**CORPORATE RESTRUCTURING IN NIGERIA**

**WHAT IS CORPORATE RESTRUCTURING?**

To have a better understanding of the meaning of corporate restructuring means. It is better we first know the words constituting the phrase, i.e., ‘corporate’ and ‘restructure’. The term "corporate" according to *the Black's Law Dictionary* means something relating to a corporation or a business entity. On the other part, to "restructure" an organization or system means to change the way it is organized, usually in order to make it work more effectively. Therefore, corporate restructuring can be described as the process of reorganizing a corporation or a business entity in order to make it work more effectively. The aim of restructuring is to transform the company. In this process a significant modification may be made on the debt, operations or structure of a company. This modification may involve cutting costs by combining departments, reassigning responsibilities and disengaging some personnel. A company may modify its structure by reducing its size through sale of some assets. This may become necessary if the current situation in the company may lead to a collapse. In sum, corporate restructuring may be designed purely to manage corporate debts, improve profitability and efficiency.[[1]](#footnote-1) Restructuring commonly brings about a change in the legal, ownership, or operational structure of the company.

**BASIS FOR CORPORATE RESTRUCTURING**

Corporations, just like human beings have the tendency to fall ill. When a man falls ill, he is taken to the hospital and treated accordingly. The kind of treatment would depend on the severity of the illness. While some illnesses require just mild treatments, some others cannot be treated without the introduction of external factors like kidney replacements. A company falling sick is synonymous with-it having challenges in its finances and management. Therefore, it can decide to change its financial, structural, and operational features to ensure that it gets business investment opportunities, cut down costs, and keeps being a going concern. Some serious corporate failures would require not just slight operational changes but serious reorganizations and restructurings. Accordingly, corporate restructuring involves the process of reorganizing a company to significantly change its financial and operational features.

Other instances when a company may restructure may include to comply with new regulatory requirements or when there is a change in ownership of the company or when there is the need to expand the operation of the business.

The legal frameworks that govern company restructuring in Nigeria include Companies and Allied Matters Act 2020, Federal Competition and Consumer Protection Act 2018, Investment and Securities Act 2007, Securities and Exchange Commission Rules, etc. The regulatory institutions that are commonly involved in restructuring processes include Corporate Affairs Commission, Security and Exchange Commission and Federal Competition and Consumer Protection. In relevant circumstances, Central Bank of Nigeria, Nigeria Insurance Commission, Nigeria Pension Commission and other related regulatory bodies may be involved in restructuring exercise where needed.

**TYPES OF CORPORATE RESTRUCTURING**

Corporate restructuring can be categorised into two—internal and external. Internal restructuring is generally employed when a Company has a large debt profile and the Company desires to retain its corporate identity without the involvement of any third party. It is a restructuring process involving the companies and their creditors. The methods of internal restructuring available to a Company include, Arrangement and compromise, Arrangement on sale and Buy-out (e.g., management buy-out, shareholders buy-out, employee buy-out).

External restructuring is a restructuring process that involves the company and another company. The methods of external restructuring available to a company include – Merger and Acquisition, Takeover, Purchase and assumption, Cherry-picking

The methods of internal restructuring are discussed below.

**ARRANGEMENT ON COMPROMISE**

Arrangement on compromise is defined as any change in rights or liabilities of members, debentures holders or creditors of a company or any class of them, or in the regulation of the company other than a change, effect under any other provision of this Act, or by the unanimous agreement of all parties affected.[[2]](#footnote-2) It is essentially an arrangement by a company with its creditors and/or members or a class of them, to accept less than they are actually entitled to in full and final satisfactions of the obligations which the company owes to them. It can take the form of compelling the shareholders to contribute further capital or agreeing with preference shareholders to convert their preference shares into ordinary shares, or reduction of dividend right by preference shareholders etc. However, it must be noted that arrangement and compromise must always be with the sanction of the Federal High Court and Securities and Exchange Commission to ensure fairness in the exercise.[[3]](#footnote-3)

**ARRANGEMENT ON SALE**

Arrangement on sale is one of the internal reconstruction methods towards the survival of an ailing company. Here, the members of a General Meeting are empowered to resolve by way of special resolution that the company should be wound up (members voluntary winding up) and that the liquidator appointed and authorized to sell the whole or part of its undertaking or assets to another corporate body. The consideration for the sale may be cash, shares, debentures or policies which should then be distributed in species amongst the members of the company in accordance with their rights in liquidation.

All sales or distributions done in this context are binding on the company and its members, and the members are deemed to have agreed with the transferee company to accept the fully paid shares, debentures, policies, cash, or others like interest to which they are entitled under such distribution.[[4]](#footnote-4) However, where a member brings an action on grounds of unfairly prejudicial and oppressive conduct for the members voluntary winding up of the company, the arrangement for sale and distribution shall not be valid, unless sanctioned by the Court.[[5]](#footnote-5)

The main difference between the liquidation process in corporate restructuring and that of dissolution of the company lies in the fact that the winding-up process embarked upon in corporate restructuring usually results in the resurrection of the company in another form. On the other hand, the winding up for dissolution of a company brings the company to a permanent end since the assets are distributed to those entitled according to the rules of distribution of assets of a dissolved company.

**CORPORATE BUY-OUT**

This is an agreement or arrangement where certain interest groups within a company acquire the interest in shares of others in a company. It may be in the form of an *employee's buy-out,* a *management buy-out or* a *shareholder’s buyout*. We are focusing on the first two.

In an *employee's buy-out*, the employees may decide to buy out a company because of their job securities or attachment to the company and pool their resources together and buy out the management of the company.

A management buy-out is an acquisition by the management team (usually the directors and officers) of the company of controlling shares of the company or its subsidiaries by buying controlling shares. In other words, a management buy-out is the acquisition, by the management team (usually directors and officers of a company), of controlling shares of that company or its subsidiaries with or without third party financing. They often resort to this restructuring option to prevent an external take-over, acquisition, or merger from third parties who might not have the same mission and vision of the company.

**EXTERNAL RESTRUCTURING**

The methods of external restructuring are discussed below.

**MERGERS**

It is instructive to begin by pointing out that even though mergers and acquisitions are sometimes used interchangeably, they do have some distinctions. Generally, a merger is a combination of two companies to form a new company. It entails the coming together of two or more firms to become one big firm’.[[6]](#footnote-6) On the other hand, an acquisition is the purchase of one company by another in which no new company is formed. For mergers, the emerging entity could assume an entirely new name or retain the identity of one of the merging companies. In terms of FCCPA 2018, a merger can be in several forms, namely: as a purchase or lease of the shares, interest or assets of the other undertaking in question, an amalgamation or combination with the undertaking in question or in form of a joint venture.[[7]](#footnote-7)

The basis for mergers can be any of the reasons including, risk diversification, stock exchange quotation, technological drive, management expertise, desire for growth and increased market share, survival of regulatory requirement for consolidation.

Mergers are classified into three types namely, horizontal, vertical and conglomerate mergers. Horizontal mergers: Horizontal is one involving direct competitors. Thus, a horizontal merger is a combination or fusion of companies in the same line of business. Thus, a merger of two or more insurance companies is a horizontal merger.

Vertical mergers: Vertical merger is one between companies in a non-competitive relationship. That is, a vertical merger is a combination or fusion of two or more companies which are engaged in complementary business activities. e.g. a packaging company and a manufacturing company or a cassava farm with a *garri* production company.

Conglomerate mergers: A conglomerate merger is a combination or fusion of two or more companies that engage in completely unrelated aspects of business.

Any of the above mergers can either be a small merger, that is, a merger with a value at or below the lower threshold which is 1, 000, 000,000-naira (One Billion), or an intermediate merger that is a merger with a value between the lower and the upper threshold which is 1, 000, 000, 000 (one billion) and 5, 000, 000, 000 (five billion) naira, or a large merger that is a merger with a value above the upper threshold which 5, 000, 000, 000 (five billion) and above.[[8]](#footnote-8)

It should be noted, however, that prior to the enactment of the FCCPA, the regulatory body for mergers and acquisitions in Nigeria was the Securities and Exchange Commission and the legal framework was the Investments and Securities Act 2007. However, with the enactment of the FCCPA, the regulatory body is now the Federal Competition and Consumer Protection Commission and the legal framework is the FCCPA 2019.

For a proposed merger to be implemented, it must first be notified and approved by the Federal Competition Consumer Protection Commission (the Commission), which will determine the threshold of the annual turnover of the company to determine the category of merger and the method of calculating the annual turn-over.[[9]](#footnote-9) The Commission will also determine whether or not the merger will reduce competition, result in technological efficiency or other pro-competitive gains, or whether it can or cannot be justified on substantial public interest.[[10]](#footnote-10)

**AQUISITION**

An acquisition is the purchase of one company by another in which no new company is formed. An acquisition is said to have occurred when one or more companies directly or indirectly, acquire or get a direct or indirect control, either partly or wholly of the business of another company.

The Securities and Exchange Commission Rules defines acquisition as when a person or group of persons buys most of a company’s shares in order to assume ownership of that company.[[11]](#footnote-11) The Securities and Exchange Commission has been saddled with the responsibility of regulating acquisitions in both public and private unquoted companies, through the filling and approval of the requirements for acquisitions by any corporate body or individual.[[12]](#footnote-12) The Commission also carries out a post-incorporation inspection three months after the approval of the application.[[13]](#footnote-13)

It is of great importance to state that acquisition can be friendly or hostile. In the case of a friendly acquisition, the target is willing to be acquired. Hence, viewing the acquisition as an opportunity to develop into new areas and use the resources offered by the acquirer, whereas in happenstances of hostile acquisition, the target is usually opposed to the acquisition. It is upon this backdrop that hostile acquisitions are sometimes referred to as hostile takeovers.

**TAKEOVER**

A takeover is virtually the same as an acquisition, except that "takeover" has a negative connotation, indicating the target does not wish to be purchased. When an acquiring company makes a bid for a target company, it is called a takeover. If the takeover goes through, the acquiring company becomes responsible for all of the target company's operations, holdings and debt. When the target is a publicly-traded company, the acquiring company will make an offer for all of the target's outstanding shares.

According to the Investment and Securities Act, a take-over is the acquisition by one company of sufficient shares in another company to give the acquiring company control over the other company.[[14]](#footnote-14) The acquiring company acquires at least 30% to 50% of the shares or voting rights in the acquired company. For take-over to occur, there must be a take-over bid. A take-over bid is a corporate action in which a company makes an offer to purchase another company. The acquiring company offers cash, stock, or a combination of both cash and stock in an attempt to take control of the target company. Examples **Titan Trust Bank’s** 2021 December **launching of a takeover bid** for Union Bank. That came after the acquirer sealed a share purchase pact for an 89.4 per cent holding. Similarly, in July 2021, the FCMB Group **announced**its takeover of the majority shareholding in AIICO Pensions, translating to a 60 per cent stake that came from purchasing 33.9 per cent shares from the pension firm and the rest 26.1 per cent from a set of other investors.

Note that a take-over bid shall not be made to less than twenty shareholders or such number prescribed by the commission, neither shall it be made to purchase shares in a company which has fewer than twenty or such prescribed number by the regulations, nor to a private company. For a person or group of persons to make a take-over bid, he or they must first be granted the authority to proceed with the take-over bid by the Securities and Exchange Commission.

**PURCHASE AND ASSUMPTION**

This involves another company purchasing the liability of a failing company and assuming ownership of its asset usually at an auction price. An application must be made to the Federal High Court for the P&A to be sanctioned. The assumed company does not go through the formal winding-up process but is dissolved through a judicial sale of its assets and liabilities to the purchasing company.

**CHERRY PICKING**

This is an external restructuring option for a failing company, also aimed at reducing the loss of investment. Unlike Purchase & Assumption, the company/investor is not taking up all the liabilities of the failing/failed company, but is allowed to inspect the books, assets, business operations/activities of the failing company with a view to pick or choose out those aspects it could save by integrating them into its own business activities.

**CONCLUSION**

Corporate restructuring has over the years proven to be the best way of saving a corporate entity from an untimely death (winding up or dissolution). It is geared towards increasing efficiency, competitive edge, profits, and prolonging the life span of a corporate entity. Corporate restructuring can only be possible if the creditors, members or investment companies still believe in the company and are willing to reorganise the business operations of the company, to make the company function better.

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   [↑](#footnote-ref-1)
2. 4 Section 710 CAMA 2020. [↑](#footnote-ref-2)
3. See generally CAMA 2020, s. 715. [↑](#footnote-ref-3)
4. CAMA Section 714 (2). [↑](#footnote-ref-4)
5. CAMA, Section 714 (2). [↑](#footnote-ref-5)
6. O. S. Muhammed, ‘Legal and Procedural Tax Issues in Merger and Acquisition Exercise in the Nigerian Banking Sector’ [2012] 4 [1] *Port Harcourt Law Journal,* 216. [↑](#footnote-ref-6)
7. FCCPA, ss. 92 (1)(b)(i)-(iii). [↑](#footnote-ref-7)
8. Rule 427 (1) SEC Rules. [↑](#footnote-ref-8)
9. Section 93 (1) FCCP 2019. [↑](#footnote-ref-9)
10. Section 94 FCCPA 2019. [↑](#footnote-ref-10)
11. Rule 433 SEC Rules 2013. [↑](#footnote-ref-11)
12. Rule 434 SEC Rules 2013. [↑](#footnote-ref-12)
13. Rule 439 SEC Rule 2013. [↑](#footnote-ref-13)
14. Section 117 Investment and Securities Act 2007. [↑](#footnote-ref-14)