

## **THE CORPORATE FINANCE SECTOR UNDER THE INVESTMENTS AND SECURITIES ACT NO. 45 OF 1999 "THE I&SA"**

The I & SA which took effect from the 26th of May, 1999 revised and reviewed the regulatory structure and modalities for capital market operations in Nigeria. It repealed some statutes and amended others.

The repealed statutes are:

1. The Lagos Stock Exchange Act.
2. The Nigerian Enterprises (Promotion of non-voting equity shares) Decree, 1990.
3. The Securities Exchange Commission Act Cap. 406 LFN 1990.
4. Part XVII of the Companies Allied Matters Act, 1990.

The I & SA also repealed specific provisions of the following enactments

- i. Capital Gains Tax Act S.3 (d).
- ii. The Venture Capital (Incentives) Decree No. 89 of 1993,
- iii. The Nigerian Investment Promotion Commission. Decree Sections 1(2) 3(a) (4) (5) 4(b) as well as S. 21 (2).

Under the I & SA, the Securities and Exchange Commission "SEC" is re-established as a body corporate with responsibility to, amongst other things, regulate and supervise investments and securities business in Nigeria. In the exercise of its functions, SEC is empowered to register Securities Exchange and Capital Trades points which is defined in the Decree to mean "a Stock Exchange or an approved Securities organization such as a commodity exchange, metal exchange, petroleum exchange, options, further counter market and other derivative Exchange." The I&SA appears to use the terms "Securities Exchange or Capital Trade Point" in place of Stock Exchange which was the dominant term under the old SEC ACT.

With the repeal of part XVII of the CAMA and the re-enactment of the provisions therein in the I&SA, the regulatory framework for public offer and sale of shares and stocks in Nigeria is currently provided by the I&SA and no longer the CAMA.

Again, with the repeal of S. 3(d) of the Capital Gains Tax Act, 1990 gains accruing from sale of shares and stocks in any company are no longer categorized as assets liable to tax.

S.7 of the old SEC Act which made it compulsory for prior approval to be obtained from the Commission before any issuance, sale or transfer of shares in any company with alien (foreign) shareholding has not been retained in the I&SA. The effect of this position is that the securities of any enterprise in which there is alien shareholding would be freely transferable without the need to obtain the consent of the commission. This is a welcome development which should, would make for free trade of securities in such enterprises more so as the bureaucratic bottle necks associated with requirement of prior approval for a Share Transfer tends to act as a clog in the wheel of free trading in securities.

#### Other provisions of the I&SA.

- a. Registration of Capital Market Operators -  
The I&SA contains mandatory provision which makes it compulsory for intermediaries associated with SEC industry e.g. Investment advisers, Stock Brokers, Sub-Brokers, Jobbers, etc. to register with the SEC before buying, selling or dealing in securities. They must equally comply with the conditions of the certificate of registration issued by the SEC.
- b. Registration of Securities, approval to public issue and register of interest in Securities.

Under the I&SA, it is illegal to transfer, issue, sell or offer for subscription securities or investments save such securities and investment are registered with the Commission and prior approval of the Commission is obtained for such transfer, issue, sale, etc. It is also mandatory for capital market operators to keep a register of securities in which they have an interest. Such register, which must be in a prescribed form, must contain certain specific particulars.

- c. Public Offer, specific Sale of Securities and Trading in Securities.

The I & SA provisions are essentially a re-hash of the provisions of the repealed part XVII of the CAMA.

Under the I&SA, the regulatory functions of the SEC are strengthened controls over activities in the capital market industry vested in SEC An Investment and Securities Tribunal has also been established to adjudicate on capital market related disputes.

- d. Mergers, Take-Overs, Acquisitions and Unit Trust Schemes

Apart from schemes of arrangement and compromise which are governed by the CAMA, mergers, take-overs and acquisitions are subject to the

provisions of the I&SA. This followed a repeal of the relevant provisions of Cap XVII of CAMA. The provision of the I&SA are similar to the repealed CAMA provisions, though with slight modification. For instance the I&SA has introduced the concept of collective investment schemes, tightened controls by SEC on activities of operators of a Unit Trust Arrangement, Commodity Savings/Esusu Scheme, Real Estate Investment Scheme and Investors Protection Fund.

The I&SA recognises the concept of borrowing by States, Local and other Government Agencies and contains provisions which aim at regulating such borrowing.

## **CONCLUSION**

In conclusion, the I&SA has:

- i. Centralized the legal framework for the corporate finance sector in Nigeria.
- ii. Strengthened the control wielded by the SEC in regulation of the activities of capital market operations.
- iii. Introduced some new concepts into the practice of corporate finance in Nigeria.

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