiding inside the legal one. Fairness is not only a defence to a petition; it is the thing that lets the founder stay in the chair afterwards and keep building. A structure engineered purely to expropriate may win in a courtroom and still kill the company, because the person you needed running it has quietly stopped caring whether it lives. The most durable cram-down is the one the founder can look back on, even bruised, and concede was the bargain she struck. Build the fairness in. It is the one thing you cannot bolt on later.

Close: the day-one checklist

It all reduces to one stubborn discipline: never negotiate a cram-down with a drowning founder. Everything the rescue will ever need must be in the documents on the day the cheque clears, not drafted in haste while the water rises. A working checklist for entry:

- **In the Articles:** the investor's class and its rights as issued, including the performance-keyed conversion ratio and its triggers; disapplication of statutory pre-emption for issues under the rescue mechanics; and the authority to allot needed to give effect to them.

- **In the shareholders' agreement:** the rescue-capital commitment and its pre-agreed price; the objective trigger definitions, tied to audited or expert-certified metrics; a deliberately tight notice-and-cure mechanic; and reinforcement of what the Articles already carry.

- **As standalone instruments:** an irrevocable power of attorney from the founder, expressed to be irrevocable, given for value, coupled with the investor's interest, authorising execution of every resolution, waiver and transfer the cram-down and rescue require, and the voting of her shares where needed.

- **Built into the fairness defence:** independent valuation machinery; a genuine new-money injection rather than a bare re-allocation; contemporaneous evidence of the founder's informed, advised consent at entry; and a process real enough to answer a petition without being slow enough to become a veto.

The instruments that fail in distress are not the wrong instruments. They are the right ones, reached for too late. The consent you will never get when the company is going under is precisely the consent you can have for the asking on the day you invest, while the sky is clear, the relationship is warm, and the founder, full of optimism, cannot imagine ever needing to be saved.

Take it then.

AUTHOR: VEROD

Dipo Okuribido

EMPLOYEE SHARE OPTION PLANS IN NIGERIAN STARTUPS: WHAT THE TAX, CORPORATE AND REGULATORY FRAMEWORK ACTUALLY PERMITS

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1. Introduction

Employee Share Option Plans ("**ESOPs**") have become an increasingly important compensation tool for Nigerian startups. In a market where early-stage companies often compete for highly skilled talent against better-capitalised employers, equity-linked incentives allow founders to offer employees a stake in future growth without immediately increasing cash burn. When properly structured, ESOPs align employee incentives with long-term business growth, offering a pathway to ownership without immediate cash outlay. A share option is essentially a contractual right granted to employees to acquire shares at a pre-agreed exercise price in the future, conferring no ownership or voting rights until exercised. Employees typically earn this right after meeting certain conditions, usually continued employment and performance milestones.

While ESOPs are well established in jurisdictions such as the United States ("**US**") and the United Kingdom ("**UK**"), they are characterised by legal certainty on share options issuance mechanics, predictable tax timing aligned with liquidity, administrative simplicity, and capital structure integrity. Nigeria's legal and tax infrastructure has not evolved at the same pace, leaving startups to navigate a fragmented and uncertain framework. This article examines the extent to which ESOPs are recognised under Nigerian law, the structural and tax challenges they present, and the alternative mechanisms startups are currently using to bridge regulatory gaps.

2. Legal Framework for Share Options in Nigeria

Whilst there is no specific law governing employee equity compensation, the legal framework for ESOPs can be garnered from general corporate, tax, and capital market laws that are not primarily designed for ESOPs. As a result, market practice has outpaced regulation, relying heavily on contractual arrangements and bespoke structuring, which in turn creates persistent uncertainty between commercial expectations and legal certainty.

The Companies and Allied Matters Act 2020 ("CAMA") provides partial recognition of ESOP mechanics but stops short of offering a comprehensive framework. The law carves ESOPs as an exception to the general prohibition on financial assistance offered by a company.[1] It further recognises employee participation through buybacks and treasury shares structures,[2] while another section implicitly assumes companies may operate such schemes as part of governance practice.[3]

Despite this partial recognition, these provisions sit uneasily with the core constraint prohibiting the issuance of shares at a discount.[4] This creates a structural tension with ESOPs' economics, which typically derives value from the spread between the exercise price and prevailing market value. This tension effectively renders true option economics legally fragile in Nigeria. In practice, it shifts ESOPs design away from equity-linked value creation toward artificial structuring, undermining the core rationale of ESOPs, which is aligning employee incentives with real market upside. While it may be argued that employee services constitute "valuable consideration", this interpretation remains unsettled, particularly for public companies which require independent valuation of non-cash consideration.[5] The Securities and Exchange Commission ("SEC")[6] also offers limited guidance, permitting discounted options for executives of public companies only with SEC approval, leaving private companies and most startup employees outside its scope.

Administrative challenges compound the problem with the abolition of authorised share capital. As a result, companies can no longer maintain traditional option pools and must issue fresh shares at each exercise event, requiring repeated corporate approvals and filings with the Corporate Affairs Commission ("CAC"). Pre-emptive rights further complicate matters,[7] often requiring contractual waivers that do not align neatly with statutory expectations.

Overall, ESOPs in Nigeria operate within a fragmented and indirect framework. While statutory recognition exists, the core mechanics, such as discounted issuance, pooling, and exercise execution, remain unresolved. This regulatory gap has necessitated reliance on contractual innovation and market practice, rather than a clearly articulated statutory ESOP regime.

3. ESOP Structuring Options for Startups in Nigeria

To address the regulatory gaps, the market has developed two principal workarounds, which include:

Structuring Option	Description
Imported Documentation	This is the most prevalent approach among Nigerian startups. The imported documentation is generally enforceable as a matter of contract, and Nigerian courts will typically uphold commercial agreements freely entered into by sophisticated parties. However, imported ESOP documentation is functionally misaligned with Nigerian law because it assumes the legality of discounted option pricing and deferred tax regimes that do not exist locally.
Nominee or trust arrangements	This vests the shares with a named trustee, often a co-founder or corporate trustee, who holds legal title on behalf of employees who have satisfied their vesting conditions. The trustee appears on the register of members while employees hold

Nominee or trust arrangements	beneficial interests. This can simplify cap table management and reduce the need for repeated allotments. However, the structure must be carefully documented to address voting, dividends, transfer restrictions, employee exits, tax timing and the trustee's obligations.

Certain startups have also utilised founder vesting as an innovative mechanism, under which founders hold a block of shares and contractually agree to transfer portions to employees as they vest. This avoids some fresh allotment issues because the eventual movement is a transfer rather than a new issuance. Its weakness is that the employee's right is largely contractual against the founder.

4. Taxation Challenges

Under the current Pay as You Earn ("**PAYE**") regime, the timing of taxation for equity compensation remains uncertain, particularly as to whether tax liability crystallises at grant, vesting, exercise, or eventual disposal of shares. The Lagos State Internal Revenue Service (LIRS) **2017 Public Notice on the Taxation of Employees' Shares/Stock Options** (the "**Public Notice**") issued under the former Personal Income Tax Act (PITA), provides the only practical guidance. It treats the discount between market value and exercise price as a taxable benefit and indicates that the employer should withhold PAYE tax when the option is exercised.

For listed companies, market value is the quoted price, while for private companies, valuation is based on net assets per share. This may be administratively simple, but it may not reflect the economic value of high-growth startups, particularly where value is driven by intellectual property, user growth, recurring revenue, technology or investor expectations rather than balance sheet assets.

The more serious issue is liquidity. If tax arises at exercise, employees may be required to pay tax on a paper gain before they have received cash or sold shares. Employers are also placed in a difficult position because PAYE withholding obligations may arise even though the benefit is non-cash. In jurisdictions with more developed ESOP regimes, tax deferral rules often postpone taxation until a liquidity event. Nigeria does not yet have an equivalent statutory deferral regime, which makes traditional ESOPs less efficient for private startup employees.

5. Phantom Equity as a Strategic Alternative to ESOPs

Given the corporate and tax frictions associated with ESOPs, phantom equity has emerged as a practical alternative. Phantom equity does not transfer shares or create shareholder rights.

Instead, it gives employees the contractual right to receive a cash payment calculated by reference to the value or appreciation of the company's shares, revenue, EBITDA, valuation multiple or exit proceeds.

Phantom equity is purely contractual and, by contrast, avoids actual share issuance entirely. This results in structural simplicity being the most immediate advantage of phantom equity.

A second major advantage is tax and timing flexibility. Because phantom equity is usually cash-settled, taxation is typically triggered at the point of payout rather than at grant or exercise. This reduces the risk of employees being taxed on unrealised gains. It also aligns taxation more closely with liquidity, which is often a major concern in ESOP structures.

The third major advantage is that phantom equity provides greater contractual control and customisation. Companies can design payout formulas that reflect revenue growth, EBITDA, valuation multiples, or specific exit scenarios without being constrained by share capital mechanics. This makes it easier to tailor incentives to business objectives rather than equity law constraints.

It is, however, important to note that Phantom equity is not a perfect substitute. It creates a continuous cash liability for the company and may be less attractive to investors or senior employees who expect actual ownership. It may also fail to create the same psychological and governance alignment as real shares. For many startups, the best solution may be a hybrid model, true equity or carefully structured options for founders and core executives, and phantom equity for wider employee participation.

6. Enforceability of Vesting Schedules and Leaver Provisions

Vesting schedules and leaver provisions are critical to ESOP design. A vesting schedule determines when employees earn their equity awards, typically through time-based vesting with a one-year cliff. While leaver provisions determine what happens to unvested or vested but restricted shares when an employee exits the company. Market practice distinguishes between "good leavers" (e.g., redundancy, ill-health, death), who generally retain vested awards and may receive some accelerated vesting, and "bad leavers" (e.g., resignation or dismissal for cause), who often forfeit unvested awards and may be required to transfer vested shares back to the company.

Under Nigerian law, vesting schedules and leaver provisions are generally enforceable as contractual arrangements, provided they are properly drafted and do not contravene statutory provisions. It is, however, important to note that, like most contracts, the enforceability of these vesting schedules is not absolute, particularly where the employees have not yet been issued shares. In such cases, vesting provisions would be enforceable as conditions precedent to share allocation. On the other hand, where shares have already been issued, leaver provisions are then enforced through contractual obligations to transfer shares back to the company or other shareholders through share buyback mechanisms. Thus, serving as a risk allocation tool between founders and employees, ensuring that unearned equity can be reallocated or cancelled.

In addition, exercised option holders who become shareholders may be bound by drag-along rights in a sale. Unexercised option holders, however, depend on the ESOPs rules. To protect employee value, plan documents should include change-of-control provisions allowing automatic exercise or cashless settlement before an exit; otherwise, options may lapse, undermining the incentive structure.

7. The SEC Regulatory Outlook

The **Investments and Securities Act (ISA) 2025**, expands the definition of "securities"[8] to include "investment contracts", potentially bringing ESOPs within SEC oversight. New SEC rules on private company securities issuance, though aimed at capital raising, signal closer scrutiny of private equity activity.

While ESOPs are not yet expressly regulated, the trajectory suggests they may soon attract oversight. Startups must prepare for compliance, anticipating disclosure and reporting requirements. This direction is further reinforced by the SEC's Rules on the Issuance and Allotment of Private Companies' Securities (April 2025), made under Section 308 of ISA 2025. Although primarily aimed at private capital raising and not employee equity incentives, the rules introduce enhanced registration and disclosure requirements and reflect a broader regulatory shift toward closer oversight of private company securities activity.

8. Conclusion

ESOPs in Nigeria remain a vital but imperfect tool.They are widely used to attract and retain talent, but their legal and tax treatment is fragmented. In practice, the enforceability and attractiveness of ESOPs depend less on statutory clarity and more on careful drafting and alignment within shareholders' agreements and employment agreements, which helps mitigate legal risk.

To unlock their full potential, reforms are needed. To resolve the pricing constraint, ESOPs should be expressly carved out from the prohibition on share discounts. To address tax inefficiency, a statutory deferral regime tied to liquidity events is necessary and clear SEC regulatory guidance for private companies.

Until such reforms are enacted, Nigerian startups will continue to rely on contractual innovation, balancing residual risk against the strategic imperative of building ownership culture and retaining talent in a competitive market.

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[1] Section 183 (3) (b) of CAMA
[2] Sections 186(d) and 189(b) of CAMA
[3] Clause 9(c) of the Fourth Schedule to CAMA
[4] Section 146 of CAMA
[5] Section 162 of CAMA
[6] Code 14.4 of SEC Corporate Governance Code
[7] Section 142 of CAMA
[8] Section 357 of the ISA 2025

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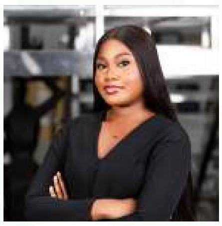


Temidayo Ajayi   Favour Ebhoaye   Blessing Udoh

FCCPC MERGER CONTROL IN 2025: WHAT THE COMMISSION'S ENFORCEMENT RECORD TELLS US ABOUT DEAL RISK AND HOW TO MANAGE IT

Duale, Ovia & Alex-Adedipe | Adeniyi Duale | Mildred Eze | Chukwuebuka John Okoli | Ogechi Wachukwu

INTRODUCTION

The Federal Competition and Consumer Protection Commission ("**FCCPC**" or the "**Commission**") has, in recent years, transformed merger control in Nigeria from a procedural regulatory requirement into a substantive competition assessment materially influencing transaction outcomes. For parties undertaking mergers, acquisitions and other qualifying combinations, obtaining merger approval requires demonstrating that the proposed transaction will not substantially lessen competition under the Federal Competition and Consumer Protection Act, 2018 (the "**FCCPA**").

Throughout the year, the FCCPC's significance extends beyond regulatory compliance. The Commission's evolving practice has direct implications for transaction structuring and post-closing integration planning.

Against this backdrop, this article examines what the FCCPC's enforcement record reveals about the Commission's merger control practice.

Statutory Foundation: What is a Notifiable Merger?

Section 92(1) of the FCCPA broadly defines a merger to include any transaction through which control, whether direct or indirect, is acquired over the whole or part of another undertaking. In practice, the FCCPC's jurisdiction is not confined to formally designated mergers but extends to any arrangement that results in a concentration of control.

This expansive reach is reflected in the Commission's recent enforcement practice. The FCCPC's latest publicly available data, contained in its 2023 Annual Report, shows that about 59 (fifty-nine) notified transactions, with 54 (fifty-four) approvals, alongside several deals subjected to enhanced Phase II review and post-clearance monitoring. Building on this, the Commission has more recently issued a regulatory reminder to market participants against non-compliance with M&A-related statutory obligations. It expressly stated that transactions meeting the thresholds under the FCCPA Notice of Threshold for Merger Notification S.I No. 32 of 2019 (the "**Merger Notice**") must be notified for prior review and approval before implementation. While detailed enforcement outcomes are still emerging, the direction of travel is evident: the FCCPC is progressively entrenching merger control as an active supervisory tool, rather than a purely procedural requirement.

Notification Requirements

Section 93(1) of the FCCPA provides the central suspensory rule, which is subject to applicable notification thresholds. Under the extant provision, a proposed merger must not be implemented unless it has first been notified to and approved by the FCCPC.

The applicable monetary thresholds are set out in the Merger Notice issued pursuant to section 93(4) of the FCCPA. A merger is notifiable before implementation, where, in the financial year preceding the merger:

(a) the combined annual turnover of the acquiring undertaking and the target undertaking in, into or from Nigeria equals or exceeds ₦1,000,000,000 (One Billion Naira); or

(b) the annual turnover of the target undertaking in, into or from Nigeria equals or exceeds ₦500,000,000 (Five Hundred Million Naira).

The wording "in, into or from Nigeria" means that the notification obligation is not limited to Nigerian undertakings. A foreign target with Nigerian sales, Nigerian customers, Nigerian assets, Nigerian subsidiaries or revenue derived from Nigeria may fall within the broad category. Recent deal activity underscores how this jurisdictional breadth operates in practice. For example, the $783 million acquisition of Nigerian Agip Oil Company by Oando Plc from the Italian energy company, Eni, which was completed in August 2024, involved the transfer of significant upstream oil assets, including producing fields and infrastructure in Nigeria. While driven by a foreign divestment, the transaction clearly engaged Nigerian merger control considerations due to the local economic footprint of the assets. Transactions with a Nigerian nexus, particularly where the target generates recurring Nigerian revenue or maintains a local subsidiary, should be assessed simultaneously with filings in other key jurisdictions.

Merger Classification: The First Regulatory Risk

One of the most consequential issues in any Nigerian merger or acquisition is whether the proposed transaction constitutes a small or large merger under the FCCPA.

Under section 95 of the FCCPA, parties to a small merger are generally not required to notify the FCCPC before implementation. However, this does not place the transaction entirely outside the Commission's oversight. Section 95(3) empowers the FCCPC to require notification of a small merger within six months after its implementation where it considers that the merger may substantially prevent or lessen competition or cannot otherwise be justified on public interest grounds. Accordingly, while small mergers benefit from a lighter regulatory burden, parties should nevertheless undertake a competition assessment at the structuring stage.

By contrast, section 96 of the FCCPA requires every large merger to be notified. More importantly, section 96(4) prohibits parties from implementing a large merger until the Commission has approved the transaction. Section 96(5) further provides that any action taken in contravention of that prohibition is void. From a transaction perspective, this prohibition represents one of the most significant sources of merger control risk. It directly influences transaction timetables, conditions precedent, long-stop dates, interim operating covenants and integration planning. Parties should therefore ensure that signing and closing mechanics adequately accommodate the possibility of an extended regulatory review, particularly where the transaction raises substantive competition concerns.

In practice, the risk rarely stops at correctly reading sections 95 and 96 in the abstract. Instead, it lies in the Commission's willingness to revisit and reject the parties' own classification. Transaction parties typically self-assess a deal as a small merger or large merger on one hand, and as a horizontal, vertical or conglomerate merger on the other hand, based on turnover thresholds and the parties' own reading of their competitive relationship at the point of structuring. The FCCPC has shown a consistent readiness to interrogate both layers of this self-assessment rather than accept them at face value. A reclassification on either front is costly in ways that go beyond the additional filing fee or a heavier evidentiary burden: it can convert a transaction parties believed was free to implement into one that is void for want of approval under section 96(5), trigger the six-month retrospective notification power under section 95(3), and reopen a deal timetable and substantive analysis that had already assumed clearance on different terms.

Behavioural Remedies Are Becoming Increasingly Sophisticated

One of the most notable features of the Commission's merger enforcement practice is its growing willingness to rely on behavioural remedies to address competition concerns, particularly where structural remedies would be disproportionate, commercially impractical or undermine the rationale of the transaction.

While divesting remains an available remedy, the Commission imposes obligations that regulate the merged entities. Recent merger reviews indicate that these commitments may extend to non-discriminatory access to infrastructure, fair and transparent commercial terms, governance independence, information firewalls, the preservation of existing customer relationships, periodic reporting obligations, independent compliance monitoring and other mechanisms designed to ensure continued compliance with the Commission's approval conditions.

This trend is particularly evident in transactions involving telecommunications, digital markets and other infrastructure-intensive sectors, where competition concerns are often linked to access, foreclosure, information sharing or discriminatory conduct rather than the mere existence of market concentration. In such cases, preserving competition may be achieved more effectively through carefully tailored behavioural commitments than through structural divestitures that could diminish the commercial value of the transaction.

The FCCPA expressly empowers the FCCPC to approve mergers subject to conditions, and the Commission has demonstrated an increasing willingness to tailor those conditions to the specific competitive risks presented by each transaction. Rather than adopting a one-size-fits-all approach, the Commission's recent practice suggests a more nuanced and commercially informed assessment.

Gun-Jumping – The Core Deal Execution Risk

Gun-jumping is a term used when the merging parties, during the merger review period and prior to the approval of the FCCPC, cease to act as competitors by coordinating their activities and behaving as one entity.[1]

In Nigeria, the principal statutory basis is section 96(4) of the FCCPA, which prohibits the implementation of a large merger without FCCPC approval. The penalty framework is turnover-based and permits the Commission to consider aggravating and mitigating factors, including whether the violation was deliberate, reckless, egregious, repeated, or continued after regulatory intervention.[2]

In practice, gun-jumping risk most commonly arises where parties, between the signing stage and regulatory clearance, engage in conduct that effectively transfers control or aligns competitive behaviour.[3]

A particularly sensitive area is the exchange of competitively valuable information without appropriate safeguards, especially in transactions involving overlapping businesses. The FCCPC's Guidance Note on Gun-Jumping recognises that parties may need to exchange information during due diligence. However, it encourages parties to adopt a competition protocol, establish clean teams, and restrict access to commercially sensitive information.

The FCCPC's enforcement practice demonstrates that it is prepared to intervene promptly where it becomes aware of potential gun-jumping. In one instance, after discovering that a notifiable merger had been implemented prior to obtaining the requisite approval, the Commission immediately issued an interim order requiring the parties to suspend further implementation pending its review. Notably, the Commission went beyond simply halting the transaction.

As part of its remedial measures, it directed the parties to undergo competition law compliance training under the supervision of the FCCPC, underscoring its expectation that merging parties not only remedy the immediate breach but also strengthen their internal compliance culture to prevent future violations.

This reflects an increasingly proactive approach to merger enforcement. Rather than relying exclusively on financial sanctions, the Commission has demonstrated a willingness to deploy behavioural and compliance-oriented measures promoting long-term adherence to Nigeria's merger control regime.

Deal Timetables Must Reflect Regulatory Reality

One of the clearest lessons from the FCCPC's recent enforcement practice is that merger review should no longer be treated as a standalone regulatory workstream operating independently of the transaction timetable.
Although the FCCPA prescribes statutory review periods, complex transactions rarely progress through the review process on a purely statutory timeline. In practice, merger reviews may involve multiple rounds of information requests, meetings with the Commission, economic analysis, market testing and, where concerns are identified, negotiations over behavioural or structural remedies. These engagements inevitably extend the review process beyond the period initially contemplated by many transaction parties.

This has important implications for transaction documentation. Parties should ensure that transaction timetables and contractual provisions are sufficiently flexible to accommodate extended regulatory engagement and the possibility of conditional clearance. Parties should carefully allocate responsibility for responding to regulatory requests, agreeing on remedies and bearing any costs associated with securing approval. Addressing these issues at the drafting stage can significantly reduce execution risk.

Practical Lessons for PE and VC Investors

The FCCPC’s evolving enforcement posture in the 2025 merger-control environment highlights several practical lessons for investors navigating merger control risk in Nigeria. First, merger analysis should be undertaken at the earliest stages of deal structuring, ideally at the term sheet phase, to identify potential notification triggers and avoid execution delays.

Secondly, particular care must be taken in structuring control rights, especially in private equity, venture capital, and growth equity transactions, where minority protections such as board representation, information rights, and reserved matters may, in substance, confer control under the FCCPA. Thirdly, investors should not assume that offshore or foreign-to-foreign transactions fall outside Nigerian jurisdiction.

Finally, the preparation of merger filings must be approached with rigour, ensuring that submissions are comprehensive, well-supported, and aligned with FCCPC expectations.

Conclusion

The FCCPC's merger control regime should be taken seriously by both local and international investors. The statutory framework is clear.

For PE and VC investors, the central message is simple: merger control is now a front-end deal issue in Nigeria. The investors who ignore it may find that regulatory delay, conditional approval, enforcement exposure or voidness risk has become a material threat to the deal value of the proposed transaction.

[1] Seye Ayinla, Nigerian Merger Control: Principles and Practice (LexisNexis 2022), 108.
[2] Federal Competition and Consumer Protection Commission (Administrative Penalties) Regulations, para 6.
[3] For private equity and venture capital investors, this often includes actions such as premature transfer of equity or assets, early appointment of board members or key management personnel, or the consolidation of financial reporting and operational oversight structures. Additionally, early-stage integration steps such as combining sales functions, merging procurement processes, or aligning human resources, information technology or finance systems may be viewed as indicative of implementation

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PORTFOLIO COMPANY GOVERNANCE IN A DISTRESSED ENVIRONMENT: DIRECTOR DUTIES, CREDITOR INTERESTS AND INVESTOR LIABILITY RISKS

ÆLEX | Chinyerugo Ugoji | Onyinyechi Chima

Introduction

Financial distress is no longer an abstract risk for private capital investors. Many Nigerian portfolio companies are operating in a difficult environment shaped by inflationary pressure, foreign exchange volatility, higher borrowing costs, delayed receivables, compressed margins and a more selective fundraising market. As a result, boards are increasingly being required to make difficult decisions on bridge financing, creditor payments, restructuring, downsizing, asset sales, emergency funding and, in some cases, insolvency planning.

When a portfolio company is in difficulty, the central issue is how investor-appointed directors, fund managers and investment teams can protect the company and preserve value, while avoiding personal or investor-level liability.

The answer is not that investors should step away. In many cases, active investor engagement is exactly what the company needs. The point, however, is that engagement must be properly structured. Investor-appointed directors must understand when their duties begin to shift, fund managers must avoid crossing the line into shadow directorship, and boards must move from ordinary growth-stage governance to disciplined governance when the company is under financial pressure.

This article examines the key legal issues that arise under Nigerian companies' law when a PE/VC-backed company enters financial difficulty with particular focus on the duties of investor-appointed directors, obligations owed to creditors, wrongful trading risks and the practical steps that investors and fund managers should take when signs of distress begin to emerge.

The Starting Point: Investor-Appointed Directors are Directors First

A common feature of PE and VC investments is the right of an investor to appoint or nominate a director to the board of a portfolio company. This is often one of the principal governance protections negotiated by investors, particularly in minority investments. However, once appointed, the nominee is not simply an extension of the investor. The director sits on the board of the portfolio company and owes legal duties to that company.

Under the Companies and Allied Matters Act 2020 ("CAMA"), a director stands in a fiduciary relationship towards the company and must observe utmost good faith in transactions with or on behalf of the company. A director is required to act in what he or she believes to be the best interests of the company, to preserve its assets, further its business and promote the purposes for which it was formed.[1] CAMA also requires directors to consider, among other things, the impact of the company's operations on employees, shareholders and the community or environment in which the company operates.[2]

This does not mean that an investor-appointed director must ignore the commercial position of the investor. It does, however, mean that the director cannot simply vote in accordance with investor instructions where doing so would be contrary to the portfolio company's interests. CAMA expressly provides that a director must not fetter his or her discretion to vote in a particular way.[3] Therefore, a voting instruction from the investor should be treated as input, not as a binding command.

In ordinary circumstances, the interests of the company and its shareholders may be broadly aligned. In a growth-stage company, decisions that preserve or enhance shareholder value may often also promote the company's business. However, where the company is financially distressed, this alignment may weaken. The investor may be focused on preserving its investment, avoiding dilution, securing repayment of shareholder loans or structuring an emergency funding round. The company, however, may need to prioritise solvency, creditor protection and the preservation of enterprise value.

The practical lesson is simple: an investor-appointed director may listen to the investor, take account of the investor's perspective and understand the investor's commercial concerns. However, the director must ultimately ask a separate question: is this decision in the best interests of the company in its present financial condition?

The Ordinary Standard of Care: What is Expected of Directors?

CAMA imposes a duty of care and skill on directors. Directors are required to exercise their powers honestly, in good faith and in the best interests of the company, and with the degree of care, diligence and skill that a reasonably prudent director would exercise in comparable circumstances.[4]

This standard is objective. A director is not excused simply because he or she did not personally understand the financial, legal or operational implications of a decision. At the same time, the law does not require perfection. Directors are expected to act with the care, diligence and skill of a reasonably prudent director in comparable circumstances.

CAMA also provides that each director is individually responsible for the actions of the board in which he or she participates, and that absence from board deliberations, unless justified, does not relieve a director of responsibility. It further provides that the same standard of care applies to both executive and non-executive directors.[5]

This is particularly relevant to portfolio company boards. A non-executive or investor-appointed director is not involved in day-to-day management in the same way as the CEO or CFO. However, that does not mean the director can be passive. A director who repeatedly fails to attend meetings, ignores board papers, does not ask questions about obvious liquidity pressure or allows management to continue trading without proper scrutiny may face difficulty if the company later enters insolvent liquidation.

That said, Nigerian case law recognises that liability should not be imposed mechanically on directors for matters of which they had no knowledge and in which they did not participate. In one case,[6] the Court of Appeal held that it would be unfair to hold non-executive directors liable for the consequences of a transaction where the relevant matter was not presented to the board, no board approval was sought or obtained, and the non-executive directors were not made aware of the issue. The case is helpful, but it should not be read as a licence for passive board conduct. It protects a director who was genuinely unaware of concealed wrongdoing. It does not protect a director who had warning signs before him or her and failed to act.

When Distress Changes the Governance Lens

The ordinary position is that directors owe their duties to the company, not directly to individual shareholders or creditors. However, where a company is insolvent, nearing insolvency, or where insolvent liquidation is becoming unavoidable, the interests of creditors become increasingly important.

This is because, in economic terms, creditors become the persons most exposed to the company's remaining decisions. When a company is solvent, shareholders bear the residual risk and reward. When a company is insolvent or close to insolvency, creditors effectively become the residual stakeholders because decisions taken by the board may determine whether there will be assets available to satisfy their claims.

The principle is not that directors suddenly owe a free-standing duty to each creditor. Rather, their duty to act in the interests of the company must be understood in light of the company's financial condition. When solvency is in doubt, preserving the company's assets and minimising creditor loss become central to what it means to act in the company's interests.

This has real implications for portfolio company governance. A board that continues to approve aggressive expansion, related-party payments, dividends, transactions that favour shareholders or new debt when there is no realistic plan to meet existing obligations may expose directors to claims if the company later enters insolvent liquidation.

The key point for investors is that distress is rarely a single event. It is usually a progression. A company may move from underperformance, to liquidity pressure, to financing covenant default, to inability to pay debts as they fall due, and eventually to a point where insolvent liquidation becomes unavoidable. Governance discipline must increase as the company moves through that progression.

Wrongful Trading under CAMA: The Core Distress Risk

CAMA contains specific provisions on wrongful trading. Where a company has gone into insolvent liquidation, the court may, on the application of the liquidator, declare that a person who is or has been a director of the company is liable to make such contribution to the company's assets as the court considers proper if, before the commencement of winding-up, the person knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation but failed to take steps with a view to minimising the potential loss to the company's creditors.[7]

This provision is especially important because it does not require fraud. A director may be exposed even where he or she acted honestly, if the director continued to allow the company to trade in circumstances where there was no reasonable prospect of avoiding insolvent liquidation and did not take appropriate steps to minimise creditor loss.

The defence is also important. The court should not make a wrongful trading declaration where it is satisfied that, after the director knew or ought to have concluded that there was no reasonable prospect of avoiding insolvent liquidation, the director took every step with a view to minimising potential loss to the company's creditors.

For investor-appointed directors, the analysis is likely to turn on two broad questions.

The first is what the director knew, or what the director ought to have known. This requires attention to the information available to the board. A director who receives management accounts, cash flow forecasts, creditor schedules, reports on compliance with loan or financing obligations, budget variance reports and fundraising updates may find it difficult to argue that he or she was unaware of the company's financial position if those materials clearly showed signs of distress.

The second question is what the director did with that information. Did the director ask for updated cash flow information? Did the board consider restructuring options? Did the company seek professional advice? Were creditor interests discussed? Were new obligations incurred only where there was a credible basis for payment or performance? Were board minutes prepared to record the reasons for decisions taken?

The wrongful trading test is especially relevant to investor-appointed directors because the standard looks not only at the general knowledge, skill and experience reasonably expected of a person carrying out the same functions as that director, but also at the actual knowledge, skill and experience of the specific director in question. In other words, a financially sophisticated investor nominee may be judged partly by reference to that sophistication.

This is one of the most important points for PE and VC investors. A director appointed because of his or her experience in finance, investment, restructuring or business oversight cannot approach distress as a passive observer. The more sophisticated the director, the more difficult it may be to justify reliance on unsupported optimism from management.

Fraudulent Trading, Reckless Conduct and Personal Liability

Wrongful trading should be distinguished from fraudulent trading. CAMA allows the court, in a winding-up, to impose personal responsibility where the company's business has been carried on in a reckless manner, with intent to defraud creditors, or for any fraudulent purpose, and the relevant person was knowingly a party to that conduct.[8]

Fraudulent trading may involve dishonesty, fraud or intentional creditor prejudice. The statutory reference to reckless conduct is also significant. In a distressed environment, reckless conduct may include continuing to incur debts where there is no credible plan for repayment, taking customer deposits when the company cannot perform, misrepresenting the company's financial condition to lenders or suppliers, or approving transactions designed to move value away from creditors.

For investors, the concern is not only formal liability. Distress often leads to retrospective scrutiny. Liquidators, creditors, minority shareholders and regulators may review the company's records after the event. Decisions that seemed commercially urgent at the time may be judged against the board papers, minutes, emails and financial information available when the decisions were made.

Shadow Director Liability: When Investor Oversight Becomes Control

CAMA's definition of a director includes a person on whose instructions or directions the directors are accustomed to act.[9] This is the foundation of shadow director risk.

In PE and VC structures, this issue is particularly sensitive. Investors often have extensive contractual rights. These may include consent rights over budgets, debt, capital expenditure, hiring and firing of senior management, related-party transactions, new share issuances, acquisitions, disposals and material contracts. Investors may also receive monthly reports, attend board meetings as observers, participate in strategy sessions and engage directly with founders or management.

These rights are not inherently problematic. Protective rights are a legitimate feature of private capital investments. The risk arises when these rights cross the line from structured oversight into operational control, where investors issue directives to management on day-to-day decisions, instruct the board on how to vote, negotiate directly with creditors in ways that substitute their judgment for that of the board, or otherwise run the business from behind the scenes.

In a distressed environment, this risk is elevated. Investors under pressure to protect fund value may be tempted to intervene more directly in portfolio company decisions. Each such intervention carries the potential to cross the shadow directorship threshold. The test is not how the investor sees its role, but whether the board has, in practice, become accustomed to acting on the fund's instructions.

For fund managers, shadow director allegations can create serious risk. If a fund or its personnel are treated as shadow directors, they may be exposed to director-type obligations and potential claims in a subsequent insolvency. Even where liability is not ultimately established, the allegation can create litigation, reputational risk and internal fund governance issues.

Conflicts of Interest in Emergency Funding and Dilutive Fundraising Rounds

Distressed companies often require emergency funding. This may come through bridge financing, shareholder loans, convertible instruments or new equity issued at a lower valuation than the company's previous fundraising round. These transactions may be necessary to preserve the company.

However, they often involve conflicts.

Where a distressed company requires emergency funding, an existing investor may be willing to provide that funding only if it receives enhanced economic or governance rights. These may include security, repayment priority, conversion rights, enhanced liquidation preferences, anti-dilution protection, waivers or amendments to existing shareholder rights. If that investor has a nominee on the board, the nominee director may be conflicted when the board considers whether to approve the transaction.

The resulting conflict should not be treated casually. The board is not simply approving fresh capital. It is also considering a transaction that may improve one investor's position relative to the company, other shareholders or creditors. CAMA requires directors to avoid conflicts between their personal interests and their duties to the company and to account for secret profits or improper benefits.[10] Depending on the company's constitutional documents, shareholders' agreement and the nature of the transaction, the director may need to abstain from voting or recuse himself or herself from certain deliberations.

The board should also consider whether the company requires independent legal advice, financial advice, valuation support or shareholder approval. The more severe the dilution or the more favourable the funding terms to an insider, the more important the process becomes.

The objective is not to make distressed financing risk-free. It rarely is. The objective is to ensure that the board can demonstrate that it acted honestly, reasonably, transparently and in the interests of the company.

Practical Governance Steps for Distressed Portfolio Companies

Once a portfolio company shows signs of financial stress, the board should move into enhanced governance mode. This is not the same as assuming that insolvency is inevitable. It simply means that the board may need to supervise the company more closely than it would in the ordinary course.

The following steps are particularly important.

(a) Improve Financial Reporting

The board should insist on reliable and current financial information. In distress, quarterly or monthly reporting may be insufficient. The company may need weekly cash reports, debtor recovery reports and scenario planning.

Where figures are unclear, inconsistent or delayed, the board should ask questions and require clarification.

(b) Monitor Solvency

The board should monitor solvency on an ongoing basis. This includes whether the company can pay its debts as they fall due and whether its assets are sufficient to meet its liabilities, including contingent and prospective liabilities.

(c) Put Creditor Interests on the Agenda

Where distress is material, creditor interests should be expressly considered in board papers and minutes. This is especially important for decisions involving new debt, payment prioritisation, asset disposals, related-party transactions, customer deposits and continued trading.

(d) Obtain Independent Professional Advice

Directors should seek legal, financial, insolvency or restructuring advice where the company's position becomes uncertain. Early advice may preserve options.

(e) Document Board Deliberations Carefully

Minutes should show the information considered, the options discussed, the risks identified, any professional advice obtained, the treatment of creditor interests, conflict disclosures, abstentions and the reasons for the board's decision.

If the company later enters insolvency, well-prepared minutes may be one of the most useful ways for directors to show what they considered and why they acted as they did.

(f) Manage Investor Communications

Investor views should be clearly separated from board decisions. Fund managers and investment teams should avoid language that suggests they are directing the company. Recommendations should be framed as shareholder views, not instructions.

Conclusion

For Nigerian private capital investors, the key lesson is that when a portfolio company is under financial pressure, the board must act deliberately, keep proper records and take creditor interests seriously. Good governance will not eliminate commercial risk, but it can significantly reduce liability exposure and improve the prospects of preserving value through difficult periods.

[1] Section 305(1) CAMA.
[2] Section 305 CAMA.
[3] Section 305 (6).
[4] Section 308(1) CAMA.
[5] Section 308(4) CAMA.
[6] Obigwe v Securities and Exchange Commission (2017) LPELR-43549(CA)
[7] Section 673 of the Companies and Allied Matters Act, 2020
[8] Section 672 CAMA
[9] Section 270(1) CAMA
[10] Section 306(2) CAMA.

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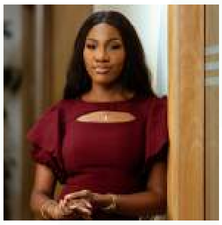

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MANAGEMENT INCENTIVE STRUCTURES IN NIGERIAN PE-BACKED COMPANIES

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Management incentive structures are becoming a more important part of Nigerian private equity transactions. In founder-led businesses, family-owned companies and growth companies moving into a more institutional phase, investors are increasingly focused not only on capital, control and governance, but also on whether the management team has a direct stake in the value creation journey.

That is the real purpose of management equity. It works as a commercial alignment mechanism rather than a decorative benefit or soft retention tool. It rewards the people expected to execute the investment thesis, professionalise the business, improve reporting, drive operational discipline and support a credible exit. In the Nigerian context, where private equity ownership often introduces stronger governance, audited accounts, internal controls, tax compliance, board oversight and strategic planning, management incentives can help make value creation part of how management runs the business day to day.

The structures being used in Nigerian PE-backed companies vary. Some are straightforward employee share ownership plans. Others borrow from international private equity practice, including sweet equity, growth shares, hurdle shares, ratchets, phantom equity and exit-based bonuses. The economics may look familiar to global practitioners, but the design must work under Nigerian company law, Nigerian tax rules and the practical realities of Nigerian private companies.

What these structures are trying to achieve

The starting point is the behaviour the structure is meant to encourage, well before any choice of instrument.

Where the objective is retention, a time-based vesting structure may be appropriate. Performance objectives are better served by tying the award to clear financial or strategic KPIs. To reward only value created above the investor's entry case, growth shares or hurdle shares tend to fit better. And where the aim is to reward an exit outcome without putting actual shares in management's hands, phantom equity or an exit bonus may be cleaner.

A simple ESOP gives selected employees or managers the right to acquire or receive shares in the company. In a Nigerian private company, this cannot be treated as a casual promise. The plan should be consistent with the company's articles, shareholders' agreement, board approvals, share allotment processes, share register and any CAC filings that may be required. It should also sit properly with pre-emption rights, transfer restrictions, reserved matters, drag rights, tag rights and anti-dilution provisions already agreed among shareholders.

A practical ESOP will often separate the award into a time-based component and a performance-based component. The time-based component rewards continuity and leadership commitment. The performance-based component links vesting to measurable outcomes. Those outcomes may include EBITDA growth, revenue expansion, margin improvement, working capital discipline, governance milestones, audited accounts, ERP implementation, regulatory compliance or exit readiness. The better plans do not overcomplicate the KPIs, but they make them sufficiently clear to avoid disputes when value is realised.

Sweet equity is more targeted. It usually gives management a small equity interest at favourable economics, but the real value only emerges if the business performs. It is meant to reward growth, not simply employment. In Nigerian transactions, the same commercial effect can be achieved through ordinary shares issued at an agreed value, a special class of shares, options, deferred share rights or contractual participation rights. The correct choice will depend on the company's capital structure, tax position, governance arrangements and exit plan.

Growth shares and hurdle shares are useful where investors want management to participate only in value above a defined threshold. That threshold may be the investor's entry valuation, invested capital plus a preferred return, or another agreed equity value. This protects the investor's base case while giving management a real stake in outperformance. It also helps address one of the common tensions in PE-backed businesses: management should share in the upside, but only where genuine additional value has been created.

Ratchets operate differently. A ratchet adjusts management's economic participation depending on performance or exit outcome. For example, management may receive a higher percentage of proceeds if the investor achieves a specified money multiple or IRR. Participation may reduce where performance falls below the agreed target. Ratchets can be powerful, but they require careful drafting. If the ratchet is too generous, it may distort behaviour. If it is too opaque, it may create tension at exit. The formula should be simple, capable of calculation and aligned with the investment case.

Phantom equity and exit bonuses remain useful alternatives. They give management a contractual right to receive a cash amount calculated by reference to equity value or exit proceeds. They may avoid some of the corporate law and shareholder complexity that comes with actual share ownership. However, because they are cash settled and often linked to employment, they may be more naturally analysed as compensation. That tax character should be considered at the design stage, not after the exit event.

Leaver provisions

Leaver provisions matter as much as the percentage being granted. A plan that says management owns two per cent of the company but does not explain what happens on resignation, misconduct, disability, death, termination, retirement or early exit is incomplete.

Most plans distinguish between good leavers and bad leavers. A good leaver may keep vested rights or receive fair value for vested shares. A bad leaver may forfeit unvested rights and may be required to sell vested shares at cost or at a discount. In some exit-focused structures, management participation remains conditional on continued employment through a liquidity event. This can be appropriate where the purpose of the incentive is to keep senior leadership committed through the full PE hold period and exit process.

The plan should also address early exit. If the company is sold before all KPIs have been tested, should vesting accelerate? Should the board have discretion? Should the award be pro-rated? Should unvested rights fall away? These questions are better answered when the plan is agreed, not in the middle of an exit negotiation.

The Nigerian tax question

The most important technical issue is tax. Management gains may have the character of employment income, capital gains, investment return or a combination of these. The answer should depend on the legal form of the award, the consideration paid by the manager, the timing of vesting, the degree of downside risk, the source of the entitlement and the connection between the benefit and employment services.

Where a manager receives shares for no consideration or at a discount because of employment, the tax analysis may point toward an employment benefit. Where a manager pays market value, assumes genuine equity risk and participates only in future appreciation, the analysis may be closer to investment return. Where the plan is a cash-settled contractual right, the compensation character may be stronger.

The Nigeria Tax Act 2025[1] makes this analysis more important. The Act reflects a broader movement toward taxing economic benefits by reference to substance and character, rather than merely by the legal wrapper through which value is delivered. In our earlier article in PEVCA LRC Bulletin Issue 04,[2] Personal Income Tax Reform: Implications for Carried Interest, Manager Compensation, and Economic Impact, we considered the distinction between income earned for services and gains earned through genuine risk-bearing participation. That distinction is also central to management incentives in

PE-backed portfolio companies.

The point is not that management equity should be treated favourably as a matter of assumption. The point is that the structure should make the character of the participation clear. If management is being rewarded for employment services, the tax treatment should follow that character. If management has made an investment, paid value, accepted risk and receives value only because enterprise value has increased, the documentation should support that analysis.

This is where the market would benefit from more direct administrative guidance over time. Until then, deal teams should design for evidential clarity. The documents should record the grant date, valuation basis, consideration paid, vesting conditions, forfeiture triggers, rights attaching to the shares or instruments, transfer restrictions, calculation mechanics and tax responsibility. Tax should not be treated as an exit housekeeping item. It should be embedded in the incentive design from day one.

The same point appears in other recent LRC commentary. In PEVCA LRC Bulletin Issue 04, AELEX, through Onyinyechi Chima, Jibrin Dasun and Chinyerugo Ugoji, addressed Capital Gains Tax 2025 to 2026: Exit Planning in a New Era,[3] highlighting the need for more deliberate exit planning under the new fiscal framework. That message applies directly to management equity. If value will be realised on exit, the exit tax analysis should be built into the structure at entry.

KPMG's article in the same edition, Taxing Offshore Disposals with Nigerian Nexus: Indirect Share Transfers Under the Nigeria Tax Act 2025,[4] is also relevant where Nigerian portfolio companies sit below offshore holding structures. If management holds shares or economic rights at the holding company level, the indirect transfer and Nigerian nexus analysis may become important. That is particularly relevant for PE structures where the fund, holding company and operating company may sit in different jurisdictions.

Issue 02 of the LRC Bulletin also remains useful. Olaniwun Ajayi LP's article on Private Equity and Venture Capital Exit Strategies[5] emphasised that exit provisions shape definitive agreements from the start, including drag rights, tag rights, pre-emption rights and investor protection provisions. Management incentives should be drafted with the same exit discipline. A manager's economic participation should not frustrate a drag process, delay buyer diligence or create avoidable uncertainty around proceeds.

Designing for Nigerian realities

The best management incentive plans in Nigeria tend to share five characteristics.

First, they are understandable. If a CEO needs multiple advisers and a complex waterfall model to understand the incentive, it is unlikely to drive behaviour in the intended way.

Second, they are linked to the value creation plan. If the investment thesis is operational turnaround, the KPIs should reflect operational improvement. If the thesis is governance and institutionalisation, the KPIs should include reporting, controls, compliance and audit readiness. If the thesis is scale, the KPIs should reflect growth, margins, cash conversion and market expansion.

Third, they are properly approved and documented. Share rights should not live only in an informal side letter if they need to be reflected in the articles, shareholders' agreement, board records, share register or plan rules. In practice the plan moves through a clear approval chain: the board approves the plan and the specific awards; where new shares, a new share class, or amendments to the articles or shareholders' agreement are involved, shareholders approve the necessary resolutions and any waiver of pre-emption rights; and the resulting allotments, class rights and amendments are then captured in board resolutions, the register of members and the relevant CAC filings. Mapping that chain at the outset avoids the common problem of an award that has been economically agreed but is not yet legally effective.

Fourth, they are tax aware. The company, investor and management team should understand the likely treatment at grant, vesting, exercise and exit. The plan should also state who bears any tax liability and whether the company has withholding or reporting obligations.

Fifth, they are fair. Investors need downside protection and exit flexibility. Management needs to know that the upside is real. A good plan should protect both concerns.

These benefits come at a real cost, which is easy to underestimate. Designing and implementing a credible plan typically involves legal fees for the plan rules and for amending the articles and shareholders' agreement, tax advice on the treatment at grant, vesting and exit, valuation work to set award prices or hurdles, and company secretarial costs for the resolutions, allotments and filings, with some ongoing administration cost over the life of the plan. For smaller portfolio companies in particular, those costs should be weighed against the size of the award pool, so that the structure stays proportionate to the value it is meant to create.

Conclusion

Management incentive structures will become more common as Nigerian PE-backed companies mature. That is a positive development. It supports retention, accountability, governance and long-term value creation. It also recognises that transformation is delivered by the management team running the business.

The next phase is greater technical discipline. Sweet equity, growth shares, hurdle shares, ratchets, phantom equity and leaver provisions can all work in Nigeria. But they must be adapted to Nigerian company law, Nigerian tax rules, Nigerian corporate practice and the realities of private equity ownership.

The best structures will be simple in purpose, rigorous in drafting, properly approved, tax aware and aligned with durable enterprise value creation. Where that balance is achieved, management incentives can become one of the most effective tools for turning PE capital into lasting business performance.

[1] Nigeria Tax Act 2025, Federal Republic of Nigeria.
[2] Private Equity and Venture Capital Association Nigeria (PEVCA), LRC Bulletin Issue 04, “Personal Income Tax Reform: Implications for Carried Interest, Manager Compensation, and Economic Impact”.
[3] AELEX, Onyinyechi Chima, Jibrin Dasun & Chinyerugo Ugoji, “Capital Gains Tax 2025–2026: Exit Planning in a New Era”, PEVCA LRC Bulletin Issue 04.
[4] KPMG, “Taxing Offshore Disposals with Nigerian Nexus: Indirect Share Transfers Under the Nigeria Tax Act 2025”, PEVCA LRC Bulletin Issue 04.
[5] Olaniwun Ajayi LP, “Private Equity and Venture Capital Exit Strategies”, PEVCA LRC Bulletin Issue 02.

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GP-LED SECONDARIES AND CONTINUATION FUNDS: COULD THEY WORK FOR NIGERIAN PE AND VC, AND WHAT WOULD NEED TO BE TRUE LEGALLY FOR THEM TO HAPPEN?

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Introduction

As Private Equity ("**PE**") and Venture Capital ("**VC**") in Nigeria deepens and matures, there is a growing appetite for liquidity and exit solutions optimising value for both general partners ("**GPs**") and limited partners ("**LPs**") in and out of fund cycles. In 2025, global secondary market transaction volume reached US$233 billion, representing a 53% increase compared to US$152 billion in 2024, with GP-led secondary volume alone accounting for US$116 billion.[1] Continuation funds ("**CF**") accounted for $71 billion of the $160 billion in global secondaries deals in 2024, representing 45-60% of all secondary market deal flow.[2]

GP-led secondaries provide liquidity to existing investors or an option to hold on to attractive assets for much longer. The most common type of GP-led secondaries involves the creation of a CF sponsored by the GP, into which interests in one or more portfolio companies from a legacy or expiring fund are purchased and transferred. This mechanism offers existing LPs the option to either retain their economic interest by rolling it over into the new fund vehicle, with or without new LPs; hence, preserving their investment in a portfolio company in which the GP is not yet ready for an optimal exit, or sell down their stake to new LPs at an agreed price, thereby achieving liquidity. The purchase price is typically determined by third-party secondary investors (often through an auction process). This independent valuation is critical for addressing GP-LP conflict-of-interest concerns.

Without CF, GPs managing high-performing portfolio companies in funds nearing the end of their lifecycle are faced with certain challenges, including weak market conditions for exit and a GP's desire to generate more liquidity for investors without a premature sale at a lower price than would have been due if the divestment is made at a future time. CF provides a practical solution to avoid forced sales, preserve value, and offer LPs flexibility to either join the new fund and continue investment in an already ascertained and familiar portfolio company, or exit and receive returns.

This article explores the prospects of GP-led secondaries and CFs in Nigeria, analyses challenges, and provides recommendations to the Securities and Exchange Commission ("SEC") in dealing with GP-led secondaries.

Prospects for GP-Led Secondaries Under Nigerian Laws

Nigeria has the largest PE and VC market in West Africa and ranks as the second in Africa, accounting for 23% of transactions as of 2025,[3] but has limited secondary market infrastructure. Currently, in Nigeria, trade sales to strategic buyers, offers for sale, and initial public offerings are recorded as the commonest exit paths.[4] GP-led secondaries could solve liquidity challenges, especially because Nigerian companies often require longer holding periods, beyond typical 7-10-year fund terms, to maximise value. Moreover, Nigerian GPs can retain control of their best-performing companies for longer.

However, there is no specific legal framework dedicated to regulating GP-led secondaries in Nigeria. For instance, the Investments and Securities Act 2025 ("ISA") only generally recognises PE as Collective Investment Schemes ("CIS") within the SEC's regulatory oversight. (ISA, s.150 and 151; SEC Rules, 557).

Some Critical Challenges

While existing legislation provides for general rules in relation to PE funds, these provisions do not address the unique challenges of GP-led secondaries, subsequently discussed below.

a. Conflicts of Interest

GP-led secondaries create a significant conflict of interest because the GP acts as an agent for two groups with opposing objectives: for the legacy fund, the GP acts on behalf of existing LPs, whose interests lie in selling the fund's assets at the highest possible price. For the CF, the GP sponsors the new vehicle to benefit incoming LPs seeking to acquire the same assets at the lowest possible price. In addition, the GP benefits directly from higher profits through increased carried interest.

This conflict can lead to exploitation of privileged information and pricing of assets that favour one party over another, maximising legacy LPs' returns at the expense of new investors or favouring the CF LPs at the expense of those exiting.

Conflict of interest is significantly reduced, but not eliminated, when all LPs elect to roll over their shares. Valuation remains necessary for fee and carry calculations, even without new investors. However, true conflict arises when new investors enter the CF, as the valuation then directly impacts their investment.

The April 2025 amendment to the SEC Rules, r. 561 now requires a conflict-of-interest policy to be submitted during the registration of a private equity fund. While commendable, the amendment does not prescribe the scope of such policies. Traditional conflict of interest policies usually cover related-party transactions, allocation of investment opportunities, self-dealing by the GP, and other circumstances where the interests of the GP may be prejudicial to those of the LPs.

GP-led secondaries, however, present unique conflict concerns on the part of the GP, as there may be conflicting interests over the timing of the exit of the legacy fund, disputes over valuation, different interests on carried interests' calculations, and other negotiated terms in the secondaries transaction documents.

This apparent conflict of interest may result in difficulty in obtaining consent from the existing investors to set up the CF or wind down the legacy fund. There may also be extended negotiations and difficulties in reaching consensus, especially where the economic and governance terms of the CF are different from those of the legacy fund. The Institutional Limited Partners Association ("**ILPA**") specifically recommends that advisory committees of LPs formally evaluate these conflicts and provide a "status quo" option (maintaining legacy terms) to address term differences.

b. Valuation Governance

Fair valuations are critical to GP-led secondaries because the conflicted GP effectively determines the transfer price of assets from the legacy fund to the CF while managing both funds.

SEC Rules, r. 563 only requires GPs to act in good faith, with no prescribed mandatory independent valuation rules. Exits and sales are private commercial arrangements in which parties negotiate to maximise value, and negotiations extend beyond pricing alone and also cover other commercial terms, including payment structures, risk allocation mechanisms, representations and warranties, and indemnities, all of which may significantly influence the overall value of a transaction. The SEC Rules do not specify which of the sides involved the GP should hold utmost fiduciary duties and act in good faith when there is a conflict of interest. Also, no mandatory independent valuation is required to ensure objectivity.

In Nigeria, valuation challenges for GP-led secondaries are amplified by two factors: limited comparable transactions with which to benchmark the CF, and macroeconomic instability affecting valuation assumptions. The GP effectively determines the transfer price of the legacy fund to the CF while managing both funds, which raises conflict of interest concerns as previously discussed above.

To ensure fair valuation, the International Private Equity and Venture Capital ("IPEVC") Valuation Guidelines (the "Guidelines"), which set out best practice for valuing private capital investments at fair value, are sometimes adopted to determine the valuation of such GP-led secondaries implemented via a CF.[5] However, the Guidelines are voluntary best practice standards and not mandatory rules. GPs are not mandated to abide by them, leaving valuation quality dependent on GP discretion rather than regulatory requirement.

c. Taxation Concerns

Capital gains tax ("CGT") will apply to gains made from waterfall returns to LPs upon the transfer of interest in the portfolio company by the legacy fund to the CF. Under the Nigerian Tax Act, 2025 ("NTA"), capital gains tax is now chargeable as income and, as such, at the same rate applicable to income tax.

The exemptions from CGT apply in relation to shares held in a Nigerian company. For instance, gains that accrue from the disposal of assets (including shares, by implication) held by a PE fund in a Nigerian-labelled startup for a minimum of 24 months are exempt from income tax (NTA, s. 162(1)(m)). CGT is also exempt where aggregate disposal proceeds are below NGN150 million and chargeable gains do not exceed NGN10 million within any 12 consecutive months (NTA, s.34). In addition, the portion of disposal proceeds reinvested in a Nigerian company within the year of assessment will be exempt from CGT (NTA, s.34(1)(a)).

The applicability of the monetary-cap exemption depends on the legal status of the legacy fund and whether it is regarded as a juristic entity in its country of incorporation. In Nigeria, a limited liability company legacy fund is directly subject to capital gains tax, while gains made by a partnership legacy fund are taxed in the hands of the LPs.

Remarkably, NTA, s. 63 appears to only conceive funds as juristic entities, as it treats the trustee (in this instance, the fund) as a company and the unitholders as shareholders. By a joint reading of NTA, ss. 63(3) and 162(1)(b), returns may be subject to withholding tax, while distributions to LPs are exempt from income tax. This may create uncertainty for PE transactions involving fiscally transparent funds where gains and income are attributed directly to LPs rather than the fund itself.

Due to the GP's close connection to both the legacy fund and the CF, transfer pricing principles will likely apply, thereby bringing the transaction under close scrutiny. Tax authorities at relevant jurisdictions may challenge any discount applied by the CF on the basis that it does not reflect the asset's true fair market value for tax purposes. The possibility of post-closing re-evaluation raises concerns regarding deal certainty and finality in GP-led secondary transactions. Parties may, therefore, need to account for potential tax adjustments and allocate risk of subsequent assessments, thereby increasing transaction complexity and negotiation period.

For Nigerian-registered funds, the removal of the arm's-length requirement from valuation requirements in the April 2025 amendment to r. 563 does not displace compliance with the Income Tax (Transfer Pricing) Regulations 2018 ("TP Regulations") and the Nigerian Tax Act, 2025. Under the TP Regulations, r. 4(3), the Nigerian Revenue Service ("NRS") may adjust the taxable income of the transferring vehicle where the sale price is not at arm's length. (TP Regulations, r.4(3).)

Recommended Way Forward: The role of the Securities and Exchange Commission

For the GP-led secondaries and continuation funds to work more effectively for funds domiciled in Nigeria, the SEC should issue a dedicated framework specifically addressing the nuances of these transactions. While existing regulations governing CISs and PE provide a general framework for fund operations, they do not adequately address the unique governance concerns that arise when a GP acts on both sides of a transaction and investor protection specific to asset transfers from a legacy fund to a CF.

For instance, to address valuation concerns, there should be mandatory guidelines prescribing minimum valuation disclosure requirements, particularly where the LPs in the CF differ from those in the legacy fund. Such guidelines should cover the appointment of an independent valuer for all such asset transfers, the disclosure to LPs of key valuation assumptions and methodologies, and the provision of sufficient information. In addition, the framework should prescribe minimum disclosure requirements relating to the sale (asset description, transfer rationale, expected timeline), the alternatives considered by the GP and why CF was chosen, all transaction costs, GP fees, management fee structures in CF, and all actual or potential conflicts of interest, GP's financial interests in both funds. This would enable LPs to make an informed decision as to whether to roll over their investment into the CF or elect for liquidity and exit the transaction.

The downside to these requirements, however, is that they may increase the cost and execution timeline of GP-led secondary transactions due to independent valuer fees, enhanced documentation and disclosure preparation, and review delays. Nevertheless, these costs may be justified by the solutions they provide.

To clarify the tax treatment of CF transactions and address transfer pricing concerns, the SEC, in collaboration with the NRS, should develop guidelines on the tax treatment of PE fund structures and the treatment of CF transactions for transfer pricing purposes. This should include a safe harbour provision whereby a PE transaction is presumed to satisfy transfer pricing requirements if supported by an independent valuation and approved by the LPAC or a majority of the LPs. This would reflect the commercial realities of GP-led secondary transactions while safeguarding against asset undervaluation and disputes with tax authorities over arm's-length pricing.

Furthermore, the SEC can strengthen its role by collaborating with international bodies such as the IPEVC to adopt the global valuation guidelines and harmonise Nigeria’s regulations with international standards.

Conclusion

GP-led secondaries present greater complexity where the LP composition of the legacy fund differs from that of the CF. The introduction of new investors (alongside existing LPs) with differing interests, investment objectives, and liquidity preferences gives rise to valuation, governance, and conflict-of-interest concerns and tax considerations that require careful regulatory and contractual safeguards. GP-led secondaries offer an alternative solution to Nigeria’s scarcity of viable exit and liquidity options for investors. As there is potential for this structure to become increasingly prevalent, particularly for high-quality portfolio assets in demand sectors such as fintech, infrastructure, healthcare and consumer businesses, a clear regulatory framework addressing these considerations is crucial to fostering investor confidence and facilitating more efficient GP-led transactions.

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W&I INSURANCE IN NIGERIAN M&A AND PE EXITS: MARKET PRACTICE, COVERAGE GAPS AND BARRIERS TO ACCESS

Jackson Etti & Edu | Comfort (Agboola) Adekunle

1. Introduction

Warranty and Indemnity (**W&I**) insurance has become a fundamental feature of modern M&A practice. It enables the transfer of risk from transaction parties to insurers, thus facilitating clean exits, pricing certainty, and reduced post-closing disputes. In most developed jurisdictions, W&I insurance is now embedded in private equity (PE) exits and competitive auction processes.

In Nigeria, however, while the M&A market has witnessed increasing sophistication - driven by private capital inflows, regulatory reform and cross-border structuring - W&I insurance has seen limited adoption and remains constrained by policy hurdles. In many Nigerian transactions, it is usual still for parties to rely on traditional risk allocation mechanisms.

This article interrogates the practical reality of W&I insurance in Nigerian private capital exits, considering the risks that underwriters are willing to cover and typical exclusions, the due diligence standards required, how Nigerian-law deals are treated differently from English-law deals, and what practical solutions exist where W&I insurance cannot fully bridge the risk allocation gap.

2. W&I Insurance in the Global and African Contexts

Globally, W&I insurance has become a standard tool in private M&A transactions, particularly in mid to large cap private equity exits and competitive auction processes. Across Africa, however, the adoption of W&I insurance has grown unevenly. South Africa leads the continent, with relatively mature usage in mid and large-cap transactions, while other jurisdictions, including North Africa, Kenya and Nigeria are still emerging.

Policies across both developed and developing jurisdictions typically cover losses resulting from breaches of contractual warranties, with coverage limits often ranging between 20% and 30% of the purchase price. However, while premiums are typically below 1% of the transaction value in mature markets and about 1% in South Africa, they rise up to two per cent or higher for deals in Nigeria and other African countries.[1]

3. The Reality of the Nigerian Market

In Nigeria, W&I insurance penetration remains low relative to deal volume with international insurers typically focusing on transactions above circa US$10 million. Also, for most deals, W&I is often introduced late in the process and treated as transaction-enhancement rather than baseline risk allocation - a major divergence from the practice in developed markets and a key constraint to widespread adoption. The product has been adopted mostly in cross-border transactions in financial services and fintech, manufacturing and FMCG, infrastructure, and to some extent, deals in oil and gas, health and pharmaceuticals.

However, market penetration is still low due to limited underwriting appetite, smaller transaction sizes, pricing considerations and lack of familiarity with the product among domestic deal participants. As W&I insurance is not always available, Nigerian transactions tend to rely heavily on contractual deal structures such as escrow arrangements, purchase price holdbacks, seller indemnities and earn-out structures. This reflects a structural gap between global insurance-enabled risk allocation and local deal practice.

4. Scope of Coverage and Typical Exclusions

4.1 Scope of Coverage

As elsewhere, a W&I policy in Nigeria is designed to cover representations and warranties, and any tax indemnity given by the seller to the buyer in the transaction documents.

4.2 The Central Role of Exclusions

W&I policies typically include extensive exclusions intended to bring the policy in line with the scope of coverage that W&I insurance is designed to provide. Standard W&I policy exclusions fall into the following categories: (i) general exclusions, (ii) deal-specific exclusions, and (iii) warranty carve-outs and qualifications.[2]

General exclusions are exclusions which apply across the W&I insurance market and typically address matters that cannot be covered because they fall within the knowledge of the deal team including matters disclosed in the data room, during due diligence, in a disclosure letter or in public searches. Other typical exclusions are fraud of the insured, purchase price adjustments, fines and sanctions that are uninsurable by law, etc.

Deal-specific exclusions are those arising from certain features of the transaction, including areas of lack or insufficient due diligence, jurisdiction-specific issues such as anti-bribery and corruption matters, industry-specific risks, and areas that should more properly be covered by existing insurance policies.

It is also typical to have warranty carve-outs and qualifications where the insurer is not comfortable with providing cover for a warranty as drafted in the transaction document. The insurer's preferred amended warranty form will usually be set out in the W&I policy or warranty spreadsheet. Typical warranty amendments range from removal of forward-looking warranties, estimates or forecasts, to inserting seller knowledge qualifiers. There may be wholesale exclusion of a warranty where an insurer takes the view that it cannot be covered even with amendments.[3]

5. Due Diligence as the Prerequisite for Insurability

W&I insurance is fundamentally a diligence-driven product. Insurers rely on the adequacy and completeness of due diligence to evaluate the transaction and determine the scope of coverage and the insurance premium.[4] Accordingly, underwriters require comprehensive due diligence covering legal, financial, tax and commercial/operational matters. Also, conclusions in the due diligence reports must be supported by adequate documentation. Underwriters are likely to challenge findings in the due diligence reports that are not supported by evidence or which are based only on management representations. Fundamentally, gaps in due diligence translate into exclusions in the policy.[5]

With respect to the legal due diligence report, underwriters would want to see a full scope due diligence report covering corporate and regulatory compliance status, a detailed review of material contracts and financing arrangements, ownership of intellectual property, status of real estate and other assets, employment and labour law compliance, and litigation and contingent liability. As regards the financial due diligence, underwriters are typically concerned, inter alia, about the quality of the earnings report, working capital analysis and revenue recognition analysis and a review of related party transactions. Regarding the tax due diligence, matters of interest to insurers include any uncertain tax positions, analysis of all open tax years, VAT and indirect tax review and transfer pricing documentation and compliance.[6] In a particular W&I insurance negotiation, the cover offered for tax liability was very limited as the tax due diligence related only to a few years, leaving the buyer without cover for other open tax years.

In Nigeria, due diligence is often constrained by inconsistent regulatory filings by the target, limited due diligence scope and, in some cases, limited audit quality. These issues create gaps on the basis of which underwriters draft exclusions limiting the scope of the W&I policy.

6. Implications of Nigerian Law vs English Law Deals

Most of the transactions in this market that have featured W&I policies involve cross-border elements, thus making English law the prevalent governing law. Also, English-law-governed transactions are favoured because they offer an established jurisprudence on warranties and damages, and consequently, predictable legal interpretation. Also, insurers and reinsurers are more familiar with English-law transactions.

Nigerian-law-governed transactions involving W&I have been very few, possibly on account of issues such as uncertainty around the jurisprudence on warranty breaches and W&I insurance, a desire to avoid policy-SPA misalignment and perceived enforcement risks. However, interactions with practitioners within the market indicate that there is usually no major concern where the insurer is familiar with the market.

7. Why Nigerian PE Exits Struggle to Use W&I Insurance

We consider below some structural constraints which continue to limit W&I adoption in Nigeria.

(a) Deal Size and Economics
Many Nigerian transactions fall below global insurers' preferred thresholds (circa US$10m), making placement inefficient.

(b) Limited Local Underwriting Capacity
The Nigerian insurance market does not yet provide deep domestic W&I capacity. Accordingly, reliance remains mostly on the London market.

(c) Legal and Regulatory Uncertainty
There is perceived unpredictability in licensing regimes, enforcement risks through local courts and enforcement by tax authorities as well as uncertainty in the tax treatment of W&I insurance.

(d) Diligence Gaps
While local capacity in due diligence is well-developed, inconsistent documentation, weak record-keeping, and compressed diligence processes may reduce insurability.

(e) Exit Environment Constraints
African, and particularly, Nigerian PE exits face considerable liquidity challenges, require longer holding periods and have limited exit routes, thus reducing the standardisation pressure that typically drives W&I adoption in mature markets.

(f) Cost vs Value Trade-Off
Higher premiums combined with reduced coverage create a perception of low value for money. In many mid-sized deals, the cost of the W&I policy is considered prohibitive relative to the transaction value. Our interactions with legal practitioners in the market also indicate that a major reason for non-adoption of W&I is the reluctance of local buyers to undertake the cost of the W&I. In certain situations, parties agree to share the costs.

8. Practical Solutions When W&I is Unavailable

Where W&I insurance cannot be placed, or the available policy is considerably limited, it is typical for dealmakers to revert to contractual risk allocation tools or explore hybrid structures to facilitate a cleaner exit.

(a)Creative structuring
In the absence of comprehensive W&I

coverage, it is typical for parties to resort to contractual structures such as escrows, holdbacks, deferred consideration and liability caps. Also, buyers often negotiate targeted indemnities for specific risk areas such as tax or regulatory compliance, alongside pricing mechanisms that reflect identified exposure.

(b)Hybrid Risk Allocation Structures

Transaction parties may also consider hybrid structures such as partial W&I cover for "clean" aspects of a business, combined with bespoke protections (e.g. reduced escrow or holdbacks) for others. This would serve to balance cost and protection.

(c)Targeted Risk Insurance

Where W&I is inadequate, parties may also consider complementary insurance products to address discrete issues that fall outside the scope of traditional W&I cover, e.g. tax insurance or contingent risk insurance.

Trends in mature markets suggest that specialist underwriters are launching products designed to target smaller deals (valued below US$10m), by using technology to streamline the W&I process, synthetic warranties and standardised policy wording to underwrite more efficiently and at a lower cost. The trends indicate that W&I may become increasingly accessible for smaller transactions.

9. Conclusion

W&I insurance in Nigerian M&A transactions is a real and growing product, though structurally constrained. The reality within the market shows that W&I exists and is most effective for large, well-structured, cross-border deals. The cover may, in certain cases, be narrower and more conditional than in developed markets while pricing for local deals is higher. Greater adoption will depend not only on insurer appetite, but also on improvements in transaction readiness including earlier engagement with brokers and underwriters, and deal structuring that aligns more closely with established underwriting frameworks. Until these elements converge, W&I insurance may remain a valuable tool but one that is selectively deployed to enhance certain transactions, rather than a default exit mechanism. In the meantime, creative contractual structuring will continue to do much of the heavy lifting in Nigerian private capital exits.

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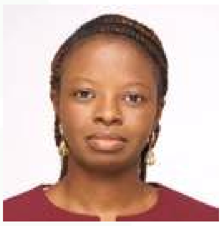
AUTHOR: JACKSON, ETTI & EDU



Comfort (Agboola) Adekunle

THE NGX AS AN EXIT ROUTE FOR PE-BACKED NIGERIAN COMPANIES

Uhuru Investment Partners | Yemi Osindero | Temi Popoola

Introduction

The PEVCA Chairman, Dr. Yemi Osindero, sat down with Mr. Temi Popoola, Group Managing Director and Chief Executive Officer of NGX Group, to discuss what is driving Nigeria's equity market rally and what it signals about the evolution of the country's capital markets and the private equity ecosystem.

Nigerian Exchange has entered a new phase of activity, marked by successive years of strong index performance and a meaningful expansion in market capitalisation. For private equity investors across Africa, this matters. A deeper, more liquid public market creates genuine exit pathways: IPOs and secondary sales that were previously constrained by limited liquidity and narrow strategic buyer pools. Recent transactions underscore this shift. As NGX strengthens, founders and PE sponsors now have real optionality beyond trade sales, opening new routes to capital realisation at scale.

The central question running through the conversation is whether this rally reflects a genuine repricing of Nigerian assets, supported by ongoing macroeconomic reforms, improving fundamentals, and renewed investor confidence, or a cyclical move that will eventually turn. The answer touches on foreign capital flows, domestic participation, market infrastructure, and the role public markets are beginning to play in the private capital lifecycle. For investors building and exiting businesses across the continent, and for PEVCA's members weighing exit options for their portfolios, understanding this inflection point matters.

1. What is really driving this repricing of Nigerian equities?

What we are seeing is a combination of policy reform, improving market confidence, and a reassessment of the long-term value within Nigerian equities. For a long time, many quality companies traded below their intrinsic value because the market was pricing in macroeconomic uncertainty, FX distortions, and liquidity constraints.

Over the last two years, reforms around foreign exchange liberalisation, fiscal adjustments, subsidy removal, and monetary tightening have started to reshape investor perception. While these reforms carried real short-term adjustment costs, they have also strengthened confidence in the direction of policy and the broader economy.

Listed companies have demonstrated real resilience across this period. Across banking, telecommunications, consumer goods, industrials, and energy, many businesses adapted to inflationary pressures by optimising operations, repricing products, strengthening balance sheets, and expanding regionally. That resilience translated into strong earnings performance despite a difficult operating environment.

In periods of elevated inflation, investors look for assets that can preserve value over time. Equities became increasingly attractive because many listed companies have the scale and pricing power to outperform inflation. As confidence improved, domestic investors became more active, pension fund participation strengthened, and foreign investors gradually began rebuilding exposure. Better liquidity supports better price discovery and the two reinforce each other.

What we are witnessing is a broader shift in narrative: from a market previously defined by uncertainty and under-allocation, to one increasingly viewed through the lens of reform, resilience, and opportunity.

2. What has changed in terms of foreign investor participation?

The biggest shift has been the gradual restoration of confidence around market accessibility and capital mobility. Historically, many foreign investors were less concerned about the attractiveness of Nigerian assets and more concerned about their ability to efficiently enter and exit the market, particularly around foreign exchange liquidity and repatriation.

Over the last two years, FX market reforms have improved transparency and price discovery. Investors generally prefer a market-driven system with transparent pricing over one characterised by multiple exchange rates and administrative constraints, even if the transition involves periods of volatility.

Nigeria's reclassification by FTSE Russell as a Frontier Market has reinforced market credibility and improved visibility within global allocation frameworks. Index reclassification does not automatically translate into inflows, but it supports medium- to long-term institutional positioning decisions.

We are also seeing increased engagement from long-only institutional investors, frontier market funds, and global asset managers. The conversation has evolved beyond short-term yield opportunities toward strategic exposure across financial services, infrastructure, technology, energy transition, and industrial expansion. Foreign participation is still rebuilding, but the direction is clearly improving.

3. Beyond the macro story, what has been driving activity within the market itself?

Several market-specific developments have contributed.

The banking sector recapitalisation was the most consequential catalyst. Nigerian banks collectively raised more than ₦4 trillion during the exercise, drawing deep engagement from both domestic and international investors and demonstrating that the Nigerian capital market could absorb supply of that scale. Central to its execution was NGX Invest, our e-offering platform, which digitised the primary market process, improved execution efficiency, and broadened retail access in ways that were not previously possible.

Retail participation has also improved materially, supported by greater financial literacy, digital investment platforms, and growing awareness of wealth creation through capital markets. Younger investors in particular are becoming more engaged with equities.

Market participation has broadened beyond banking stocks as well. While recapitalisation initially drove much of the momentum, investors are now rotating into industrials, consumer goods, telecommunications, and energy. Growth in Exchange-Traded Funds, fixed income products, and broader portfolio diversification reflects a more sophisticated investor base.

What we are witnessing is not simply cyclical activity. It is a strengthening of participation, accessibility, and market depth across the board.

4. What structural improvements are making NGX more attractive to institutional investors?

Institutional investors want markets that are transparent, efficient, liquid, and predictable. We have focused deliberately on those foundations.

The transition to T+1 settlement cycle is particularly consequential. It aligns Nigeria more closely with global standards, improves capital efficiency, reduces counterparty risk, and enhances overall market competitiveness. For institutional investors managing large cross-border portfolios, settlement timing is not an administrative detail, it is a risk variable.

We have also extended trading hours, which supports better price discovery and creates greater flexibility for investors across different time zones. Corporate governance standards at listed companies have strengthened as well, with measurable improvements in disclosure, board oversight, and governance discipline. The demutualisation of the Exchange, its conversion from a member-owned entity into a commercially oriented public company, gave NGX Group the ability to generate profit, attract investment, and build its own infrastructure in ways the previous structure simply did not allow.

Product diversification remains a priority. A modern capital market must extend beyond equities, and we are seeing continued growth across fixed income products, ETFs, derivatives, and sustainable finance instruments. Through initiatives such as the NGX Net-Zero

Programme, we are supporting listed companies in developing credible climate transition pathways and improving alignment with global sustainability standards which matters increasingly to institutional capital with ESG mandates.

Our focus remains on building the structural foundations that position the Nigerian capital market as a competitive destination for long-term capital.

5. Do these Exchange-driven changes meaningfully expand the role of public markets in the private equity lifecycle?

They do. One of the most consequential developments is the strengthening of public markets as a viable exit pathway within the broader private capital ecosystem.

Historically, private equity investors across Africa faced limited exit options. Trade sales were narrow, strategic buyers were few, and public market exits were not always viewed as sufficiently liquid or scalable to serve as a genuine realisation route. As markets deepen and liquidity improves, that changes.

A more liquid Exchange creates greater optionality for private equity sponsors, venture capital investors, founders, and growth-stage businesses. Public markets can provide efficient capital raising, secondary liquidity, valuation transparency, and long-term growth capital. We are already seeing increasing interest from companies that would not previously have considered a listing as part of their growth strategy.

Public and private markets should not be viewed as competing ecosystems. They are complementary parts of the broader financing and investment cycle. Strong public markets improve valuation benchmarks for private assets, expand financing pathways, and increase investor confidence on both sides. For Nigeria, this matters because the scale of capital required to support economic transformation cannot rely solely on bank financing. The Exchange’s role is to ensure its piece of that system is functioning well enough to attract its share.

6. Looking ahead, what could shape the next phase of market growth?

The next phase will largely depend on Nigeria’s ability to sustain reform momentum, deepen market participation, and expand the breadth of investable opportunities.

Macroeconomic stability will remain foundational. Investors will continue to monitor inflation trends, exchange rate stability, fiscal discipline, and monetary policy credibility. Sustained policy consistency is critical.

The pipeline of new listings will equally matter. Increased participation from high-quality issuers across technology, infrastructure, healthcare, agriculture, energy, and industrials could deepen market breadth and attract broader investor interest. Domestic institutional capital will also play a growing role. Nigeria's pension industry continues to expand, creating a pool of patient capital that can support market development over time.

Technology will remain a key driver as capital markets globally become more digital and data-driven. There is also real opportunity within sustainable and transition finance. As global capital increasingly prioritises sustainability-linked investments, Nigeria has an opportunity to position itself as a platform for financing energy transition, infrastructure development, and climate adaptation.

The long-term opportunity extends well beyond the current market rally. The real objective is building a market capable of supporting enterprise growth, economic transformation, job creation, and wealth generation at scale.

7. Is this rally more than a cyclical upswing?

I believe what we are witnessing is more structural than cyclical.

Every market rally contains cyclical elements. Liquidity conditions, sentiment shifts, and macroeconomic adjustments will always influence performance. What differentiates the current environment is that several structural forces are evolving at the same time: policy reform, market infrastructure modernisation, institutional participation growth, stronger domestic capital formation, increased technology adoption, and improving market sophistication. Those are not short-term developments.

The market is also beginning to reflect a broader reassessment of Nigeria's long-term potential. For years, there was a disconnect between the scale of the Nigerian economy and the valuation of its capital markets. As reforms improve market efficiency and investor confidence strengthens, that gap begins to narrow. There is a generational dimension to this as well. Younger Nigerians are becoming more financially aware, more digitally connected, and more engaged with investing and wealth creation. Over time, that reshapes domestic participation in ways that are structural, not cyclical.

That said, sustainable growth requires continued reform execution. Markets do not move in straight lines, and periods of volatility are inevitable. The focus should not be on short-term index performance alone, but on whether the underlying market architecture is becoming deeper, more transparent, more liquid, and more globally competitive.

From that perspective, Nigeria's capital market is in an important phase, one where NGX Group is positioned not just as a trading venue, but as a central engine for capital formation, economic development, and wealth creation.

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Yemi Osindero

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CERTIFICATES OF CAPITAL IMPORTATION: WHY THEY STILL GO WRONG, WHAT INVESTORS LOSE WHEN THEY DO, AND HOW TO PROTECT YOURSELF

Deloitte | Asiata Agboluaje | Chisom Asuzu | Inepaimi Ayah

Overview of the Certificate of Capital Importation regime in Nigeria

The underlying rationale for doing business or making any investment is the expectation of profit and accretion of capital. This is the same for Nigerian and foreign investors in Nigeria. For foreign investors, the ability and ease of repatriation of both its invested capital and any returns generated from that investment (during the life of the investment or at the end) is equally as important as the accretion of capital.

The Nigerian government is keen on attracting foreign direct investment and portfolio investment into Nigeria. In recognition of the impact of the ease and ability to repatriate capital on the attraction of foreign direct/portfolio investment, the Nigerian government enacted laws guaranteeing unhindered ability to repatriate capital and attendant accretion. These include the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act ("**FEMMPA**") and the Nigerian[1] Investment Promotion Commission Act.[2]

While the Nigerian government guarantees unhindered repatriation of capital, this is not without some regulation. In this regard, the Nigerian state, acting through the Central Bank of Nigeria ("**CBN**"), regulates the inflow and outflow of foreign capital as part of its oversight of foreign exchange transactions. To ensure the proper documentation and monitoring of foreign capital inflows into Nigeria, and to facilitate the repatriation of capital and investment returns in freely convertible foreign currency, the FEMMPA requires that a Certificate of Capital Importation ("**CCI**") be issued in respect of the relevant foreign investment.

A CCI serves as formal evidence that foreign capital has been imported into the country. Its importance lies in the protection it affords the foreign investor. In practical terms, a valid CCI facilitates access to the official foreign exchange market for the repatriation of capital and investment returns through authorised channels. It is issued once in the lifetime of an investment (subject to procedural changes in its form) and it is transferable.

Historically, CCIs were issued in hard copy form. This changed in September 2017, when the CBN introduced the Electronic Certificate of Capital Importation ("**eCCI**") platform, thereby digitising the issuance process and significantly improving administrative efficiency. Simply put, without a CCI, where required, a foreign investor may be unable to repatriate capital and ROI through the official foreign exchange market.

Although the CCI regime provides the legal basis for investors to access the official foreign exchange market for repatriation, and the process of verifying investment into Nigeria as a precondition for access for repatriation has been in place for a while, it remains subject to operational and market-related limitations, which can have significant consequences for investors.

Why CCIs still go wrong

Notwithstanding the objectives of the CCI framework, investors may still encounter practical difficulties in obtaining and using valid CCIs for the reasons discussed below.

Timing requirements:
The FEMMPA and CBN Foreign Exchange Manual 2018 ("FX Manual") issued pursuant to FEMMPA set strict timelines for an authorised dealer bank to issue a CCI. For example, with respect to cash inflow, it should be effected within 24 hours of receipt of a cash capital inflow. In the event of non-adherence to this timeline, the authorised dealer must obtain CBN approval before issuing the CCI.

Although this timing requirement is framed as an obligation on the bank, it also means that investors must engage promptly once capital is about to be imported and ensure that the relevant documentation is available without delay. The process is intended to take place while the transaction is still current and readily verifiable through the banking system.

In practice, non-adherence to timing requirements often arises where investors delay engaging the authorised dealer or assembling the required documentation. By the time the application is made, the transaction may have fallen outside the prescribed timeline, or may require prior CBN approval, resulting in delay or additional complexity.

Timing failures may also arise where investors fail to take required steps in relation to an existing CCI in accordance with the CBN-prescribed timeframes. This may include, for example, a failure to dematerialise hard copy CCIs to eCCIs within the period prescribed by the CBN.

Documentation gaps:
The FX Manual makes the issuance of CCI strictly dependent on the submission of supporting documentation. In practice, documentation gaps often arise from incomplete, inconsistent, or poorly aligned records. It could also be because of improper structuring of investment into Nigeria and inaccurate record-keeping, especially in relation to investments that pre-date the CCI regime.

These gaps may delay or prevent the issuance of a CCI. As with timing failures, the consequences are often only felt later, when investors are unable to present the complete documentation trail required to access the official foreign exchange market for repatriation.

Categorisation of capital:
This issue arises where the nature of the inflow—whether equity, shareholder loan, or non-cash contribution—is not properly defined or consistently documented at the outset. This distinction is important because a CCI must accurately reflect the form of the investment. For example, equipment introduced as non-cash capital must be clearly structured, characterised, and documented as a non-cash equity or debt contribution. Where this is not done, the authorised dealer may be unable to issue a CCI that accurately captures the transaction.

In practice, misclassification commonly results from poor coordination between legal, finance, and operational teams, or from treating the importation of assets separately from the investment structure. The result is that, even where capital has in fact been introduced, it may not be recognised in a manner that supports the issuance of a CCI or the repatriation of capital and returns. This can create uncertainty around the treatment of returns and restrict access to the official foreign exchange market for repatriation.

Misaligned Investment structure:
In practice, a particular investment may tick all the pertinent boxes and appear attractive but fail the CCI test. For example, direct acquisition of shares from a Nigerian shareholder (who did not have any underlying CCI) would create problems for the foreign investor as there is no basis to issue CCI for the investment. In this regard, CCI compliance and/or availability is a key verification during due diligence and transaction structuring stage.

Authorised dealer inefficiencies:
Although CCIs are issued in line with CBN guidelines, the issuance process is administered by authorised dealer banks. Investors may encounter delays, inconsistent interpretations of regulatory requirements, and repeated requests for additional documentation. Internal bank processes may also be slow, and some banks may adopt a more cautious approach, particularly in relation to non-cash capital or more complex transactions.

Non-compliance with regulatory requirements surrounding CCI issuance, maintenance or transfer:
There are guidelines/processes covering the issuance, maintenance, recategorisation or transfers of CCIs. Non-compliance with any of these processes may create issues in relation to reliance on the CCIs. These include compliance with the timing for dematerialising CCIs and obtaining CBN's final approval for regularising CCI lapses.

What investors lose when CCIs go wrong

For investors, the consequences of a

delayed, defective, or absent CCI extend beyond regulatory non-compliance. In practical terms, they can translate into commercial, financial, and exit-related challenges. Some of the key implications are outlined below:

Loss of access to the official foreign exchange market: The most immediate consequence of a defective or missing CCI is the loss of access to the official foreign exchange market for the purpose of repatriation. Under the CBN Foreign Exchange Manual, a valid CCI is required to remit dividends, interest, and capital through the official foreign exchange window.

Where a CCI has not been properly issued, investors may be unable to repatriate funds through the official foreign exchange market or may face significant delays and additional regulatory scrutiny. In effect, the investment may become partially illiquid, particularly at the point of exit or realisation.

Exposure to foreign exchange losses: In the absence of a valid CCI, investors may have to rectify remediable lapses which cause delay in the repatriation process. This leaves the investor exposed to volatility in the foreign exchange rates. Exploring alternatives to the authorised foreign exchange market comes with its own challenges.

Reputational damage & pecuniary damages: CCI deficiencies also create regulatory and audit risks. Because the CCI serves as formal evidence that capital has been properly imported and recorded, its absence or irregularity can raise compliance concerns during regulatory reviews, audits, or due diligence exercises. This may ultimately result in sanctions by the CBN which could include fines on authorised banks, investor/investee company and blacklisting the investor with resultant reputational damages.

This can delay transactions, complicate exit processes, and in some cases require investors to regularise historical inflows under less favourable conditions. For private equity and venture capital investors, this introduces unnecessary uncertainty into what should otherwise be a straightforward realisation process.

How investors can protect themselves

Where there are defective or absent CCIs, it is not uncommon for such issues to come up during high-stake events such as dividend remittance, loan repayment, divestment, liquidation, or exit, with far reaching implications on the investor. Hence, there is the need for investors to take proactive steps to avoid CCI-related disruptions. Some of such measures that can be adopted include:

Integration of CCI considerations into the investment structuring: CCI considerations should be addressed at the structuring stage of the transaction, not after funds or assets have been introduced. This includes clearly identifying the nature of the investment, whether equity, shareholder loan, or non-cash contribution, and ensuring that the transaction is aligned with applicable CBN requirements from the outset.

Where non-cash capital is involved, the importation process and investment structure should be closely coordinated so that the inflow can be properly documented and recognised for CCI purposes. With the relevant support, investors need to identify the right action prior to investment, whether there should be a transfer, revalidation, regularisation or different transaction structure.

Maintenance of complete documentation: Given the documentation-driven nature of the CCI process, investors should ensure that all required records are complete, consistent, and readily available. This includes proof of fund transfer, corporate approvals, and other evidence of importation of capital through an authorised dealer and conversion to Naira.

Maintaining a clear and aligned documentation trail reduces the risk of delays or rejection at the point of issuance and ensures that the investment can be properly validated when repatriation is required.

Regular CCI compliance reviews: CCI compliance should not be treated as a one-time exercise. Investors should periodically review their documentation and confirm that all inflows, particularly in multi-tranche or staged investments, are properly captured and supported by valid CCIs.

Regular checks help identify gaps early, reduce the risk of surprises at exit, and ensure continued access to the official foreign exchange market when it matters most.

Taking Steps to remedy noncompliance: As noted above, the consequences of CCI issues only become apparent at the point of repatriation, when the absence of a valid eCCI restricts access to the official foreign exchange market. In this case, depending on the underlying issues there may be an opportunity to remediate the issue. In most cases, this requires CBN approval pursuant to an application, supporting documentation and a legitimate case. This is not as of right but subject to CBN’s prerogative. In this regard, investors should identify if the failure can be remedied and take steps to do this, where required.

Conclusion

The recurring issues around CCIs are not due to a lack of regulation, but rather a gap between what the law requires and how transactions are executed in practice. In line with applicable legislation, capital importation must be properly structured, documented, and recorded at the point of entry to ensure that it can be recognised and repatriated without constraint.

For investors, the implications are straightforward. CCI compliance should be treated as a core part of investment planning, not a post-closing formality. Attention must be paid to timing, documentation, and classification from the outset, with appropriate coordination between legal, finance, and operational teams. Early engagement with authorised dealer banks and the CBN, as well as periodic compliance checks, can further reduce execution risk.

More broadly, investors should treat CCI compliance as a tool for preserving liquidity, flexibility, and exit certainty. While market conditions may at times reduce the immediate importance of the certificate, its value becomes critical when access to foreign exchange is constrained or when an exit is being executed.

In a market like Nigeria, where both opportunity and complexity coexist, the difference between a successful investment and a constrained one is often determined by how well seemingly routine requirements are managed. The CCI is one such requirement. Getting it right ensures liquidity, certainty, and flexibility. Getting it wrong introduces avoidable risk at precisely the point where investors can least afford it.

[1] Cap F35, Laws of the Federation of Nigeria 2004
[2] Cap N117, Laws of the Federation of Nigeria 2004

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TRANSFER PRICING AND RELATED PARTY TRANSACTIONS IN NIGERIAN PRIVATE EQUITY PORTFOLIO COMPANIES: TAX AUDIT RISKS, DOCUMENTATION OBLIGATIONS AND RISK MANAGEMENT CONSIDERATIONS

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Introduction

Private equity (PE) firms have become an increasingly vital component in Nigeria's economic architecture. By mobilising long-term capital, supporting business expansion and enhancing corporate governance in portfolio companies, they play a central role in economic growth. In recent years, regulatory attention on PE groups and their structures has intensified. This reflects both their importance and the complexity of their operational models.

Nigeria remains a major hub for private capital activity in Africa. According to the African Private Capital Association, Africa's venture capital ecosystem recorded approximately US$2.6 billion in venture capital deals and US$1 billion in venture debt in 2024, reflecting a moderation in investment activity following global macroeconomic tightening.[1] Investor sentiment toward Nigeria remains relatively strong. The 2024 Deloitte Africa Private Equity Confidence Survey identifies Nigeria as a key investment destination in West Africa, with investors highlighting expected improvements in economic conditions, strong sectoral opportunities, and anticipated growth in exit activity over the medium term.[2]

A defining feature of modern PE investments in Nigeria is the use of offshore holding companies, multi-jurisdictional structures and relationships, regional management, centralised services and complex treasury and financial arrangements. While these structures are driven by legitimate commercial rationale and objectives such as operational efficiency, core competencies and economies of scale, they also give rise to a wide range of cross-border related party transactions. These related party transactions include management and advisory services, intellectual property (IP) licensing arrangements, intragroup financing, and secondment of personnel, amongst others. Under Nigerian law, these transactions fall within the purview of transfer pricing (**TP**).

TP broadly refers to the pricing of transactions between related entities within a local or multinational group. The governing standard of TP is the arm's length principle, which requires that related party transactions be conducted in a manner that independent parties would typically conduct similar transactions, ordinarily determined by market forces. As embedded in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrators (OECD TP Guidelines)[3], this principle forms the global standard for pricing related party transactions. Through the Income Tax (Transfer Pricing) Regulations, 2018 ("Nigerian TP Regulations") and the Nigeria Tax Act 2025, Nigeria has reinforced its commitment to adopting the arm's length principle.

This article analyses how TP applies to Nigerian PE portfolio companies, key risk areas arising from relevant intercompany transactions, the evolving audit controversies and focus of the Nigeria Revenue Service (NRS), and practical steps that PE portfolio companies can adopt to manage exposures effectively and efficiently.

TP risks in Nigerian PE structures

The business models of PE groups usually involve close interaction between PE funds and their portfolio companies. This often occurs across multiple jurisdictions. For example, strategic direction may be issued by a foreign fund manager, IP may be owned by another company in a low-tax jurisdiction, and the company's operations may be financed through shareholder/foreign related party loans.

While commercially rational, these arrangements create tax risks because they directly affect the allocation of profits between PE funds and portfolio companies in Nigeria. NRS is empowered to review these transactions and make adjustments where the transactions are not considered at arm's length or lack economic substance. The tax authority may also disregard or recharacterise transactions as artificial or fictitious, particularly where they lack economic substance or are inaccurately delineated. In recent years, NRS has significantly strengthened its TP audit capabilities. NRS now adopts a risk-based audit approach, supported by data analysis and detailed functional interviews to assess whether profit attribution in cross-border related party transactions reflects economic realities. Significant related party transactions, cross-border payments, recurring losses and transactions with entities in low-tax jurisdictions may be triggers for TP audits.

Common related party transactions and their TP implications

1. Management and centralised services: Management and centralised services are a key part of many PE structures because parent companies or affiliated service companies often provide strategic direction and operational support that assist in driving the operations and strategic goals of the PE funds. However, these services are part of the most frequently challenged transactions in TP audits.

NRS usually requires taxpayers to demonstrate that the services were provided and that the services delivered clear and identifiable economic benefits to the Nigerian company. This requirement is known as the benefit test. NRS also evaluates whether the services received are duplicated or shareholder activities.[4] Compared to transactions involving tangible goods, more effort is required in proving service transactions because of their invisible nature. Service transactions are open to abuse and use in eroding tax base/shifting profits. The tax authority is likely to disallow tax deductions for services if documentation supporting the existence and benefit is weak or if the commercial rationale of the transaction is not apparent.

NRS also evaluates whether the cost base is appropriate[5] and whether the profits earned by the service provider are at arm's length.[6]

2. IP licensing arrangements

IP-related transactions present even greater complexity and controversy in TP audits. Unlike tangible goods, intangibles do not have clear market prices that can easily be referenced.

The OECD TP Guidelines have stressed the importance of analysing DEMPE[7] functions and the associated risks in determining entitlement to the economic returns on intangibles. For PE groups with presence in Nigeria, a key risk arises where IP is held offshore, but the actual value is created through activities carried out locally. In such cases, NRS may challenge the royalty payments or reduce allowable deductions based on contributions to DEMPE functions made locally by portfolio companies.

Across jurisdictions, tax authorities generally view intangible transactions as high risk and an avenue for profit shifting and therefore subject these transactions to closer and intense scrutiny.

In summary, the tax authority may evaluate four major considerations in IP arrangements:

- Existence and uniqueness of the intangible to warrant a royalty payment. NRS may evaluate whether the transaction should properly be delineated as a service transaction to attract a cost-plus charge or whether no valuable IP even exist to be exploited.
- Ownership of the IP and accurate analysis of the DEMPE functions. NRS may evaluate whether the portfolio company makes valuable contributions to the development and marketing of the IP that may justify allocation of a share of returns commensurate with those contributions.
- Appropriateness and arm's length nature of the IP charge.
- Compliance with royalty restriction clause based on EBITDA in Regulation 7 (5) of the Nigerian TP Regulations.

3. Intragroup loans and financing arrangements

In addition to equity capital, PE groups often utilise loan facilities to fund portfolio companies. While this may be commercially efficient and commercially important, it raises several TP considerations.

NRS evaluates whether the terms of the loan facilities, such as the interest rate, fixed repayment dates, collateral, among others, are consistent with what independent lenders and borrowers would agree to. A key risk is the recharacterisation of the loan facility to equity, where the terms of the arrangement are similar to those that exist in equity transactions.

Furthermore, interest rates charged must fall within the expected arm's length range, which is normally supported by a benchmarking analysis. Failure to fall within the range can result in TP adjustments and additional tax liabilities for the company. Tax deduction of interest expense must also comply with EBITDA-based restrictions in the tax law.

4. Secondment arrangement

Secondment arrangements are also usually subject to scrutiny by the tax authority in Nigeria. Some of the issues that may come up in TP audits include:

- Whether activities performed by seconded personnel are for the benefit of the portfolio companies or the PE funds;
- Whether cost recharged for secondment are excessive;
- Whether the secondment arrangement constitutes a reimbursement or a service requiring a markup;
- Whether the presence of seconded personnel in Nigeria creates permanent establishment for the PE group and whether required obligations have been performed where permanent establishment exists;
- Whether applicable personal income tax and/or transaction taxes arising from the arrangement have been settled.

Why services and IP transactions are high-risk areas

A consistent theme across these transactions is that services and intangibles are difficult to price and complex to support. Unlike tangible goods, there is often no clear evidence of value received and the data for comparable uncontrolled transactions may not exist.

Intangibles and intragroup services are among the most complex areas in TP, requiring detailed analysis and robust documentation. This increases the risk that these transactions can be structured or presented in ways that distort profits, making them a major focus during TP audits. Nigeria is not an exception. NRS has demonstrated a strong willingness to challenge these arrangements, particularly where they result in large payments out of the Nigerian entity.

Practical risk management considerations

For PE groups, TP risks should not be managed reactively. Reactive management is expensive and may lead to tax leakages. It requires deliberate, proactive and continuous attention across the board.

As a first step, compliance with Nigeria's TP documentation requirements is beneficial. Through the Nigerian TP Regulations and Country-by-Country reporting (CbCR) Regulations, Nigeria has adopted the three-tiered documentation approach comprising a master file providing an overview of the multinational group, a local file detailing information about the local entity including its related party transactions and CbCR reports or notifications for entities that are part of qualifying multinational groups. These requirements must be complied with, and the documentation must contain sufficient functional details, economic information and benchmarking analysis to show that the related party transactions undertaken by PE portfolio companies are consistent with the arm's length principle. In addition to TP returns that need to be filed annually, NRS requires taxpayers to submit TP documentation within 21 days of a formal request during an audit. There are potentially significant penalties for failure to provide TP documentation reports, file TP returns, late filings and incorrect disclosures. This makes proactiveness a critical risk-mitigation tool.

Beyond documentation, each category of transaction must be individually defensible when scrutinised. Management services should be supported by clear evidence of the service delivery, cost allocation methodologies and clear economic benefits. IP licensing arrangements should reflect the actual DEMPE functions performed rather than the legal ownership alone.

Audit readiness of the PE group is also very important. Due to the current intensity of NRS audits, companies should maintain well-organised documentation, conduct periodic internal reviews and ensure key personnel and departments understand the rationale behind intercompany arrangements. Engaging TP consultants to carry out TP health checks is also a crucial way of preparing for TP audits.

From a structuring perspective, PE groups should regularly reassess their legal structure and value chain to ensure compensation and profit allocation align with economic substance, in a way that is tax optimal. Over-reliance on centralised models where significant profits are allocated offshore without corresponding functional presence is quite easy to challenge. Where appropriate, a more balanced allocation of functions, assets and risks may reduce TP exposure.

Governance also plays a critical role. PE groups should ensure that related party transactions are commercially justified and well-documented. Internal processes and controls should exist to ensure compliance with and operationalisation of TP policies. In simpler terms, TP should be embedded into the broader decision-making process of the group, including investment structuring and post-acquisition integration.

Conclusion

TP has become a high-risk area for PE portfolio companies in Nigeria. As investment structures grow more complex and cross-border relations increase, the scrutiny by NRS intensifies. At its core, the Nigerian TP regime reflects a simple but rigorous principle that profit must follow value creation. For PE group entities, this means that every related party transaction must be grounded in economic substance, supported by robust documentation and priced in accordance with the arm's length principle.

TP is no longer a mere compliance issue - it is a strategic priority. PE groups must proactively integrate TP into their structuring, documentation and governance frameworks to ensure that they are better positioned not only to manage regulatory risks but also to preserve value and ensure long-term investment success in Nigeria's growing and evolving market.

[1] African Private Capital Association, 2024 Venture Capital in Africa Report – highlights on deal value, deal volume, and regional activity.
[2] Deloitte, 2024 Africa Private Equity Confidence Survey – investor sentiment and regional outlook
[3] Paragraphs 1.14 to 1.32
[4] Duplicated services and shareholder activities are not chargeable intragroup services. See Paragraphs 7.9 to 7.11 of the OECD TP Guidelines.
[5] Usually involves a review of the nature and narration of items in the cost base for reasonability and value. For indirect cost items, the evaluation also involves a review of the allocation methodology, including the appropriateness of the allocation keys.
[6] Usually involves an evaluation of the appropriateness of the TP method adopted and benchmarking analysis
[7] DEMPE is an acronym for development, enhancement, maintenance, protection and exploitation

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INVESTING IN NIGERIAN FINTECHS: THE LANDSCAPE AND REGULATORY APPROVALS THAT DETERMINE DEAL CERTAINTY, CHANGE OF CONTROL RISK AND EXIT OPTIONALITY

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INTRODUCTION

Financial technology or fintech typically relates to the use of innovative digital technologies to deliver financial solutions. It encompasses a broad range of market segments, from digital payments and remittances to lending platforms, crowdfunding, insurance technology (InsurTech), investment and wealth management technology (WealthTech) and regulatory technology (RegTech).[1] The Nigerian fintech ecosystem is one of Africa's largest and most dynamic, attracting significant foreign and local capital which has been utilised to build some of the most innovative financial solutions on the continent. Today, Africa is home to about ten (10) unicorns, of which four (4) are Nigerian fintechs. Importantly, the ecosystem has been a major driver of financial inclusion in Nigeria and has played a critical role in improving financial inclusion indices from 33% inclusion in 2012 to 74% in 2023. Although the[2] financial inclusion gap persists, it represents a remarkable opportunity for follow-on investments in fintech.

Data indicates that the fintech ecosystem has sufficient capacity to attract and absorb capital. Tech startups in Nigeria attracted US$903 million and US$976 million in 2021 and 2022, respectively. In spite of the recent adverse economic[3] landscape, the Nigerian fintech ecosystem has continued to be resilient. In 2024, Nigerian tech startups raised US$520 million in 2024 out of a continental total of US$2.2 billion.[4] The impact of the investment in fintech is evident in the considerable growth in the adoption of digital platforms by Nigerians for financial solutions and the corresponding increase in the volume and value of digital payments. Electronic transactions in Nigeria processed via real-time payment channels and through the NIBSS NIP platform increased from 5 billion transactions in 2022 to 11.2 billion in 2024, valued at over ₦1.07 quadrillion.

The Nigerian fintech ecosystem remains resilient and attractive for investment. It is therefore important to continually create an environment with regulators that supports innovation, growth and investment.

The Nigerian Fintech Ecosystem

Innovation is at the centre of the fintech ecosystem. Fintechs have adopted creative innovation to disrupt the conventional banking model by using technology to provide financial solutions to individuals and businesses in an easier, faster and more efficient manner. Solutions provided by fintechs have also been leveraged by regulators to achieve industry goals and objectives such as increasing the financial inclusion indices and adopting a cashless economy. Products and solutions cover a wide range of services in Nigeria, which include, amongst others, the following: -

1. Electronic Payment and Wallet Solutions

Electronic payment and wallet solutions involve the processing of payments for individuals and businesses using secure platforms, debit cards, credit cards and mobile wallets. It includes integration with switching and processing agents and payment terminal service aggregators to process the payments and ensure seamless transactions with customers.

2. Digital Lending and Credit

Digital lending and credit platforms process, evaluate and approve loans to customers without the need for physical or in-person interaction. Typically, the platform will include technologies for biometrics, e-signatures and KYC to verify the identity of the borrower and reduce fraud.

3. Digital Insurance

Digital insurance platforms make insurance products more accessible by providing insurance comparison and policy purchasing. Digital insurance platforms will also utilise data analytics to personalise insurance products for customers.

4. Digital Investment and Assets Solutions

Digital investment platforms utilise algorithms to create and manage personalised investment portfolios based on individual risk appetite and financial goals. Solutions provided by digital investment platforms are usually affordable compared to traditional investment firms.

5. Digital Compliance

Digital compliance platforms offer technology solutions which support Fintechs to comply with regulations related to anti-money laundering and KYC procedures.

The Nigerian Fintech Regulatory Landscape

Given that fintech solutions cut across a range of sectors, Nigerian fintechs have been caught in the web of multiple and overlapping regulations. This challenge is further amplified by the rapid rate at which innovation outpaces regulation and the overarching responsibility of regulators to ensure the safety and integrity of the financial system. As is often the case, fintech solutions gain customer traction well before any formal regulatory framework is introduced. Therefore, regulators subsequently invest time to understand the product before developing a corresponding regulatory framework, which is typically shaped by the imperative to protect financial system integrity. The challenge usually is that regulation provides additional hurdles or constraints on fintech operations. This underscores the dilemma of finding the right balance between the need to regulate and the imperative not to stifle innovation.

For instance, a fintech business providing Electronic Payment and Wallet Solutions or Digital Lending and Credit may require the following licences and registrations in order to be able to deliver its services efficiently. The licences include: -

1. Payment Solution Service (PSS) Licence: Payment solution services provide bridging infrastructure, end-to-end electronic payment solutions, systems and services to stakeholders within the financial services space. It encompasses the Payment Terminal Service Provider (PTSP) Licence and the Payment Solution Service Provider (PSSP) Licence.

2. Mobile Money Operator Licence (MMO): Mobile money is an electronic wallet service. This licence will provide an opportunity for the fintech customers to receive, store and expend money using a mobile phone or wallet.

3. Money Lenders Licence: Where the fintech business involves digital lending or credit, a money lenders licence might be required to conduct digital lending. However, the licence is restricted to the relevant State where the licence is issued, although in many cases, due to the digital platform fintech provides, a person's residence outside the relevant state might be able to take advantage of the digital lending services.

4. Microfinance Bank Licence: The microfinance bank licence from a regulatory perspective provides a wider range of options to fintechs in the provision of financial solutions, including taking deposits, lending to customers from the deposits received and reducing reliance on transaction fees.

5. Value-Added Service Licence: Where the solutions provided by fintechs will involve the use of text messages, USSD shortcodes or telecom networks, the value-added services licence will be required from the National Communication Commission (NCC) to provide financial services leveraging telecommunication networks and infrastructure.

6. Registration with the NFIU: Fintech companies are required to register with the Nigerian Financial Intelligence Unit (NFIU). The Money Laundering (Prevention and Prohibition) Act 2022 and the Anti-Money Laundering, Combating the Financing of Terrorism and Countering the Proliferation of Weapons of Mass Destruction in Financial Institutions (AML/CFT/CPF) Regulations require fintechs to file suspicious transaction reports, perform KYC and customer due diligence, submit currency transaction reports and returns on large cash transactions.

7. Registration with the FCCPC: The Federal Competition and Consumer Protection Commission (FCCPC) Guidelines on registration of digital lending platforms require all digital lenders to be registered with the Commission.

8. Data Protection: Fintech businesses are also required to register with the Nigeria Data Protection Commission and put in place appropriate technical and organisational measures for the protection of personal data, including an audit of their data processing activities annually.

The above-mentioned licences and registrations indicate that a fintech business providing financial solutions in Electronic Payment and Wallet operations or Digital Lending and Credit operations may require multiple licences with the Central Bank of Nigeria with varied compliance requirements for operations. The business may also require a VAS licence with the NCC, resulting in multiple and overlapping regulations. Fintechs whose operations border on insurance and investment management may also have regulatory overlap with additional regulators such as the National Insurance Commission (NAICOM) and the Securities and Exchange Commission (SEC). Multiple and overlapping regulations provide considerable constraints on the operation of fintech.

The minimum capital requirements for maintaining the different licences, particularly the licences issued by the CBN, increase with the number of licences. This affects the capital-raising efforts of sponsors and investors, implying that they may also have to raise additional capital for each new service they deploy.

Compliance with the statutory and return obligations to respective regulators also creates additional costs for the operations of the business. Where not properly managed, compliance could distract from the core business. Streamlining the licence requirements and capital requirements, including co-operation amongst regulators, would be necessary to support the continued growth of the fintech ecosystem.

Regulatory Approvals that Determine Deal Certainty, Change of Control Risk and Exit Optionality

Investments and exits in fintech businesses are also impacted by multiple and overlapping regulations. This implies that investment or divestment in the fintech businesses may be subject to multiple regulatory and competition approvals. For instance, acquisition or divestment of 5% (five per cent) and above equity holding in fintechs with CBN licence will trigger regulatory approval. In view of Section 65 of the Banks and Other Financial Institutions Act 2020 (BOFIA)[5], it will imply that fintechs with CBN licences are exempt from the provisions of Sections 92 (1) – (3), 94 and 98 of the Federal Competition and Consumer Protection Act requiring the prior approval of the Federal Competition and Consumer Protection Commission (FCCPC). However, fintechs without a CBN licence but which are under the regulatory supervision of other regulators like NAICOM and NCC will require both approval of their primary regulator and that of FCCPC. It also raises the question whether, in relation to a fintech with a CBN licence and other licences, Section 65 of BOFIA will absolve the fintech from the provisions of Sections 92 (1) – (3), 94 and 98 of the FCCPA in view of the fact that some parts of its business are regulated by legislation which do not exempt it from the provisions of the FCCPA. Regulatory approvals in investments and acquisitions which cut across national borders get more complex as the acquisition might also require multiple regulatory approvals in the respective jurisdictions where the fintech operates.

Multiple regulations create risks in investment and exit situations; therefore, identifying the relevant approvals and planning the approval process becomes critical. It is also important to undertake regulatory engagements with a view to streamlining approvals, regulations, and compliance for fintechs, as it is important to sustain and expand the significant growth in the fintech ecosystem.

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[4] Ibid at 1.
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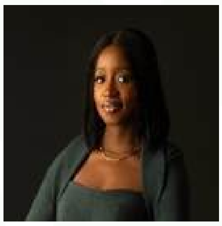
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CREDIT SPRINTS AND EQUITY MARATHONS: EXECUTION, EXITS, AND RETURNS IN THE NIGERIAN PRIVATE CAPITAL RELAY

Udo Udoma & Belo-Osagie | Solomon Adegboyo | Precious David | Folake Elias-Adebowale

On 23rd July 2026, Dangote Petroleum Refinery announced completion of approximately US$2.5 billion of new equity through private placement subscribed 3.7 times.[1] An exceptional outlier by scale and disclosure-most Nigerian private capital transactions operate under vastly different structures and disclosure regimes-the transaction is not representative of the market. But it is useful in framing the market question.

Capital can enter Nigeria at exceptional scale. The harder questions are whether it can stay, perform, and return. This is not a question of capital availability. It is a question of execution-and execution is determined by legal structure, regulatory clarity, transaction architecture, and the final measure: how much operating value created actually reaches investors as distributions.

In this article, Folake Elias-Adebowale, Precious David and Solomon Adegboyo of Udo Udoma & Belo-Osagie separate the components of that journey. They distinguish publicly available deal activity from disclosed deployment value; deployment value from fund performance; fund performance from investor distributions. And they examine how legal frameworks, regulatory approvals, exit mechanics, and transaction execution determine the outcome: operating performance may create value, but market access determines price, while legal and transaction architecture determine how much of that value reaches investors.

One market, three readings

For legal and regulatory analysis, the first discipline is to separate activity data from performance evidence: deal activity indicates volume; disclosed value indicates deployment; and fund performance turns on IRR, TVPI, DPI, yield, defaults, recoveries, and distributions. Even then, a valuation gain is not the same as cash returned to LPs. Realisation depends on exit route, tax, currency conversion, settlement mechanics, and the amount ultimately distributed

01 ACTIVITY Deal count, disclosed value, stage and asset class. Direction of travel - not returns.	**02 PERFORMANCE Net** IRR, TVPI, DPI, yield, defaults, recoveries and losses. The missing comparable ledger.	**03 REALISATION** Exit route, timing, tax, currency conversion and cash actually distributed.

The distinction matters because deal count is not deployment value, deployment value is not fund performance, and a paper gain is not an LP distribution. The available evidence supports conclusions about the direction of Nigerian private capital, the growing use of credit, and the improving exit count. It does not support a market-wide claim that PE, VC, or private debt has generated the highest comparable net return.

While individual asset classes have dedicated metrics, like equities, fixed income, real estate, and private capital, Nigeria still lacks a comprehensive unified multi-asset public benchmark capable of directly comparing PE and VC fund performance and returns with private credit returns and losses or across diverse asset classes. Existing tracking is siloed into separate market-specific gauges, such as the NGX All-Share Index for equities or FMDQ benchmarks for fixed income.

Liquidity remains uneven. McKinsey estimates[2] that more than 16,000 buyout-backed companies had been held for more than four years by the end of 2025, while average holding periods exceeded six and a half years. AVCA recorded 81 African exits in 2025 and 25 in Q1 2026.[3] At the same time, 27% of AVCA-surveyed LPs expected to slow commitments during 2026, although 87% planned to maintain or increase allocations over three years.[4] In other words, short-term pacing is cautious, but medium-term conviction has not disappeared. The harder task is converting that conviction into cash distributions.

Debt is gaining ground, but equity still carries the weight

Category	2024	2025	Movement
Total private capital	74 / US$441.2m	72 / US$810.7m	Volume -2.7% | value +83.8%
Venture capital	58 / US$360.2m	49 / US$613.6m	Volume -15.5% | value +70.3%
Private equity	10 / US$25.0m	12 / US$167.4m	Volume +20.0% | value +569.7%
Private debt	5 / US$38.0m	10 / US$26.1m	Volume +100% | value -31.2%
Infrastructure	1 / US$18.0m	1 / US$3.6m	Value -80.0%
Reported exits	8	11	+37.5%

Source: AVCA, African Private Capital Research for UUBO, 8 May 2026. Disclosed values only; activity data, not fund performance data. Publication consent confirmed

AVCA customised research records 72 Nigerian private capital transactions in 2025, flat versus 74 in 2024. Yet disclosed value surged 84% to US$810.7 million. Venture capital dominated with 49 deals worth US$613.6 million (76% of value); private equity recorded 12 transactions totalling US$167.4 million; private debt doubled in deal count to 10, but fell in value to US$26.1 million.

Venture capital remained the centre of gravity: 49 transactions worth US$613.6 million, approximately 68% of volume and 76% of disclosed value. Private

Private debt doubled from five to ten transactions, but disclosed value fell from US$38.0 million to US$26.1 million - approximately 14% of deal count and only 3.2% of disclosed value. One infrastructure transaction worth US$3.6 million completes the 2025 total.[5]

For sponsors and lenders, the point is less about substitution and more about structuring. Deal count doubled, but debt represented only 3.2% of disclosed value, while VC and PE together carried approximately 96.3%. Private credit is becoming more available for working capital, acquisition finance, receivables, infrastructure, venture debt, and portfolio company refinancings. It gives sponsors and companies another instrument to use, but it does not remove the need for equity risk capital. Credit is broadening the toolkit, but equity still absorbs uncertainty and participates in long-term upside.

Capital is back - and carry-sensitive

The regulatory question is not only whether capital enters Nigeria, but whether it can be converted, serviced, protected, and repatriated. For foreign investors and Nigerian borrowers, that analysis turns on capital importation documentation, FX access, debt service capacity, withholding tax, enforceability of security, transfer restrictions, and repatriation mechanics. Nigeria attracted US$10.37 billion of capital importation in Q1 2026, up 83.83% year on year, but 95.09% was portfolio investment and only 1.30% was FDI. These are not private capital deployment figures. They show that confidence returned first to liquid instruments.

With the MPR at 26.5% in July and headline inflation at 15.91% in June,[6] investors and borrowers are now dealing with a familiar set of practical questions: carry, cost and reversibility. High rates attract yield, but they also raise borrower costs; currency stability can reverse; and hard-currency debt against naira revenue remains a structural mismatch.[7] Diligence therefore has to look beyond today's exchange rate and test what happens to cash flow, covenants and distributions if rates, inflation, reserves or global risk appetite move.

The path from value to cash

In legal terms, an exit is not simply a valuation event; it is an execution process. Nigeria recorded 11 exits in 2025, up from eight in 2024 and the highest annual total in AVCA's 2021-2025 Nigeria series.[8] The routes comprised three trade sales; two sales to PE firms or other financial buyers; two management buyouts or private sales; two IPO or capital markets exits; one other exit; and one write-off. Across the five-year series, trade buyers accounted for 17 of 36 exits.

In practice, negotiated exits need more than buyer interest. They require clean data, transferable licences and contracts, required consents, tax planning, security releases or transfers, workable settlement mechanics, and a route for moving proceeds. Counsel also need to test change-of-control approvals, pre-emption and drag rights, completion accounts or locked-box mechanics, foreign exchange documentation, capital gains tax treatment, and the enforceability of indemnities. Legal documents do not create enterprise value, but they often determine whether value already created can move to investors without avoidable leakage or delay.

The approximately US$285 million secured facilities supporting BlueCore Gas Infraco's acquisition of the owner of Axxela illustrate the hand-off.[9] An ownership transfer and equity realisation were enabled by acquisition finance. The facilities are not automatically 'private credit' merely because they were privately negotiated; they show how equity, strategic ownership and debt can operate within the same exit.

Tax and domestic capital are changing the return model

The Nigeria Tax Act 2025 took effect on 1st January 2026. For companies, following the alignment of capital gains tax with the companies' income tax framework, chargeable gains are generally taxed at 30%, rather than the former 10% under the Capital Gains Tax Act, subject to the statutory exemptions and reliefs. The Nigeria Tax Act also brings specified indirect transfers involving offshore holding structures within the Nigerian tax scope, subject to the applicable statutory nexus and treaty position.

FORMER RATE	CURRENT RATE
10%	30%
₦100 gain → ₦90 retained	₦100 gain → ₦70 retained

Simplified, fully taxable corporate gain: retained gain falls by 22.2%. Actual outcomes vary.

Tax now sits inside the exit model. For a simplified fully taxable capital gain, assuming no exemption, relief, deductible loss or treaty protection, the move from 10% to 30% reduces the retained gain from ₦90 to ₦70 for every ₦100 of chargeable gain - a 22.2% reduction.[10] This is not every transaction's result, but it is large enough to influence price, structure, escrow, indemnities and the choice between direct and indirect exit. UUBO has separately analysed the new tax and compliance framework for collective investment schemes.

Nigeria also has a substantial domestic pool that remains lightly allocated to alternatives. PenCom reported ₦31.323 trillion in pension assets at 31 May 2026, of which ₦258.335 billion - approximately 0.82% - was invested in private equity and ₦317.605 billion - approximately 1.01% - in infrastructure funds. Relevant fund categories may invest up to 15% or 10% in PE, subject to detailed limits and conditions.[11] PenCom's March 2026 addendum identified a shortage of qualifying alternative asset instruments as a reason for underused limits and excess liquidity. National Pension Commission, Monthly Report - May 2026; Revised Regulation on Investment of Pension Fund Assets; March 2026 Addendum.

STRATEGY	EVIDENCE	EXIT	MANAGER
Defined and publicised investment strategy; clear pricing and disclosure.	Audited financial information and institutional reporting.	Pre-defined liquidity and exit routes.	SEC-registered manager; relevant experience, prior exit and prescribed commitment.

Selected requirements only; managers must test the full PenCom regulation and applicable fund-category limits.

The issue is not only the availability of capital; it is product qualification. Relevant requirements include a clear strategy, audited information, pre-defined exit routes, experienced SEC-registered management, prior exit experience and prescribed manager commitment.[12] The capital exists, but managers still need to build instruments that qualify for it. These points should be dealt with at fund design stage because they affect governance, reporting, economics and fundraising from the outset.

Four sector signals, one practical investment test

Fintech: Nigeria processed approximately ₦1.07 quadrillion across 11.2 billion electronic-payment transactions in 2024.[13] Capital implication: the market is moving beyond customer acquisition towards payments rails, switching, identity, embedded finance, cross-border settlement, profitability and consolidation. Execution test: licensing, data governance, technology ownership, fraud controls and a cap table that can support the next round or strategic sale. UUBO's public work on Flutterwave's US$250 million Series D and the proposed acquisition of Baxi by MFS Africa illustrates the progression from scale-up capital to strategic consolidation.[14]

Banking and insurance: The banking recapitalisation programme mobilised ₦4.65 trillion through the Nigerian capital market.[15] In insurance, the available capital-management routes include strategic investment, M&A, portfolio transfers and licence rationalisation. Capital implication: rights issues, private placements, strategic minority investment and ownership consolidation. Execution test: whether capital is admissible for regulatory purposes, change-of-control and fit-and-proper approvals are secured, and integration preserves the value bought. UUBO's work on emPLE's acquisition of Old Mutual's Nigerian insurance businesses is one public example.[16]

Gas and energy: Nigeria held 215.19 TCF of gas reserves at 1st January 2026. Capital implication: reserves become financeable only when production, processing, transport, and offtake are connected by bankable contracts. Execution test: supply rights, pipeline access, tariffs, payment security, environmental allocation, currency, and enforceable cash waterfalls. The Axxela financing shows how acquisition debt can support a change of ownership in operating gas infrastructure.[17]

Infrastructure and specialised credit: Long-life assets continue to face tenor, construction, and currency gaps. Capital implication: the stack may combine sponsor equity, DFI capital, specialised debt, bank finance, guarantees, and refinancing. Execution test: who bears completion, demand, payment, and regulatory risk, and whether the allocation survives stress. UUBO's publicised work on ARM Investment Managers' ₦200 billion private debt programme and a US$15 million senior secured Afrigreen facility for Westa Solar illustrates two distinct non-bank credit models.[18]

Across regulated sectors, investability depends on the legal and regulatory conditions that turn revenue potential into bankable cash flow. The most credible cases are regulated platforms with reliable cash flow, institutional governance, clear licence status, enforceable contracts, credible approval pathways, and a practical route to liquidity.

Different capital for different parts of the relay

LPS Separate realised from unrealised returns; test DPI, FX bridges, write-offs, restructurings, recoveries and valuation discretion.	**GPS & SPONSORS** Map buyers, approvals, tax, transferability and reliable data at entry - not when the exit process begins.
LENDERS & CREDIT MANAGERS Test cash generation, revenue and debt currency, perfectible security, cash control and a credible pre-enforcement workout.	**GENERAL COUNSEL & PORTFOLIO COMPANIES** Test whether rights, covenants, information undertakings and consents preserve operating flexibility through financing and exit.

Complementary capital, not a replacement cycle

The practical implications are different for each participant. LPs should separate realised from unrealised performance. Sponsors should map buyers, approvals, tax, and transferability at entry, not only when exit discussions begin. Credit managers should test cash generation, currency mismatch, perfectible security, and pre-enforcement workouts. Portfolio companies should ask whether rights, covenants, and information undertakings preserve enough operating flexibility.

Nigeria is not rotating wholesale from equity into debt. Equity still absorbs uncertainty and creates upside; credit can provide contractual cash flow, priority and earlier recycling where the underlying business can carry it. VC will remain essential for formation and technology-enabled scale. PE will remain central to growth, control and consolidation. Private credit should continue to expand where borrowers need flexible or longer-tenor finance and investors seek contractual income and clearer priority.

The test for the next phase is simple: capital inflow matters, but the more durable question is how much of that capital can stay in the business, perform through the cycle and return to investors.

[1] Dangote Petroleum Refinery completion reported by Oil & Gas Journal. Note: The SEC's 23rd June 2026 action against unauthorised IPO marketing (directing operators to cease publicity, remove materials, and refund monies) was distinct from the subsequent private placement, which the SEC did not characterise as misconduct.
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[4] AVCA, 2025 African Private Capital Activity Report; Q1 2026 Private Capital in Africa Report; 2026 Investors Sentiment & Outlook.
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[6] Central Bank of Nigeria, Monetary Policy Decisions, 20-21 July 2026.
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[9] UUBO public transaction announcements: Flutterwave Series D; Baxi/MFS Africa; emPLE/Old Mutual; ARM private debt programme; Afrigreen/Westa Solar; BlueCore/Axxela.
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[18] UUBO public transaction announcements: Flutterwave Series D; Baxi/MFS Africa; emPLE/Old Mutual; ARM private debt programme; Afrigreen/Westa Solar; BlueCore/Axxela.

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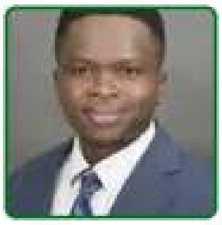
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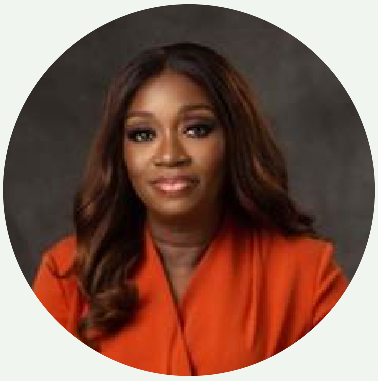

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Dipo Okuribido
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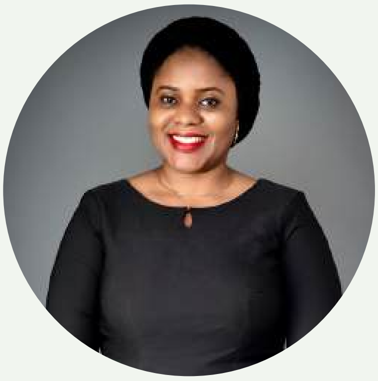

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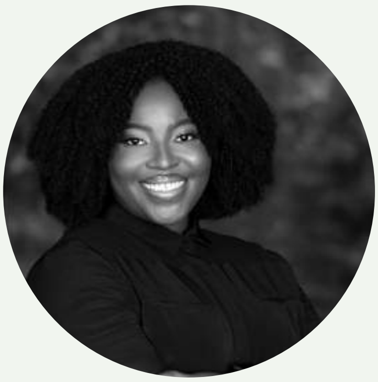

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