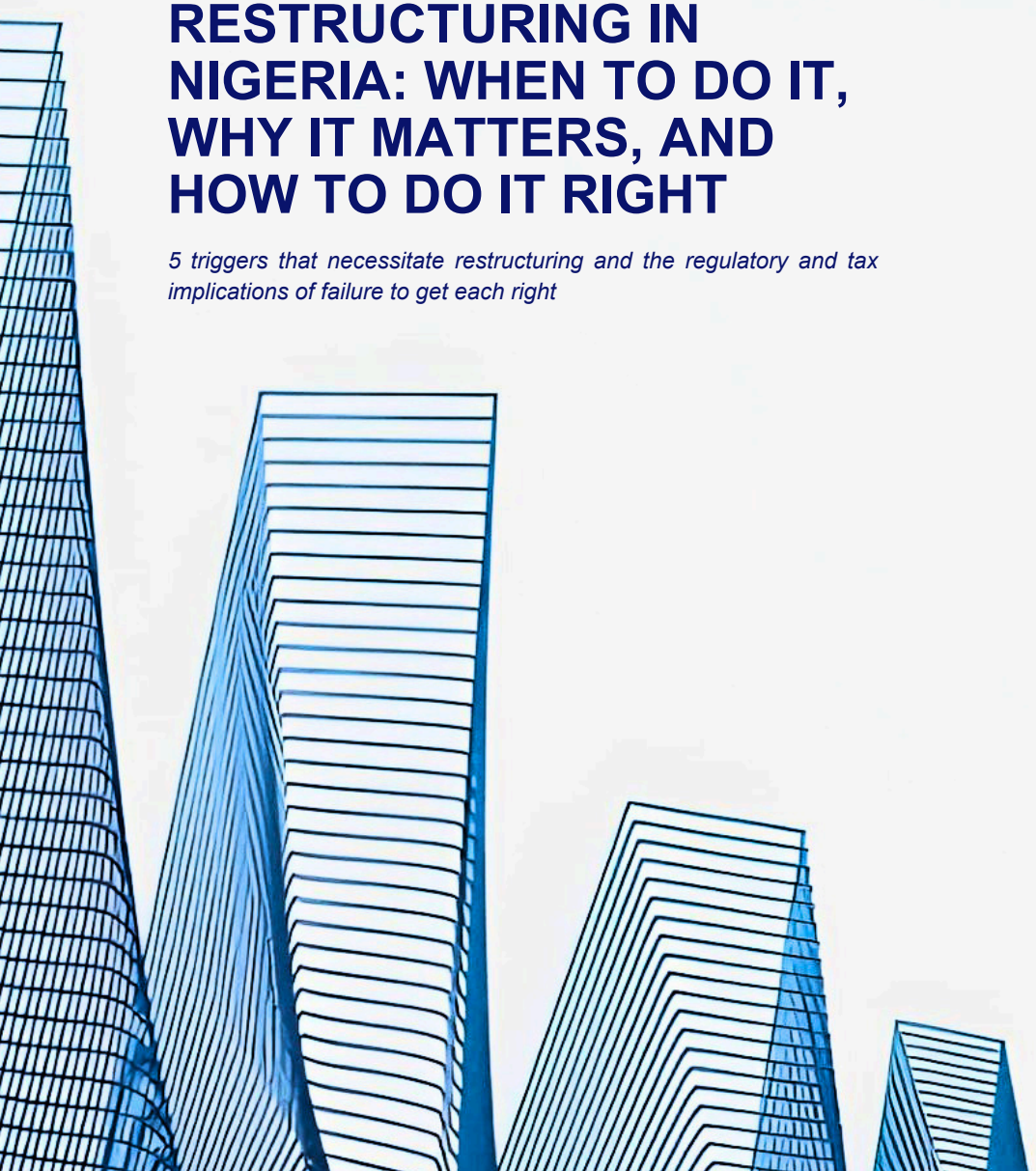
GOLDSMITHS

CORPORATE RESTRUCTURING IN NIGERIA: WHEN TO DO IT, WHY IT MATTERS, AND HOW TO DO IT RIGHT

5 triggers that necessitate restructuring and the regulatory and tax implications of failure to get each right



INTRODUCTION

The legal process for restructuring is the most significant for a Nigerian company, and arguably, one that is the most often initiated incorrectly. Those who get restructuring right treat it as a thoughtful, planned process – one with clear commercial objectives and the benefit of legal advice that understands both the relevant legal and regulatory framework, and the desired business outcome. Those who get it wrong approach restructuring reactively: when time-critical, after a term sheet is signed or in the midst of a shareholder dispute that is already causing damage to the relationships the restructuring is intended to resolve. Below are the five typical triggers that can give rise to a restructuring in Nigeria: what options are available and what mistakes are the costliest when dealing with them. Please note that all references to stamp duties and other related fiscal levies apply in accordance with the Nigeria Tax Act (NTA) 2025, effective January 1, 2026

1 AN INCOMING INVESTOR REQUIRES A HOLDING COMPANY STRUCTURE

It is quite common in Nigeria that, when dealing with private equity investors, development finance institutions or strategic acquirers, they insist on conducting investment into a clean holding company, from which investment into the target operating company will be made. The argument for a holding company is quite clear:it gives clear access, separates investment from operating risks, and allows room for further investment, offshore subsidiaries and exiting. A restructured company will need to complete its holding structure arrangements before the close of the investment when there is a new investor already talking, a process which will likely cost more money and is more time-consuming. The following regulatory and tax procedures are needed to put in place a holding company above a Nigerian company:

- ·Either a share for share exchange[SA1] , or a new subscription into the holding company (newly created).
- Filing with Corporate Affairs Commission (CAC) in relation to the transfer with each of the companies (if any) being transferred, and with the new holding company itself under Companies and Allied Matters Act (CAMA), 2020. Section 175 of CAMA dictates that share transfers need to be duly effected and entered into the company's register, and as required by Section 176 of CAMA, CAC must be informed of any such transfer before it becomes effective. [SA1]I am not sure I understand what share for share exchange means in this context?
- Stamp duty implications under NTA 2025 retains the exemption on shares and stock transfers. Generally, ad valorem on instruments like the shareholders' agreements and subscription documents need to be considered under NTA 2025.

If offshore entities are being used, NIPC notification might be required in addition to regulatory clearances. Under NTA 2025, there have been important changes in relation to Capital Gains Tax (CGT); it is now taxed at income tax rates (30% on the company rate, and 0% on small companies, that is, companies having less than N100 million and less than N250 million on fixed assets, respectively). CGT now applies even to offshore share sales. Where indirect foreign share transfers have taken place, a CGT charge will apply, although it is possible to obtain relief based on applicable treaties. Such issues can significantly impact the tax consequences of structuring. A company can make a deliberate and conscious decision regarding its holding company's domicile depending on the relevant investors, sectors and countries that the company is being implemented in and operates within;

these countries which include Ireland Mauritius and Netherlands can offer exemptions from double tax treaties and different treatments on the taxation of dividends. Should this be established instead?

- Nigeria Tax Act 2025's controlled foreign company rules (CFC) which levy tax on untaxed profits from offshore subsidiary businesses, should be evaluated for all holding company choices.

2. A SHAREHOLDER DISPUTE MAKES THE CURRENT STRUCTURE UNWORKABLE

No structure is ideal and shareholder disputes mean one company has become a battleground rather than a business. For co-founders who invested in an equal partnership and without reserved matters rights at inception, they have become stalemated over a major commercial decision.

An early investor who failed to properly document their rights over the shares of a company might seek to impose conditions which are beyond what other stakeholders envisaged. The returning co-founder, for whom the company was always structured in an equal part despite holding no significant role, might seek a share sale based on

an agreed initial valuation that no longer appears justifiable. Whatever the situation, restructures that are driven by disputes need the utmost care since they should have an immediate impact on the overall result of the disputes. Each of a share buy-back, demerger, capital reduction, or the transfer of a business into a new company has a different impact upon each shareholder, tax implications under NTA 2025 and regulatory requirements in Nigeria. The most appropriate tool will be determined based on the overall legal status of each party and the business goals being pursued through the restructure. The foremost principle is that the documentation must correctly document the arrangement agreed between the shareholders before regulatory actions can be taken. Creating additional legal risk for companies on an already fragile shareholder arrangement by attempting to justify post-facto the circumstances, rather than preceding the corporate restructuring, means there is additional legal risk.

3. THE BUSINESS SEEKS TO ENTER A REGULATED SECTOR

Where a business intends to operate in a regulated sector such as banking, payment services, insurance, capital markets etc., the business cannot simply undertake the regulated activity through its existing operating company without obtaining the relevant regulatory licence, amending its memorandum and articles of association (MEMART), increasing its share capital where it operates with a lesser share capital, etc... It must either obtain a CBN licence for the existing entity which will impose capital requirements, governance obligations, and ongoing regulatory reporting on the entirety of that entity or establish a separate licensed subsidiary through which the regulated activity is exclusively conducted.

The second approach, which is often preferable, is to establish a separate licensed subsidiary through which the regulated activity will be exclusively conducted. This structurering-fences the applicable capital requirements and regulatory obligations to the entity for which they are relevant, and preserves the operational flexibility of the broader group. However, this structure requires a clear and documented framework governing the relationship between the parent entity and the regulated subsidiary: the governance arrangements applicable to each, the intra-group service agreements, the data sharing arrangements, and the financial support mechanisms that determine how the two entities interact on a day-to-day basis. Businesses entering regulated sectors in 2026 must also account for the expanding regulatory perimeter created by the forthcoming National Digital Economy and E-Governance Bill, which is anticipated to bring additional categories of digital economy participants within National Information Technology Development Agency's (NITDA) licensing regime. For digital financial services businesses in particular, compliance obligations may arise simultaneously under CBN, NITDA, the Nigeria Data Protection Commission (NDPC), and the Securities and Exchange Commission (SEC), Federal Competition and Consumer Protection Competition and the group structure should be designed to accommodate each of these regulatory relationships.

4. INTERNATIONAL EXPANSION REQUIRES A MULTI-JURISDICTIONAL GROUP STRUCTURE

Nigerian businesses expanding into other African markets, the United Kingdom, or the United States encounter a structuring challenge that is simultaneously legal and commercial because the structure that is adequate for a Nigerian domestic business may not be suitable for a business required to

hold assets, employ personnel, enter contracts, and receive investment across multiple jurisdictions simultaneously

The international expansion structures most commonly adopted by Nigerian businesses include a Nigerian operating company positioned beneath an international holding company; a parallel structure comprising a Nigerian entity and an international entity operating in separate markets, connected by a management services or technology licensing agreement; and a branch or representative office structure, which may be appropriate for limited international activities but which does not provide the full legal and commercial infrastructure of a separately incorporated foreign entity.

The NTA 2025 introduces several provisions directly relevant to international structures. The force of attraction rule expands the scope of non-resident taxable activity in Nigeria. Controlled foreign company (CFC) rules now tax undistributed foreign profits attributable to Nigerian parent companies, preventing the indefinite deferral of Nigerian tax through offshore retention of profits. The minimum Effective Tax Rate (ETR) of 15% for large and multinational companies aligns Nigeria with the Organisation for Economic Co-operation and Development (OECD) Pillar Two global minimum tax framework. Transfer pricing obligations applicable to intra-group transactions between related entities in different tax jurisdictions remain in force under the NTA 2025 and should be reflected in contemporaneous documentation before intra-group transactions commence.

5. THE FOUNDERS SEEK TO SEPARATE INTELLECTUAL PROPERTY FROM OPERATING RISK

Intellectual property that resides in the same legal entity as the operating business is exposed to the full liability profile of that business to its creditors, to enforcement actions taken against it, and to the consequences of any insolvency event. For Nigerian businesses whose commercial value is

substantially constituted by intellectual property like technology companies, creative economy businesses, and enterprises with proprietary processes or methodologies, this exposure is both material and manageable.

The standard mechanism for addressing it is an IP holding structure: the intellectual property is transferred to a dedicated holding entity, which licences it back to the operating company on arm's length commercial terms. The operating company pays a royalty to the IP holding entity, generating income in that entity that is insulated from the operating company's liability profile.

Under the NTA 2025, IP-related transfers and royalty arrangements carry materially different tax implications than under the prior regime. Gains arising from the disposal, transfer, or assignment of IP assets are now treated as taxable events at the point of transfer and determined by reference to the asset's fair market value at that date no longer at the flat 10% CGT rate, but at the applicable income tax rate (30% for large companies). IP transfers as part of a corporate restructuring are explicitly treated as taxable events under the NTA 2025. The royalty arrangement between the holding entity and the operating company must be structured on arm's length terms and documented in a manner capable of withstanding transfer pricing scrutiny. Where the IP holding entity is offshore, withholding tax on royalty payments from the Nigerian operating company to the foreign IP holder must also be addressed, along with any applicable NOTAP registration requirements.

CONCLUSION

Corporate restructuring is not, in itself, a sign that something has gone wrong. It is a sign that a business has grown beyond the structure that was adequate for it at an earlier stage of its development. The Nigeria Tax Act 2025 has altered the tax implications of every category of restructuring described in this article, and businesses evaluating a restructuring in 2026 must do so with advice that reflects the current legislative framework rather than the repealed regime.

The Nigerian businesses that restructure well proactively, with a clearly defined commercial objective, and with the legal and tax advice necessary to implement the chosen structure correctly emerge from the process with a foundation capable of supporting the next stage of their growth. Those who restructure reactively, under time pressure and without adequate preparation, encounter the cost of that approach at precisely the moment when they are least equipped to bear it.

CONCLUSION

TThe contents of this article are for general guidance on the subject matter only and do not constitute legal advice.

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