

BEHIND THE BOARDROOM BATTLE: CORPORATE TAKEOVERS AND THE
FATE OF MINORITY SHAREHOLDERS RIGHT IN NIGERIA.

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ABSTRACT

This research critically examines the concept of corporate takeovers in Nigeria and its effect on the protection of minorities in Nigerian Corporate practice. It seeks to explore the concept and strategies of corporate takeovers as corporate restructuring method and how it can affect minorities interest in a company. This research uses doctrinal method while engaging statutes and case law. The research observes that the emerging trend of takeovers in Nigeria as a restructuring method for financial growth and development of companies though economically relevant requires a strengthened legal and regulatory background to be able to meet international best practices and standards. Without this, the protection of minorities in the corporate sectors will be threatened and jeopardized. Several defence strategies used by target companies faced with takeover bids have also been explored in this research. This research recommends that there should be an enactment of a takeover code which will regulate corporate takeovers in Nigeria and specifically provide for the protection of minority Shareholders under such circumstances which will be under the control of the Securities and Exchange Commission. It further concludes that the core of good corporate governance in Nigeria is adopting international best practices that will promote investment and boost investor's confidence.

Keywords: takeover, acquisition, corporate governance, minorities, minority protection

1. Introduction

Corporate takeover as a restructuring mechanism has become an evolving phenomenon in Nigeria's corporate landscape. This restructuring mechanism seeks grow and make more efficient the corporate world.¹ Despite the economic influence and importance of takeover, its effect and impact on corporate governance and minorities in corporate sector cannot be overlooked thus, the growing need for enhanced takeover procedures and regulatory oversight as

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¹ S Deakin, 'Hostile Takeovers, Corporate Law, and the Theory of the Firm', Journal of Law and Society, (2000) Vol. 24, 124-151.

well as protection of minorities in the corporate sector.² According to *Oke*³, the regulatory environment in Nigeria has evolved significantly, with greater attention now being paid to minority shareholder protection and transparency in takeover transactions. However, weak enforcement and bureaucratic delays continue to undermine investor confidence. The Companies and Allied Matters Act (CAMA) 2020 also plays an indirect but vital role by regulating the corporate governance structure, directors' duties, and disclosure obligations of companies involved in takeover bids. It is the view of the researcher that despite the role played by CAMA in providing corporate governance structure in takeover Bids, there is need to an enhanced provision or legislation on takeovers to properly cover emerging fields.

A significant safeguard available to minority shareholders is the right to initiate a **derivative action** on behalf of the company in situations where a fraud has been perpetrated against the company and the directors neglect or refuse to take steps to remedy the wrongdoing.⁴ However, this remedy is not without limitations. Even when such an action succeeds and damages are awarded against the wrongdoers, the **benefit of recovery accrues solely to the company**, rather than to the individual shareholder who brought the action. Consequently, the minority member gains no direct personal compensation.⁵ This remains true even when the fraudulent conduct of the majority shareholders leads to a decline in the value of the minority's shares, amounting to a personal loss such losses have consistently been deemed **non-recoverable** in law.⁶ In *Okoye & Anor v. Ecobank & Anor*⁷, the **Court of Appeal** defined a minority shareholder as one who holds less than half of the company's total shares and therefore lacks the ability to control corporate management or unilaterally appoint directors. Against this background, the present study seeks to analyze the nature and scope of takeover in Nigeria as well as its effect on Minorities in Nigerian Corporate practice.

2. Meaning of Corporate Takeovers.

A corporate takeover refers to a process in which one company acquires a controlling interest in another company, thereby gaining authority over its management and operational decisions.⁸ It is essentially the acquisition of a sufficient number of shares in a company that enables the acquiring entity to

² Ibid.

³ O Oke, "An assessment of SEC rules on mergers and acquisitions in Nigeria", *African Journal of Legal Studies*, 13(1), 25-45.

⁴ Section 346 CAMA 2020.

⁵ SE Ojogbo, 'Shareholder Protection: A Comparative Review of the Corporate Legal/Regulatory Regimes in the UK and in Nigeria' *Journal of African Law*, (2020) Vol. 64, 399-424.

⁶ *Prudential Assurance Co Ltd v. Newman Industries* (1982) 1 All ER 354.

⁷ (2019) LPELR-47350 (CA).

⁸ Section 117 ISA 2025.

exert dominant influence over the affairs of the target company.⁹ Through this process, the acquiring company assumes control of the management and policy direction of the acquired company.¹⁰ Typically, a takeover begins with a takeover bid, which is an offer made by the acquiring company to the existing shareholders of the target company to purchase their shares for a specific consideration.¹¹ Such consideration may be in the form of cash, securities of the acquiring company, or a combination of both.¹² The ultimate aim of this offer is to secure control of the target company.¹³ Takeovers may occur by mutual consent, where both companies agree to the acquisition, or without prior notice to the target company, in which case the acquiring company gradually purchases shares until it obtains a controlling interest.¹⁴

In corporate finance, takeovers can take several forms. The acquiring company may obtain a controlling interest sufficient to make the target company its subsidiary, or it may acquire the entire company outright and subsequently merge the two entities.¹⁵ According to Weinberg and Blank, a takeover is “a transaction or a series of transactions through which a person, group of persons, or a company acquires control over the assets or management of another company.”¹⁶

Under Nigerian corporate law, when a person making a takeover offer acquires at least nine-tenths of the shares in the target company, such a person may compel the remaining shareholders to transfer their shares on the same terms as the others.¹⁷ This provision ensures that once a bidder secures overwhelming control, minority shareholders are bound to comply, leading to the consolidation of ownership.¹⁸

Takeovers may either be friendly or hostile, depending on the attitude of the target company’s management. A friendly takeover occurs when the target company’s board agrees to the acquisition and cooperates with the bidder.

⁹ Adegbite, A. *Corporate Governance and Takeovers in Nigeria*, (2019). p. 42.

¹⁰ *Ibid*

¹¹ SA Osamolu, *Corporate Law Practice in Nigeria 3rd Ed* (Abuja: Law Lords Publications, 2021) 90.

¹² *Ibid*.

¹³ *Ibid*.

¹⁴ MA Weinberg & MV Blank, *Weinberg and Blank on Takeovers and Mergers 5th ed* (London, Sweet & Maxwell 1989) 56.

¹⁵ A Rao & KS Ramesh, *Fundamental of Financial Management, Theory and Practice* (Oxford, University Press, 1898) 456-478.

¹⁶ *Ibid*.

¹⁷ Mondaq, The Impact of Minority Shareholder Protection on Corporate Governance Practices & Investment Efficiency in Nigeria
<https://www.mondaq.com/nigeria/shareholders/1552816/the-impact-of-minority-shareholder-protection-on-corporate-governance-practices-and-investment-efficiency-in-nigeria> accessed June 3, 2025

¹⁸ *Ibid*.

Conversely, a hostile takeover arises when the offer is made against the wishes of the target company's management or without its prior knowledge.¹⁹ A takeover may involve the purchase of either the shares or the assets of the target company. Although the terms "takeover" and "acquisition" are sometimes used interchangeably, a takeover is more accurately viewed as a reorganization process in which the acquiring company assumes all the rights and obligations of the target company.²⁰ After the takeover, the acquiring company continues as a legal entity, while the acquired company ceases to exist independently. The nature of a takeover and its effect on minority shareholders depend largely on the takeover model employed such as tender offers, share transfers, or schemes of arrangement each having distinct implications for shareholders' rights, creditor relationships, and corporate control.²¹

3. Parties to Corporate Takeover.

Pursuant to the provisions of the *Investments and Securities Act (ISA) 2025*, only publicly quoted companies are eligible to be taken over or acquired. This position is further reinforced by *Rule 445(1)(a)* of the *Securities and Exchange Commission (SEC) Rules 2021*, which provides accordingly:

Where a person or group of persons acquire(s) or wishes to acquire a minimum 30% shares in a public quoted company with the intention of taking over control of that company, a take-over bid shall be made by such person or group of persons or through their agent to the shareholders of the target company. This explains why an authority to proceed with a takeover bid must be obtained from the Securities and Exchange Commission.²²

Under the *Companies and Allied Matters Act (CAMA) 2020*, there is no explicit limitation regarding the type or classification of companies that may be subject to a takeover. The provision merely states "...the transfer of shares or any class of shares in a company (in this section referred to as 'the transfer of company')"²³. Consequently, a company may be limited by shares, limited by guarantee, or unlimited, and each of these types may exist as either public or private companies²⁴.

¹⁹Mondaq, The Impact of Minority Shareholder Protection on Corporate Governance Practices & Investment Efficiency in Nigeria
<https://www.mondaq.com/nigeria/shareholders/1552816/the-impact-of-minority-shareholder-protection-on-corporate-governance-practices-and-investment-efficiency-in-nigeria> accessed June 3, 2025.

²⁰*Ibid.*

²¹*Ibid.*

²² Rule 447 (1) (a) SEC Rules 2021.

²³ Section 712 CAMA 2020.

²⁴ Section 712 CAMA 2020.

A private company may be established by a single individual, while a public company is characterized by its capacity to have its shares and debentures traded on the stock exchange²⁵. When the shares and debentures of a public company are admitted to dealings on the stock exchange, such a company is said to be *quoted*²⁶.

From the foregoing, it becomes evident that the laws governing corporate takeovers create a distinction regarding the category of companies that can be acquired. Under the *Investments and Securities Act (ISA) 2025* and the *Securities and Exchange Commission (SEC) Rules 2021*, only public quoted companies are eligible for takeover²⁷. Conversely, under *CAMA 2020*, any class or type of company whether public, private, limited, or unlimited may be acquired²⁸.

4. Companies or Persons that can Take over a Company.

Although the laws differ regarding the types of companies that may be acquired, they agree that only a company can be the subject of a takeover²⁹. The next point of consideration is the category of entities permitted to initiate such a takeover under the relevant statutes.

Under the *ISA 2025* and *SEC Rules 2021*, any person or group of persons who acquire, or intend to acquire, a minimum of 30% of the shares in a public quoted company with the intention of assuming control must make a takeover bid to the shareholders of the target company³⁰. Such bids are usually executed directly or through a registered capital market operator, acting as the authorized agent³¹.

A corporate body may also make a takeover bid for a public quoted company. According to *Rule 445(2) of the SEC Rules 2021*, any takeover bid made by a corporate entity must be accompanied by a resolution of its board of directors, duly approved and signed by at least one director and the company secretary³². Thus, under the *ISA 2025*, both individuals and corporate entities, acting either

²⁵ Section 18(2) CAMA 2020.

²⁶ Rule 445 (1) (a) SEC Rules 2021.

²⁷ Rule 445(1) (b) SEC Rules 2021.

²⁸ RI Ahmed, "Takeover of Companies as a Restructuring Option under Nigerian Corporate Laws: Need for Harmonization", *International Journal of Research Publication and Reviews*, (2022) Vol. 3(9) 493-498.

²⁹ *Ibid.*

³⁰ R Morck et al, "Characteristics of Targets of Hostile and Friendly Takeovers" ed. AJ Auerbach (Corporate Takeovers: Causes and Consequences) (University of Chicago Press, 1988) 101-136.

³¹ A Shleifer & W Vishny, "Value Maximization and the Acquisition Process", *Journal of Economic Perspectives*, (1988) Vol. 2(1), 7-20.

³² *Ibid.*

directly or through licensed market operators, may acquire substantial shares in a target company³³.

In contrast, *Section 712 of CAMA 2020* provides that where a scheme or contract involves the transfer of shares in a company (referred to as “the transfer of company”) to another entity whether incorporated under the Act or not such a transaction constitutes a takeover³⁴. This implies that the acquiring body, or *transferee company*, need not necessarily be incorporated under CAMA, as long as it is capable of acquiring shares³⁵.

However, *Section 713 of CAMA 2020* modifies this position by stipulating that “...shares in a company are transferred to another company or its nominee...”³⁶. This means that the acquiring body must either be a company or a nominee acting on behalf of a company typically a director or secretary nominated to represent it³⁷. Hence, under *Section 712 of CAMA 2020*, any entity (corporate or otherwise) may acquire shares in a company, while under *Section 713*, only a company or its nominee is permitted to do so³⁸.

5. Types of Corporate Takeover: Nature and Characteristics

Corporate control can be obtained through three principal methods: friendly takeover, hostile takeover, and reverse takeover³⁹. A friendly takeover, often described as a *negotiated takeover*, involves an amicable arrangement between the acquiring investor(s) and the management of the target company⁴⁰. The process typically results in the shareholders of the target company receiving cash and/or shares in the acquiring company as compensation⁴¹. This form of takeover is characterized by mutual consent and cooperation aimed at achieving synergy between both companies⁴². A hostile takeover, by contrast, occurs when an acquiring company seeks control without the consent of the target company’s management⁴³. Such takeovers may involve direct negotiations with shareholders or the discreet acquisition of shares in the open market⁴⁴. Hostile

³³*Ibid.*

³⁴ EF Fama, “Agency, Problems and the Theory of the Firm”, *Journal of Political Economy*, (1980) Vol.8, 288-307.

³⁵ CM Easterwood, “Takeovers and Incentives for Earnings Management: An Empirical Analysis”, *Journal of Applied Business Research*, (1998) Vol. 14, 29-48.

³⁶*Ibid.*

³⁷*Ibid.*

³⁸ JC Verma, *Corporate merger, Amalgamation, Takeovers (concept, Practice and Procedure)*, (New Delhi: Bharat Publishing House, 1995), p.

³⁹*Ibid*

⁴⁰*Ibid*

⁴¹ OJ Orojo, *Company Law and Practice in Nigeria*, 5th edition;(Lexis Nexis, butterworths, 2008), p. 339

⁴²*Ibid.*

⁴³ Section 137 ISA 2025.

⁴⁴ Section 137(3) ISA 2025.

takeovers are often viewed as a mechanism to remove underperforming management but may also generate private benefits for investors while offering limited social value⁴⁵. The reverse takeover is another form, occurring when the shareholders of a private company acquire a controlling interest in a publicly listed company to gain access to its listing status without undergoing the traditional initial public offering (IPO) process⁴⁶.

6. Hostile Takeovers and Insider Trading

The effectiveness and credibility of the securities market depend significantly on fairness and transparency.⁴⁷ Insider trading where individuals use non-public, price-sensitive information for personal benefit undermines market integrity and investor confidence.⁴⁸ It typically occurs when someone buys or sells securities based on confidential corporate information that is not yet available to the general public.⁴⁹ For instance, a director who sells his shares before a dividend reduction is announced, or one who purchases shares knowing of an undisclosed discovery that would raise share prices, engages in insider trading.⁵⁰ Such actions constitute a breach of the director's fiduciary duty to the company and create an unfair advantage over other shareholders.

Section 137 of the Investments and Securities Act 2025 explicitly prohibits insider trading, stating that no insider shall buy, sell, or otherwise deal in a company's securities if they possess unpublished, price-sensitive information regarding those securities.

7. Insider Trading in the Context of Takeover Bids

When a takeover bid is being contemplated, individuals with knowledge of the proposed bid are restricted from dealing in the target company's securities.⁵¹ Similarly, directors or officers of the target company aware of the impending bid are prohibited from trading in the company's shares.⁵² This restriction is intended to prevent such individuals from taking advantage of insider information to make unfair profits.⁵³ Both the potential acquirer and their associates (known as *tippees*) are forbidden from trading or encouraging others

⁴⁵ Section 137(4) ISA 2025.

⁴⁶ JE Abugu, *Company Securities: Law and Practice* (Lagos, University of Lagos Press, 2005) 187.

⁴⁷ S Deakin, 'Hostile Takeovers, Corporate Law, and the Theory of the Firm', *Journal of Law and Society*, (2000) Vol. 24, 124-151.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ LK Meulbroek, 'The Effect of Illegal Insider Trading on Takeover Premia', *European Finance Review* (2000), Vol. 1, 51-80

⁵² *Ibid.*

⁵³ *Ibid.*

to trade in the securities of any company involved in the takeover.⁵⁴ This ensures fairness, maintains investor confidence, and upholds the integrity of the capital market.

8. Defensive Strategies Against Takeovers

Recently, in August 2023, it was reported that two of the majority shareholders of FBN Holdings have intensified control battle for the company and there are possibilities of one of the shareholders utilizing a special purpose vehicle to launch a hostile takeover of FBN Holdings.⁵⁵ In April 2023, one of the largest conglomerates in Nigeria - Transcorp Plc - was threatened with a hostile takeover which ended in the majority shareholder of the company repurchasing the shares of the company at a premium.⁵⁶ Remarkably, the majority shareholder of the company had, in reacting to the threat of a hostile takeover which arose from a greenmail, increased his shareholding in the company as a defensive strategy to protect the company. Other defensive strategies that could be adopted in the face of a hostile takeover include:

A. Crown Jewel:

The **crown jewel strategy** is a defensive mechanism employed by a target company to deter a hostile takeover by divesting its most valuable assets or divisions. Typically, such companies become takeover targets precisely because of their high-value assets, profitable subsidiaries, or strategic business units. When faced with a hostile bid, the target company deliberately sells or transfers these prized assets to diminish its attractiveness to the aggressor.⁵⁷ To preserve its operational continuity following the divestment, the target company may sell the assets to a **"white knight"** a friendly third party under an arrangement that allows the target to repurchase the assets at a later date and at an agreed price. Alternatively, the company may adopt a **sale and lease-back arrangement**, whereby it sells the assets to another entity but leases them back immediately, thereby retaining their use while reducing the company's appeal to the hostile bidder. Interestingly, the crown jewel strategy offers an immediate and effective response to a hostile takeover attempt, often succeeding in discouraging the bidder. However, despite its strategic advantage, the approach carries significant risks. On one hand, the sale of the assets of the target implies high amounts of cash returns for the target and this may make it even more attractive to the bidder. To foreclose this risk, the returns could be used to fund other defensive

⁵⁴*Ibid.*

⁵⁵Taofik Salako, "Otudeko, Otedola intensify battle for control of FBN Holdings" in <https://thenationonline.net/otudeko-otedola-intensify-battle-for-control-of-fbn-holdings/> accessed June 3, 2025.

⁵⁶ Chris Ugwu, "Full Excerpt: Femi Otedola's Statement on Transcorp Deal and Why he sold" < <https://nairametrics.com/2023/05/09/full-excerpt-of-femi-otedola-statement-on-his-transcorp-acquisition-and-why-he-sold.> > accessed June 3, 2025.

⁵⁷*Ibid.*

strategies such as a poison pill. On another hand, the target may be operating in an industry that is heavily regulated and as such regulatory consent might be required which may delay the adoption of this defense.⁵⁸ Engaging legal experts with amiable relationships with regulatory agencies as well as adopting an immediate response to any hostile takeover threat can help eliminate this risk.

B. Poison Pill

At the wake of the hostile takeover threat of X in 2022 by Elon Musk, X, adopted the poison pill strategy to dilute the shares of Elon Musk in the company and ward off the hostile takeover threat.⁵⁹ FBN Holdings is believed to have considered or possibly adopted this strategy, as evidenced by the company's Annual General Meeting held on **15 August 2023**, during which shareholders granted approval to raise **₦150 billion** in new equity funds through the issuance of additional ordinary shares to existing shareholders. This approach entails offering new shares to current shareholders excluding the party attempting a hostile takeover either at a discounted rate or free of charge. The underlying purpose of this strategy is to **dilute the shareholding power** of the prospective acquirer, thereby reducing their influence and capacity to gain control.⁶⁰

However, it is important to note that the **Companies and Allied Matters Act (CAMA)** expressly prohibit the issuance of shares at a discount.⁶¹ Consequently, within the Nigerian legal framework, the issuance of such shares can only be structured as **bonus shares** or through a **rights issue**. While CAMA mandates equal treatment of all shareholders,⁶² it also allows companies to vary the rights and liabilities attached to shares through the terms of issue or provisions contained in their **articles of association**. Therefore, a company intending to implement this defensive strategy would first need to **amend its articles of association** to authorize the issuance of bonus shares exclusively to certain shareholders excluding those holding a specified percentage of shares or include such restrictions in the terms of each share issue. Companies in Nigeria adopting this strategy need to take into account related tax responsibilities, as well as the registration and approval of the issue with the Securities and Exchange Commission (the "SEC") where it a public company. One caveat to note is that this strategy may be a difficult one to adopt in Nigeria, particularly in the context of excluding the shareholder(s) threatening the hostile takeover.

C. Privatization:

⁵⁸ Rule 3(1) (c) SEC Rules 2021.

⁵⁹ Rob Wile, "A Timeline of Elon Musk's Takeover of Twitter" <https://www.nbcnews.com/business/business-news/twitter-elon-musk-timeline-what-happened-so-far-rcna57532/> accessed June 3, 2025.

⁶⁰*Ibid*

⁶¹ Companies and Allied Matters Act (CAMA) 2020, s.147(1).

⁶²*Ibid*.

As earlier stated, a mandatory takeover cannot be made of the shares of a private company in Nigeria;⁶³ additionally, publicly listed companies are more open to hostile takeovers because they offer the acquirer the discreteness of acquiring the shares of the target on the stock exchange. In the case of X, Elon Musk had purchased the company's shares overtime on the US stock market before launching a hostile takeover through tender offers to the company's shareholders.⁶⁴ Immediately after the takeover of the company, Elon Musk privatized X, to eliminate this risk, amongst other reasons.⁶⁵ A company adopting this strategy requires financial assessment to determine if the company can comfortably raise funds through other means besides from the public; an advantage that public listing offers.

D. Increase in Management's Shareholding/adoption of the 'Greenmail' Strategy:

One typical strategy adopted by majority shareholders or founders of a company threatened by a hostile takeover is to increase their shareholding in the company. A case in point is the increase in shareholding by the majority shareholder of Transcorp Plc following a hostile takeover threat of the company. This strategy allows such majority shareholders easily vote in favor of defensive strategies as well as block a potential takeover offer. Alternatively, the company can, subject to any limitations, repurchase its own shares under the share buy-back provisions in CAMA.⁶⁶

9. The Impact of Minority Shareholder Protection on Corporate Governance

In Nigeria, the protection of minority shareholders is closely linked to the overall quality of corporate governance. When minority shareholders are protected, they are more likely to participate actively in corporate decision-making, thereby enhancing the quality of governance and encouraging better management practices. One of the commonly accepted principles of corporate governance includes the rights and equitable treatment of shareholders. The Financial Reporting Council of Nigeria released a standardized code of corporate governance known as the Nigerian Code of Corporate Governance, 2018 (the Code). This Code provides guidelines for the protection of shareholders rights, by introducing key reforms aimed at improving transparency, fairness, and

⁶³ Rule 4(3) (b) of SEC Rules 2021.

⁶⁴ Chris Isidore, "Elon Musk buys 9.2% stake in Twitter, making him the largest Shareholder" <https://edition.cnn.com/2022/04/04/investing/elon-musk-twitter-shares-stake/index.html> accessed June 3, 2025.

⁶⁵ Kate Conger, How Twitter will change as a private company <https://www.nytimes.com/2022/10/08/technology/twitter-changes.html> accessed June 3, 2025.

⁶⁶ Section 184 CAMA 2020.

accountability in corporate decision-making. These reforms emphasize the importance of protecting the rights of minority shareholders, by ensuring that their interests are not overridden by majority holders in critical matters such as mergers, acquisitions, or financial decisions. The Code seeks to ensure equitable treatment and protection of statutory and general rights of shareholders in promotion of good corporate governance.

Despite existing provisions in the Companies and Allied Matters Act (CAMA) and the Investment and Securities Act (ISA), there is a noticeable lack of clarity and effectiveness in safeguarding the rights of minority shareholders during such takeovers. The absence of robust frameworks for transparency, fair valuation, and equitable treatment during corporate acquisitions results in a power imbalance that can lead to abuses such as: Coercive buyouts, Asset stripping, Dilution of minority interest, inadequate disclosure and procedural irregularities

A minority shareholder has several legal avenues to seek redress against a company for wrongs committed. These actions include:

A. Personal Action

A minority shareholder can file a personal action against the company or its controlling members for a personal wrong, aiming to enforce their individual rights.

B. Representative Action

A minority shareholder can also bring a representative action on behalf of themselves and other shareholders when a common right is breached. This includes personal representatives of deceased members or individuals to whom shares have been transferred by law.⁶⁷ Remedies available in both personal and representative actions include damages, injunctions, or declarations. Additionally, courts may award costs to the shareholder, regardless of the success of the action.⁶⁸

C. Derivative Action⁶⁹

A minority shareholder may bring a derivative action with the court's approval, either in the company's name or on its behalf. This action allows a shareholder to prosecute, defend, or discontinue a case involving the company or its subsidiary.⁷⁰

⁶⁷ Section 345 CAMA 2020.

⁶⁸Section 344(3) CAMA 2020.

⁶⁹ Section 346(3) CAMA 2020.

⁷⁰ Ibid.

Relief for Unfairly Prejudicial and Oppressive Conduct⁷¹

If a minority shareholder believes the company's affairs are being conducted in a manner that is illegal, oppressive, or unfairly prejudicial to their interests, they can petition the Federal High Court for relief.⁷²

10. Problems of Takeover on Minorities in Nigerian Corporate Practice

In recent years, minority shareholders in Nigeria have voiced growing concern over being unfairly treated during delisting processes on the Nigerian Exchange (NGX). Reports indicate that *Lafarge Africa Plc (WAPCO)* may soon exit the Exchange, following the footsteps of *Flour Mills of Nigeria Plc*, which recently delisted. Likewise, *MRS Oil Nigeria Plc*, *Wapic Insurance Plc*, and *International Energy Insurance Plc* are also in the process of withdrawal.⁷³ Despite the existence of regulatory safeguards intended to protect small investors, many minority shareholders claim they are compelled to relinquish their holdings without fair value, citing poor transparency and inequitable processes.⁷⁴ While delisting is sometimes necessary for corporate restructuring, reduction of compliance costs, or transition to private ownership, it often places minority investors at a disadvantage. In most cases, majority shareholders control the process and determine the exit price, which may not reflect the true market worth of the company.⁷⁵ Consequently, minority investors face significant financial losses and erosion of long-term investment expectations.

Although the Securities and Exchange Commission (SEC) has developed rules to ensure fairness, weak enforcement continues to embolden controlling shareholders to structure delisting in their favor.⁶¹ This perceived imbalance has generated calls for stronger regulatory intervention and more transparent mechanisms for determining fair exit prices. Beyond its immediate financial implications, this trend threatens market confidence, discouraging both local and foreign participation in Nigeria's capital market.⁷⁶ Analysts such as Patrick Ajudua have criticized the current pricing model for delisting, describing it as outdated and disadvantageous to minority shareholders. The model relies on the 60-day average trading price before delisting applications, which often fails to capture subsequent changes in market value.⁷⁷ In the *Coronation Insurance Plc* case, for example, the company applied for delisting when its shares traded at ₦0.50, offering a ₦0.65 exit price. However, by the time the delisting was finalized

⁷¹ Section 353 & 354 CAMA 2020.

⁷² *Ibid.*

⁷³ Helen Orji, "Minority Shareholders decry unfair compensation from exiting Firms" <https://guardian.ng/business-services/minority-shareholders-decry-unfair-compensation-from-exiting-firm> accessed June 3rd 2025.

⁷⁴ Helen Orji (Supra n.55).

⁷⁵ *Ibid*

⁷⁶ *Ibid*

⁷⁷ Helen Orji, (Supra n.55).

almost a year later, the market price had risen above ₦0.85, leaving minority shareholders undercompensated.⁷⁸

Similarly, Moses Igbrude observed that, although CAMA 2020 was enacted to protect minority investors, majority shareholders who often dominate management—have been known to manipulate corporate distress to their advantage.⁷⁹ He explained that majority owners sometimes allow the company's performance to decline deliberately before proposing a buyout at reduced valuations. Many such firms, including *NBC* and *Seven-Up*, reportedly returned to profitability soon after delisting, suggesting that the financial difficulties cited during the process may have been overstated. He also noted that large sums from unclaimed buyout funds remain poorly accounted for, particularly under the government's Unclaimed Dividends Trust Fund arrangement. To address these issues, Igbrude proposed that independent parties jointly appointed by both minority and majority shareholders should oversee the delisting process, under the direct supervision of the SEC. Such reforms would promote transparency, fairness, and trust in the capital market, ensuring all investors receive fair value for their holdings. Notably, recent controversies involving *Coronation Insurance Plc* and *PZ Cussons Nigeria Plc* further highlight the urgent need for reform, as both companies faced strong resistance from minority shareholders who rejected buyout offers deemed to undervalue their investments.

Recommendations

1. Strengthen Legal and Regulatory Frameworks by reviewing and amending the Companies and Allied Matters Act (CAMA 2020). While CAMA 2020 introduced some improvements, such as derivative actions (Section 343), more explicit provisions are needed to guide fair takeover practices and protect minority interests. Amend CAMA to incorporate detailed rules on mandatory offers, squeeze-outs, and fair valuation of shares during takeover.
2. There should be institutional reforms and judicial capacity building by establishing specialized commercial courts. To ensure efficient and expert resolution of corporate takeover and minority protection disputes, Nigeria should create or designate specialized commercial divisions in the Federal High Court including regular training for judges on securities law, corporate finance, and global best practices in corporate governance.
3. There should be adoption of International Best Practices. The legal framework governing the corporate framework should align with the UK City Code on Takeovers and Mergers. Nigeria can adopt similar principles of

⁷⁸*Ibid.*

⁷⁹*Ibid.*

equal treatment of shareholders, no frustration, and mandatory bids, as seen in the UK model.

4. It is also recommended that there is the need to harmonize the provisions of section 131 ISA 2007 with those of sections 712 and 713 CAMA 2020 for a better understanding of takeover as a mode of corporate restructuring in Nigeria. In order to achieve the above recommendation, we recommend further that the provisions of section 712 and 713 CAMA 2020 be expunged from CAMA 2020 and moved to ISA which is regulated by Securities and Exchange Commission. Takeover of corporate entities is regulated by SEC, if need be takeover can be classified based on the threshold.

Conclusion

Corporate takeovers whether friendly or hostile are a critical feature of modern corporate restructuring and growth. In the Nigerian context, takeovers are regulated primarily by the Investment and Securities Act (ISA) 2025, the Securities and Exchange Commission (SEC) Rules and Regulations, and the Companies and Allied Matters Act (CAMA) 2020. While takeovers can bring efficiency, capital injection, and management expertise, they also raise serious concerns regarding the protection of minority shareholders.

Takeovers, especially hostile ones, often result in decisions that prioritize the interests of the majority or acquiring shareholders. Minority shareholders may find themselves edged out, with limited influence over critical decisions such as restructuring, layoffs, or changes in dividend policy. This raises the risk of oppressive conduct or unfair prejudice, as prohibited under Section 343 of CAMA 2020. While Nigerian laws provide for protection of minority rights (e.g., appraisal rights under CAMA and fair value guarantees during mandatory takeovers), enforcement is often weak. The SEC, although empowered, suffers from institutional inefficiencies, underfunding, and sometimes political interference, making minority protection more theoretical than practical. To improve corporate takeover practices and protect minority shareholders in Nigeria, a multifaceted approach involving legal reform, institutional strengthening, enhanced enforcement, and adoption of international best practices is needed. These recommendations, if implemented, will boost investor confidence and corporate accountability.