

## Nigeria

Aina Blankson

### Share buy-back reform

Since 2008, the Nigerian capital market has witnessed severe decline in the value and volume of shares traded on the stock exchange. While some attribute the decline to the unsavoury practices that trailed the previous administration of the exchange, others attribute it to the fallout of the global financial meltdown. Following the collapse of the market, the Nigerian Securities and Exchange Commission (SEC) made several reforms, including review of the law relating to share buy-backs in quoted companies.

The Nigerian corporate law, the Companies and Allied Matters Act (Cama), grants companies operating in Nigeria power to repurchase their own shares. Section 160(2) of that Act permits such acquisitions only when a company is settling or compromising a debt, eliminating fractional shares, fulfilling the terms of a non-assignable agreement under employee stock option programmes, satisfying the claims of a dissenting shareholder, or complying with a court order. Even then, the company may only make such repurchases out of profits otherwise available for dividends or from proceeds of a fresh issue of shares made for the purpose of that purchase.

In the wake of the Nigerian capital market crisis, however, the SEC adopted certain rules to regulate quoted companies wishing to acquire their own shares. First, it required submission of detailed information on the transaction including audited financial statements for its approval before repurchase. Next, it set the amount of shares a quoted company may be allowed to repurchase at a maximum of 15% of existing issued and paid-up capital in a given financial year. I

n addition, the SEC adopted rules prohibiting quoted companies, their nominees or trustees from exercising voting rights in relation to repurchased shares (Rule 387(3) of the Consolidated Rules of SEC 2011). Quoted companies may by special resolution, at a meeting duly convened for the purpose, authorise the repurchase of shares through the open market or by self-tender offer.

Even though the Rules of the SEC made

significant extensions to the buy-back provisions under Cama (by prohibiting quoted companies), their nominees or trustees from exercising voting rights in respect of repurchased shares, it failed to specify whether other rights, including dividend rights, would attach to acquired shares. In addition, the Rules failed to stipulate circumstances that would entitle a company to purchase its own shares as under Cama.

Rather, it made provisions which stipulate that shares repurchased by a company must be cancelled in accordance with the procedures under Cama (Rule 387(3)(x)). The provision under Cama for cancellation of shares may be found in sections 105–111 for reduction of share capital.

The pertinent question, however, is will transactions made pursuant to Rule 387 of the SEC fail for non-compliance with section 160(2) of Cama? It is possible to argue that the SEC rejected the application of section 160(2) of Cama to quoted companies in particular to afford such companies the opportunity to repurchase the large number of shares which remained outstanding following the slump in the prices of shares during the crisis. Even so, it is difficult to see how such instrument by a regulator will prevail over Cama which is still subsisting as an Act of the legislature if brought before a Nigerian court.

The Nigerian Stock Exchange, however, recently relied on the provisions of Cama and Rules of the SEC to issue guidelines for companies wishing to repurchase any security listed on the exchange. The guidelines stipulate that no company would be permitted to purchase its own shares within 15 days before the publication of its annual or interim results.

In one breath it prohibits companies from reissuing repurchased securities within one year from the date of repurchase, and in another requires companies to cancel repurchased shares within 10 working days of completion of a repurchase (Guidelines (f) and (g)). These rules seem a bit contradictory unless read together with section 164 of Cama, which provides that repurchased shares will, unless cancelled by alteration of the articles of association, be available for reissue.

Companies operating in Nigeria will therefore benefit from clear provisions on share repurchase by way of amendment of the relevant portions of Cama or the Investment and Securities Act 2007 of Nigeria.

*Chinonyelum Uwazie*

#### Contacts:

Vincent Iweze  
Chinonyelum Uwazie

5/7 Ademola Street  
S.W. Ikoyi  
Lagos

Tel: +234(1)8980882-3 271 0566

Fax: +234 1 271 0566

Email: [viweze@ainablankson.com](mailto:viweze@ainablankson.com)

[c.uwazie@ainablankson.com](mailto:c.uwazie@ainablankson.com)

Web: [www.ainablankson.com](http://www.ainablankson.com)