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COMMERCIAL & ENERGY LAW PRACTICE

EMPLOYMENT TRANSFER IN CORPORATE RESTRUCTURING IN NIGERIA

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INTRODUCTION



The restructuring of corporate entities is no longer an exceptional event in the Nigerian economy. It has become, for many businesses, a strategic necessity and a response to economic disruption, regulatory change, shifts in market structure, and the relentless pressure to remain competitive in a globalized marketplace. Corporate restructuring has occurred across several sectors including banking, telecommunications, and oil and gas as well as from the divestment of state-owned enterprises. These transactions reshape the employment landscape for tens of thousands of Nigerian workers.

The issues arising from corporate restructuring and business acquisitions carry greater practical significance than the fate of employees when a business changes hands. Beyond the immediate commercial considerations of the transaction, the transfer of a business directly affects the livelihoods of workers who may have devoted years, and in some cases decades, to the enterprise. It also engages a range of legal obligations on the part of vendors and purchasers, who must navigate complex statutory, contractual, and regulatory requirements governing employment relationships.

Equally implicated are the courts and labour regulators entrusted with safeguarding employees' rights and ensuring compliance with applicable labour standards. Despite the increasing prevalence of mergers, acquisitions, divestments, and other forms of corporate restructuring in Nigeria, employment law consequences of such transactions continue to be marked by uncertainty, inconsistent practice, and an underdeveloped regulatory framework.[1]

The starting point for any analysis of employment transfer in Nigeria is Section 10 of the Labour Act[2], which subjects the transfer of any employment contract from one employer to another to the consent of the worker and the endorsement of the transfer by an authorized labour officer. The courts have confirmed, most notably in the foundational decision of Re Bendel Line Co. Ltd,[3] that Nigerian law does not recognize the automatic transfer of employees by operation of law following a business transfer. This approach differs markedly from the position in the United Kingdom, South Africa, and the European Union, where legal frameworks governing business transfers generally provide for the automatic transfer of employees to the successor employer, together with the preservation of their accrued rights and existing terms and conditions of employment.

The implications of Nigeria's consent-based approach are significant for all parties to a transaction. Employees face uncertainty about continuity of employment and accrued benefits if they decline to consent or new terms are less favourable. Acquiring entities routinely face uncertainty about whether transferred workforces will accept new employment offers. Vendors also struggle with residual liabilities for accrued benefits that may not extinguish on the effective date of a transaction. Practitioners, whether acting for buyers, sellers, or employees must navigate a statutory framework that has not been comprehensively updated since 2004.

This article proceeds from the premise that Nigerian law governing employment transfer requires systematic reform. It identifies the legislative, contractual, and institutional dimensions of the problem. Against this backdrop, the article proposes a series of targeted reforms aimed at strengthening employee protections, enhancing legal certainty in business transfer transactions, and aligning Nigeria's regulatory framework more closely with international best practices. In doing so, it argues that a modernized and predictable regime for employment transfers would not only advance labour protection objectives but also enhance Nigeria's attractiveness as a destination for sophisticated corporate restructuring and investment activity.



TRANSFER OF EMPLOYMENT



2.1. THE CONCEPT AND ITS SIGNIFICANCE

Employment transfer refers to the process by which the employment relationship between a worker and an employer is relocated — whether by agreement, operation of law, or a combination of both — to a new employer. In the context of corporate restructuring, employment transfer arises in a broad range of scenarios: asset sales where a business undertaking is acquired by a new entity; share sales where the employing entity itself changes ownership but remains in existence; mergers in which two or more legal entities combine into a single enterprise; demergers or spin-offs where parts of a business are separated into distinct legal entities; outsourcing arrangements in which functions previously performed in-house are transferred to a service provider; and privatizations in which state-owned enterprises pass into private ownership.

The significance of employment transfer cannot be overstated. Employment is not merely a commercial arrangement. It is a social institution that buttresses the economic security of workers and their families, defines the terms of participation in productive life, and carries with it a dense web of legal rights and entitlements (such as accrued pension contributions, long service recognition, vested share options and redundancy entitlements) that may be undermined or extinguished if transfer is handled carelessly.

From the perspective of the acquiring entity, the employment position is often one of the most significant risk factors in a corporate transaction. The acquirer must assess the liability profile of the target's workforce, including potential claims for wrongful dismissal, unpaid entitlements, occupational injuries, and breach of collective agreements. It must evaluate the cost implications of harmonizing employment terms across a newly combined workforce. And it must manage the human dimension of integration — the cultural, operational, and organizational challenges of bringing together employees who may have worked under very different conditions and expectations.

2.2. FORMS OF CORPORATE RESTRUCTURING[4] AND THEIR EMPLOYMENT IMPLICATIONS

Corporate restructuring in Nigeria takes several principal forms, each with distinct employment implications.

A. SHARE SALE:

this involves the acquisition of ownership interests in the target company, typically by the purchase of shares from existing shareholders. Under this structure, because the identity of the employing entity does not change, the target company remains in existence and continues to employ its workforce.

Thus, the employment contracts of the target's employees are not directly affected by the transaction. This represents an important distinction from asset sale transactions. However, a change in beneficial ownership may trigger change of control provisions in employment contracts, affect entitlement to equity-linked incentive arrangements, or alter the practical dynamics of employment relationships in ways that give rise to legal issues.

B. ASSET SALE:

this involves the acquisition of some or all of the assets of the target business, including its physical assets, intellectual property, contracts, and critically, its workforce. Unlike a share sale, the acquirer in an asset sale does not assume the target's corporate identity and does not automatically inherit its employment relationships. The employees of the transferor remain employees of the transferor unless and until they are formally transferred to the acquirer by agreement. This is the scenario most directly engaged by Section 10 of the Labour Act.

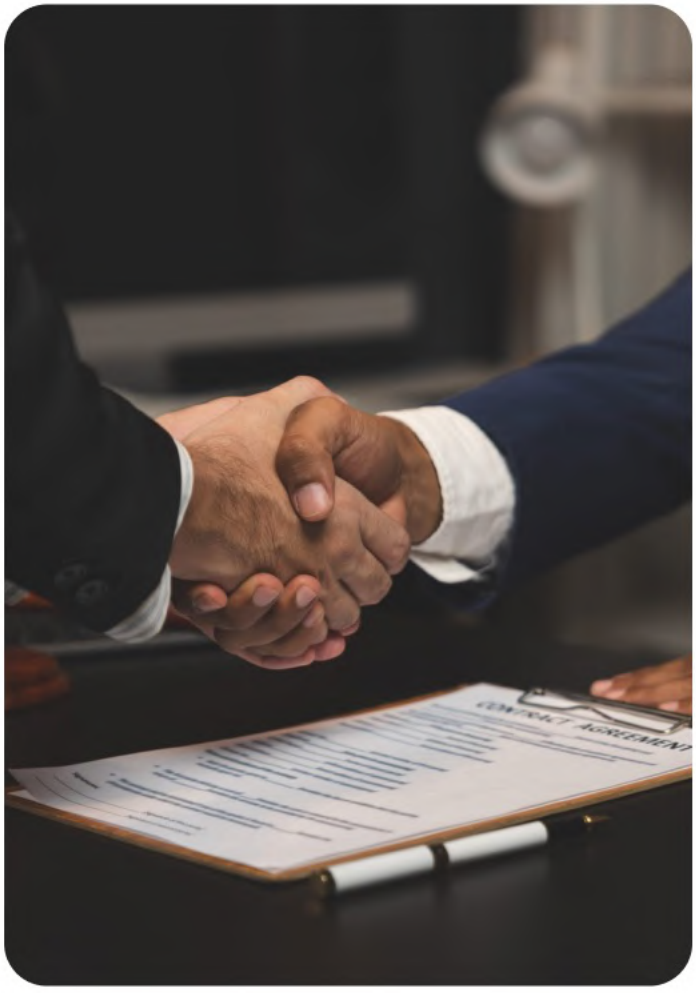
C. STATUTORY MERGER:

this is a structure under the Companies and Allied Matters Act 2020 ('CAMA 2020') which involves the combination of two or more companies into a single entity pursuant to a court-sanctioned scheme of arrangement.[5] Once sanctioned, the court order vests the assets, liabilities, and, where expressly stipulated in the scheme, employment contracts of the constituent companies in the surviving or newly formed entity by operation of law.

D. OUTSOURCING:

this occurs when an organization transfers responsibility for a particular function, such as facilities management, information technology, catering, or security services, to a third-party service provider. In these arrangements, the employees who previously performed the function in-house may be offered employment by the incoming service provider, or may be made redundant.

The legal characterization of such arrangements, and the protections available to the affected employees, is a recurring source of dispute.



THE EMPLOYEE AS A PARTY TO RESTRUCTURING



In the commercial discourse surrounding mergers and acquisitions, employees are too often treated as liabilities to be managed rather than as parties whose interests merit substantive protection. This characterization is legally as well as morally untenable. The employee is a party to a bilateral contract, i.e. the contract of employment,and no transaction that purports to relocate that contract should become operational without engaging the employee's contractual and statutory rights.

The courts have recognized that employees in restructuring transactions occupy a structurally vulnerable position. They typically lack bargaining power, may be inadequately informed about the terms of the proposed transaction, and face the prospect of unemployment if they decline to accept a transfer. It is precisely for these reasons that the legal framework, imperfect as it is, mandates employee consent and regulatory oversight before employment transfers can take effect. The NICN's growing willingness to scrutinize the quality of consent given by employees in restructuring contexts, and to hold employers to account where consent has been obtained by economic coercion, reflects an important evolution in judicial thinking on this point.

LEGAL FRAMEWORK ON EMPLOYMENT TRANSFER IN NIGERIA



4.1. THE CONSTITUTION

The constitutional framework for labour and employment in Nigeria draws primarily from the fundamental objectives and directive principles of state policy in Chapter II of the 1999 Constitution of the Federal Republic of Nigeria (as amended). Section 17 (2) (d) of the 1999 Constitution (as amended) imposes on the state an obligation to ensure that the dignity of labour is upheld, that conditions of work are humane, and that adequate economic opportunities are available to citizens. Section 14(2)(b) further frames the welfare of the people as a primary governmental obligation. Although these provisions are non-justiciable under Section 6(6)(c), they constitute the foundation against which Nigeria's statutory employment framework should be assessed.

In recent times and in line with Section 17 of the 1999 Constitution (as amended) the National Industrial Court of Nigeria (NICN) has adopted and pronounced on provisions of the International Labour Organization Conventions even though such convention may not have been ratified and domesticated. The adoption of these international conventions flows from the provision of section 254C(f) and (h) of the third alteration to the 1999 Constitution and section 7(6) of the National Industrial Court Act. Section 7(6) of the National Industrial Court Act provides that "...the Court shall, in exercising its jurisdiction or any of the powers conferred upon it by this Act, have due regard to good or international best practice in labour or industrial relations ...."

This jurisdictional allocation has significant implications for employment transfer disputes, placing all claims for breach of contract, wrongful dismissal, or unfair labour practice within the exclusive jurisdiction of a specialist court that has demonstrated an increasing willingness to apply international labour standards.

The NICN's jurisdiction extends to the application of international conventions, treaties, and protocols that Nigeria has not ratified. The court has, thus, applied the standards contained in ILO Convention No. 158 on

Termination of Employment as a measure of best practice against which the Nigerian employer conduct is assessed. This interpretive approach has the potential to fill some of the gaps in the statutory framework, though it does not substitute for the comprehensive legislative reform that Nigeria's employment law requires.

In the case of Bello Ibrahim v Ecobank Plc,[6] the NICN employed the Termination of Employment Convention 1982 ("Convention No. 158") as a basis to determine what amounts to "international best practice" for dismissal under Nigerian employment and labour law.

4.2. THE LABOUR ACT — THE PRINCIPAL STATUTE

The Labour Act, Cap L1, Laws of the Federation of Nigeria 2004 remains the primary legislation governing employment relationship in Nigeria. It is a statute of limited scope: by its own definition, it applies only to "workers", defined as persons employed under a contract of service and engaged in manual labour or clerical work. Administrative, executive, technical, and professional employees — the category that typically dominates the workforce of the sophisticated corporate entities involved in restructuring transactions — fall outside the Act's coverage. Their employment relationships are governed primarily by the terms of their contracts and common law.

Within its scope of application, the Labour Act addresses employment transfer in Section 10. That section provides, in terms that admit of little ambiguity, that the transfer of any contract of employment from one employer to another shall be subject to the consent of the worker[7] and the endorsement of the transfer by an authorised labour officer.[8] Before endorsing a transfer, the authorised labour officer is required to ascertain that the worker has freely consented to it and that such consent was not obtained by coercion, undue influence, or because of misrepresentation or mistake. [9] The officer may also require that the worker be medically examined if the change in employer involves a material change in working conditions.

The consent and endorsement requirements of Section 10 of the Labour Act represent the core of Nigeria's approach to employment transfer. They reflect a philosophy of contractual autonomy — an employment contract is a personal agreement between a specific worker and a specific employer, and the substitution of a new employer for the old is not a matter to be accomplished by commercial agreement between corporate parties without reference to the worker. This as a protective principle, but one that operates with significant limitations in practice: the worker's bargaining position in a large-scale restructuring is often so weak that "consent" may be given under conditions that fall far short of the genuinely voluntary agreement the statute intends.

The Labour Act also addresses redundancy – the scenario in which, following a restructuring, the new employer does not wish to retain all the transferred employees. Section 20(3) of the Labour Act defines redundancy as the "involuntary and permanent loss of employment caused by excess manpower." This definition is notably broad in its potential application to restructuring scenarios. Where a corporate transaction results in the elimination of roles through the rationalization of functions, the consolidation of departments, or the automation of processes, the displaced employees may be entitled to redundancy payments and the employer may be required to follow the statutory notification and consultation procedure.

Section 20(1) of the Labour Act requires the employer to notify the trade union or workers' representative of the reasons for and the extent of the redundancy before terminating employment on that ground. This obligation has been interpreted by the courts not merely as a procedural requirement but as a substantive duty to consult in good faith before implementing a redundancy exercise.[10]

The practical significance of the NICN's power to apply the ILO treaties and conventions to determine employment disputes in Nigeria is best illustrated by reference to the redundancy provision of ILO Convention No. 158. Articles 13 and 14 of the Convention No 158

impose a tripartite framework of obligations on an employer contemplating termination for economic, technological, structural or similar reasons. Article 13 of Convention No 158 provides that; when the employer contemplates terminations for reasons of an economic, technological, structural, or similar nature, the employer shall:

1. Provide the workers' representatives concerned in good time with relevant information including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out;
2. Give, in accordance with national law and practice, the workers' representatives concerned, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimize the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.

Article 14 of Convention No 158 provides that; "When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, he shall notify, in accordance with national law and practice, the competent authority thereof as early as possible, giving relevant information, including a written statement of the reasons for the terminations, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out."

From the foregoing, these provisions establish information, consultation, and notification as the foundational obligations governing collective redundancy. Where the NICN applies Convention No. 158 as a benchmark of best practice, an employer who fails to discharge these obligations, whether in the context of a business transfer or otherwise, risks an adverse finding measured against a standard that Nigeria's domestic legislation does not itself expressly codify.



4.3. THE COMPANIES AND ALLIED MATTERS ACT 2020

The corporate mechanics through which restructuring is achieved in Nigeria are governed principally by the Companies and Allied Matters Act 2020. Part F of the Act provides for schemes of arrangement, mergers, and acquisitions as the primary vehicles through which business combinations and corporate reorganizations becomes operational, and it is within this framework that employment transfers most commonly arise in practice.

One of such corporate restructuring models is a scheme of arrangement as provided under sections 710 and 711 of CAMA 2020 as a court-supervised process requiring the approval of members holding at least three-quarters in value of shares at separate meetings of each constituent company, followed by judicial sanction. The court's role is to satisfy itself that the scheme is fair and reasonable to the classes of stakeholders it affects and that the statutory procedural requirements have been met. Once sanctioned, the court order operates as a universal succession mechanism, vesting the property, liabilities, and if stipulated the employment contracts of the constituent companies in the surviving or newly formed entity by operation of law.

The critical structural weakness, however, lies in what CAMA 2020 does not address. The Act is silent on the employment implications of a scheme: it contains no provision requiring an employer to consult with affected employees before a scheme is sanctioned, no mechanism for incorporating employee consent into the court approval process, and no deemed transfer provision that would automatically preserve terms and conditions of employment on implementation. These questions fall entirely to the Labour Act and the individual contract of employment, statutes and instruments that operate in a separate documentation, that corporate practitioners may not engage with until late in a transaction, if at all.

This disconnect is one of the most significant structural weaknesses of Nigeria's current framework. It reflects a deeper failure of legislative coordination between the corporate law that enables restructuring and the employment law that governs its consequences for workers. A corporate lawyer advising on a merger may navigate the entire scheme procedure under CAMA 2020 — from the initial application, through the creditor and member meetings, to the order of sanction — without undertaking any meaningful analysis of the employment implications. An employment lawyer, engaged at a late stage, may find that the scheme documentation contains no provision for the consent and transfer process that the Labour Act requires. The result, too often, is a transaction that is legally complete from a corporate perspective but structurally defective from an employment law perspective, which may eventually give rise to litigation.

4.4. THE FEDERAL COMPETITION AND CONSUMER PROTECTION ACT 2018 AND THE INVESTMENT AND SECURITIES ACT 2025

Mergers and acquisitions that meet applicable statutory thresholds are subject to prior review and approval by the Federal Competition and Consumer Protection Commission pursuant to the Federal Competition and Consumer Protection Act 2018.[11] Where the transaction involves a public company, the approval of the Securities and Exchange Commission may also be required under the Investment and Securities Act 2025[12] and the applicable regulatory framework governing capital market transactions.

Neither the FCCPA nor the ISA addresses employment transfer directly. The merger review process conducted by the FCCPC focuses on competition analysis, i.e., the effect of the proposed merger on market structure and consumer welfare. It does not extend toemployment protection. Employment considerations occasionally arise in the context of public interest assessment, but they are rarely the primary analytical focus of regulatory review.

The absence of a mandatory employment protection component in merger review represents a significant gap. In South Africa, the Competition Act expressly requires the Competition Commission to consider the effect of a proposed merger on employment, and a merged entity may be required to give employment guarantees as a condition of merger clearance. Nigeria's competition framework contains no equivalent mechanism.

4.5. SECTORAL LEGISLATION

The Nigerian oil and gas sector operates under a more detailed regulatory regime for employment releases. The Guidelines for the Release of Staff in the Nigerian Oil and Gas Industry 2019[13], require operators holding oil mining leases to obtain the approval of the Minister of Petroleum Resources before releasing any employee. This approval requirement reflects the sector's strategic importance and the particular vulnerability of workers in extractive industries to the employment consequences of restructuring activity.

The Pension Reform Act 2014[14] creates additional obligations in the restructuring context. The Act mandates a contributory pension scheme with minimum employer and employee contributions, and establishes entitlements that survive the termination of employment, including in restructuring scenarios. Where employment is transferred or terminated as part of a restructuring, the parties must ensure that pension entitlements are properly accounted for and that relevant pension fund administrators are engaged.

The Nigeria Data Protection Act 2023[15] adds a further layer of compliance in the restructuring context. The processing and transfer of employee personal data - including to a successor employer in the context of an asset sale - constitutes regulated processing activity under the NDPA, and must be conducted on a lawful basis with appropriate consent or other legal justification.



COMMON LEGAL ISSUES ASSOCIATED WITH EMPLOYMENT TRANSFER



5.1. THE CONSENT REQUIREMENT: FORM AND SUBSTANCE

The most persistently disputed issue in employment transfer transactions is the quality of the employee's consent. Section 10 of the Labour Act requires that consent be freely given and free from coercion, undue influence, misrepresentation, or mistake. In practice, however, the circumstances in which employees are asked to consent to a transfer – particularly in large-scale corporate transactions – are rarely conducive to genuine free choice.

The NICN's 2025 decision in Busayo Sodipe v Minnesota Nigeria Limited[16] is instructive. The court found that where a restructuring exercise converted permanent employees to contract status, the employees' consent was obtained under conditions of economic coercion. In this case, the threat of unemployment in a difficult labour market made the consent obtained legally ineffective. The court held that permanent employment rights and accrued benefits cannot be unilaterally eroded, even where an employer faces genuine financial distress.

The decision raises important questions for practitioners structuring employment transfer arrangements. What level of disclosure must the employer make before seeking consent? What time and opportunity must the employee be given to consider the terms of the transfer? Must the employee have access to independent legal or trade union advice before consent can be said to be freely given? The Labour Act is silent on all these points, and the courts have not yet provided comprehensive answers.

5.2. CONTINUITY OF EMPLOYMENT AND ACCRUED BENEFITS

One of the most commercially significant questions in any employment transfer is the treatment of continuity of employment. In jurisdictions with automatic transfer regimes, transferred employees retain their continuous service from the date of their original hire, with all the accumulated entitlements that flow from long service - protection against unfair dismissal, redundancy pay, long service leave, gratuity, and so on.

In Nigeria, where transfer is effected by consent rather than by operation of law, continuity of employment is not automatically preserved. The practical consequence is that employees may find that, upon accepting a transfer to a new employer, their years of service with the transferor are treated as extinguished. They begin their employment with the transferee as if newly hired. This outcome can be financially devastating for long-serving employees who have accrued significant entitlements, and it represents a powerful incentive for transferors to use the restructuring process to renegotiate employment terms downward.

Nigeria's labour framework has a major gap because there is no guarantee that employees keep their years of service when businesses change hands. As a result, employers may be able to structure transactions so workers appear to be new hires, allowing the employers to avoid paying benefits and other rights that workers have earned over time.

5.3. THE LABOUR OFFICER ENDORSEMENT REQUIREMENT

Section 10 of the Labour Act requires that a transfer of employment, once consented to by the worker, must be endorsed by an authorised labour officer. The endorsement is not merely administrative: the labour officer is charged with an affirmative duty to verify that the worker's consent was freely given and that the terms of the new employment are not materially less favourable than those of the existing contract.

In the context of major corporate transactions, the endorsement requirement creates significant practical difficulties. Where a restructuring involves the transfer of hundreds or thousands of employees, the requirement of individual endorsement by a labour officer for each contract represents a substantial administrative burden. There is no streamlined procedure for bulk endorsements in the context of large-scale corporate transactions.

The Business Facilitation (Miscellaneous Provisions) Act 2022 represented an attempt to reduce bureaucratic friction in Nigeria's business regulatory environment. Among its reforms, the Act streamlined certain administrative processes at the Ministry of Labour and Employment, including simplifying the procedure for obtaining approvals and reducing processing timelines for routine labour documentation. However, the Act did not address the endorsement requirement under Section 7 of the Labour Act directly. The obligation to obtain individual officer endorsement for fixed-term and specified-task contracts remain intact and unchanged. In practice, many transactions proceed without obtaining the required endorsements; this is a compliance gap that creates legal uncertainty and potential exposure for both the transferor and the transferee.

5.4. REDUNDANCY AND THE RESTRUCTURING CONTEXT

Not all restructuring transactions involve employment transfers. Many involve, or are accompanied by, redundancies - the elimination of roles or proliferated positions that the new or restructured entity does not require. Section 20 of the Labour Act governs redundancy for workers within the Act's scope, requiring advance notification of the workers' union or representative and adherence to principles of seniority and non-discrimination in the selection of employees for redundancy.[17]

The courts have held that restructuring — whether driven by technological change, consolidation of operations, or strategic repositioning — can constitute valid grounds for redundancy. However, the procedural requirements of section 20 must be scrupulously observed. A court will not merely accept that a business justification exists; it will examine whether the employer gave proper notice to employee representatives, applied selection criteria fairly, and paid the redundancy entitlements that the employees were owed.

The NICN's recent jurisprudence confirms a "substance plus process" approach to restructuring-related terminations: a valid business reason for redundancy will not excuse procedural failures, and procedural compliance will not save an employer where the business justification is pretextual.[18]

5.5. VARIATION OF EMPLOYMENT TERMS

Restructuring transactions frequently involve the harmonization of employment terms across a combined workforce, which typically means that some employees will be asked to accept changes to their existing terms and conditions. Nigerian law treats the employment contract as binding on both parties, and an employer cannot unilaterally vary the terms of employment without the employee's consent.

The NICN has applied this principle with notable rigour. In Salim Ally Buckus v Greenstone Auto Repairs[19], the court held that an employer could not unilaterally convert salary payments from a contractually specified foreign currency to naira, even in the context of a foreign exchange crisis. The principle extends to the restructuring context: an acquirer who seeks to harmonise employment terms by requiring transferred employees to accept less favourable conditions must do so through genuine negotiation and freely given consent, not through take-it-or-leave-it ultimatum



RISK AREAS IN PRACTICE



6.1. DUE DILIGENCE FAILURES

Employment due diligence in Nigerian M&A transactions is frequently inadequate. Acquirers focus on financial, tax, and commercial risks, and treat employment as a secondary consideration. The consequence is that transactions proceed to completion without a comprehensive assessment of the target's employment liabilities, including the pool of accrued but unfunded entitlements, the exposure from pending or threatened claims, the position of employees subject to collective agreements, and the compliance gaps that may have accumulated over years of operational life.

An acquirer who inherits undisclosed employment liabilities faces a difficult choice: attempt to renegotiate the transaction price (which may no longer be practicable post-completion), seek indemnification from the vendor (which presupposes the adequacy of contractual protections), or absorb the liability (which may be commercially unacceptable). Proper employment due diligence, including a review of all employment contracts, collective agreements, pension documentation, outstanding claims, and compliance records, is an essential element of transactional risk management.

6.2. INADEQUATE CONTRACTUAL PROTECTION

Even where due diligence is conducted, the transaction documents in Nigerian M&A transactions often fail to provide adequate contractual protection for the parties' employment-related interests. Representations and warranties may not specifically address employment transfer compliance. Indemnities for pre-closing employment liabilities may be narrowly drafted. Conditions precedent may not include satisfaction of the Labour Act's consent and endorsement requirements. And the mechanics of the employment transfer itself, the process by which individual employees are notified, their consent obtained, and their contracts transferred, may be left unaddressed in the transaction documents.

The gap between contractual aspiration and operational reality is particularly acute in transactions that close quickly or under commercial pressure. Where employment transfer mechanics are addressed at all, they are frequently addressed in implementation schedules that are never actually executed. The result is a transaction that is legally complete on paper but practically incomplete, and legally defective from an employment perspective.

6.3. COERCED CONSENT AND ECONOMIC DURESS

The structural vulnerability of employees in restructuring transactions, particularly in an economy with high unemployment and limited social safety nets, creates a systemic risk of coerced consent. Where an employee is presented with a transfer document and told that refusal will result in redundancy, the consent obtained is not the freely given agreement that Section 10 of the Labour Act requires. The NICN has recognized this risk and has demonstrated a willingness to set aside apparent consent where it was obtained under conditions of economic coercion.

Practitioners advising on employment transfers must ensure that the consent process is genuinely voluntary. This requires adequate advance notice, full disclosure of the terms of the new employment, access to independent advice, and a reasonable period for consideration. Where these conditions are not met, the transfer is at risk of challenge even years after the transaction has closed.

6.4. DATA PROTECTION COMPLIANCE

The Nigeria Data Protection Act 2023[20] has added a new dimension of risk to employment transfer transactions. The transfer of employment records and employees' personal data, including payroll data, health records, performance reviews, and disciplinary history, from the transferor to the transferee constitutes regulated data processing activity. The transferor must have a lawful basis for the transfer, and employees must be informed of the intended transfer in advance.

In practice, data protection compliance is rarely integrated into employment transfer planning. The result is that transactions proceed with the wholesale transfer of employee data without any assessment of the lawful basis for that transfer or any communication to the affected employees. This represents not merely a regulatory compliance risk but a reputational risk that, as data protection enforcement in Nigeria continues to mature, is likely to become increasingly significant.

6.5. PENSION AND BENEFITS CONTINUITY

The Pension Reform Act 2014[21] creates specific obligations in the restructuring context. Employees' pension rights are governed by the terms of their individual Retirement Savings Account arrangements and the statutory minimum contribution regime. Where employment is transferred or terminated as part of a restructuring, the parties must engage with the relevant pension fund administrators to ensure that contributions are properly accounted for and that the transition does not create gaps in pension coverage.

Group life insurance, which the Pension Reform Act requires all employers to provide for a minimum of three times the employee's annual total emoluments, presents similar challenges. Where the employing entity changes as part of a restructuring, the new employer must ensure that group life coverage is in place from day one of the new employment relationship.

6.6. TRADE UNION AND COLLECTIVE BARGAINING IMPLICATIONS

Where the target's workforce is unionised, restructuring transactions carry significant collective labour relations implications. The Trade Unions Act[22] requires employers to recognize registered trade unions for the purposes of collective bargaining; and collective agreements, where they have been incorporated into individual employment contracts, are enforceable as terms of those contracts.

An acquirer who takes over a unionized workforce must honour the existing collective agreement, negotiate a new agreement, or, in the limited circumstances where this is permissible, restructure the employment relationship in ways that affect union membership. Each of these options carries legal and practical risks, and none can be pursued without engaging the consultation obligations that arise under both the Labour Act and the collective agreement itself.

INTERNATIONAL BEST PRACTICE



7.1. THE RATIONALE FOR COMPARATIVE ANALYSIS

The National Industrial Court's practice of applying international labour standards as benchmarks for Nigerian employer conduct creates a strong practical argument for understanding how other major jurisdictions have approached employment transfer. This exercise reveals a consistent pattern: jurisdictions with developed legal frameworks for employment transfer have moved away from pure consent-based models toward regimes that provide automatic or semi-automatic protection for transferred employees, subject to defined exceptions.

The consent-only model under Section 10 of the Labour Act is structurally inadequate for the modern restructuring environment and should be replaced by a framework that provides meaningful protection for employees while preserving appropriate commercial flexibility for legitimate restructuring transactions.

7.2. THE UNITED KINGDOM: TUPE AND THE ACQUIRED RIGHTS DIRECTIVE

The Transfer of Undertakings (Protection of Employment) Regulations 2006, universally known as TUPE, represent the United Kingdom's implementation of the European Union's Acquired Rights Directive. TUPE applies wherever there is a "relevant transfer"[23]. A relevant transfer is defined as a transfer of an economic entity that retains its identity after the transfer (such as a share purchase transaction), or a "service provision change"[24] in which a service contract is outsourced, re-tendered, or insourced.

Under TUPE, the transfer of employment is automatic by operation of law: employees assigned to the transferring undertaking move to the new employer on the same terms and conditions, with continuity of employment preserved. The transferee steps into the transferor's shoes in relation to the transferred employees and

assumes all the rights, powers, duties, and liabilities connected with their contracts of employment. An employee has the right to object to the transfer, but, depending on the circumstances, may thereby lose certain legal protections.

The TUPE framework imposes specific information and consultation obligations on both the transferor and the transferee. The affected employees must be informed, through elected representatives, of the fact of the transfer; the reasons for it; the legal, economic, and social implications for them; and any measures that the employer envisages taking in connection with it. Consultation must occur long enough before the transfer to allow meaningful dialogue and must be genuine rather than perfunctory.

TUPE's treatment of employment term variations is strict: any purported variation of employment terms that relates to the transfer and driven by the transfer itself is void. The only exceptions are variations made for "economic, technical or organisational reasons entailing changes in the workforce". This exception is a narrowly construed category that the courts have interpreted with considerable rigour.

7.3. SOUTH AFRICA: AUTOMATIC TRANSFER UNDER SECTION 197 OF THE LABOUR RELATIONS ACT

South Africa's Labour Relations Act 66 of 1995 provides, in Section 197, that when a business is transferred as a going concern, all the employees of the old employer automatically become employees of the new employer on the same terms and conditions as prevailed immediately before the transfer.

Section 197 is comprehensive in its protective scope. It preserves continuity of employment ensuring that years of service with the old employer count as years of service with the new employer for all purposes, protects against unfair dismissal protection, redundancy pay, and long service entitlements. All accrued rights and obligations under the employment contract transfer with the employee. Collective agreements and arbitration awards binding on the old employer continue to bind the new employer in respect of the transferred employees.

The South African framework strikes a balance between employee protection and commercial flexibility through a carefully calibrated consultation mechanism: before the transfer, the old and new employers must jointly consult with the affected employees (and their representatives) to reach agreement on terms and conditions of employment. This consultation is mandatory and must be conducted in good faith, but it does not require the employees' consent to the transfer itself: the transfer is automatic.

The South African model provides the automatic protection that employees require while creating a framework for legitimate post-transfer harmonization of employment terms.

7.4. THE UNITED STATES: WARN ACT[25] AND CONTRACT-BASED APPROACHES

The United States takes a different approach from the European and South African models, reflecting the "employment at will" doctrine that pervades American employment law. There is no general automatic transfer regime equivalent to TUPE or Section 197 of the LRA. Employment transfers in the US context are governed primarily by contract.

The principal piece of federal legislation relevant to corporate restructuring is the Worker Adjustment and Retraining Notification Act (WARN Act), which requires employers with 100 or more employees to provide 60 days' advance notice of plant closings and mass layoffs. The WARN Act addresses the notification dimension of restructuring-related employment termination but does not provide automatic transfer protections comparable to TUPE or section 197.

The US model illustrates an important point: automatic transfer regimes are not the only way to protect

employees in restructuring transactions. An alternative approach is to rely on contractual protections negotiated in the context of the transaction, supplemented by mandatory pre-termination notification requirements. The limitation of this approach, from the perspective of developing economies, is that it places the burden of protection on the employee's capacity to negotiate effectively — a capacity that is typically very limited.

7.5. KEY PRINCIPLES FROM COMPARATIVE ANALYSIS

Several key principles emerge from comparative analysis that are directly relevant to Nigerian reform.

First, effective employee protection in restructuring transactions requires clarity about the legal consequences of a transfer, whether automatic transfer of the employment relationship or, at minimum, presumptive continuity of employment that can only be displaced by genuine agreement.

Second, information and consultation obligations must be genuinely substantive. Notification requirements that can be satisfied by a letter delivered on the eve of completion do not provide meaningful protection. Employees and their representatives need sufficient time and information to engage meaningfully with the implications of a proposed restructuring.

Third, the variation of employment terms in connection with a transfer must be subject to meaningful constraint. Without such constraint, the transfer mechanism becomes a vehicle for reducing employment costs rather than a mechanism for protecting employees.

Fourth, institutional capacity matters. The effectiveness of employment transfer regimes depends critically on the capacity of the regulatory agencies and the courts—in Nigeria's case, the Ministry of Labour and Employment and the NICN — to enforce the protections they provide. Strengthening institutional capacity is as important as improving the substantive legal framework.



RECOMMENDATIONS



1. ENACT A DEDICATED EMPLOYMENT TRANSFER STATUTE

Nigeria urgently needs a dedicated employment transfer statute that addresses the consequences of corporate restructuring for employees in a comprehensive, clear, and enforceable way. Incremental judicial and regulatory responses have proven insufficient. It is important that this concept gain statutory recognition.

Such a statute must, at minimum: establish the automatic continuity of employment upon a business transfer as a going concern; define the specific obligations of transferors and transferees with respect to information, consultation, and the preservation of employment terms; prohibit the variation of employment terms solely by reason of a transfer, except where agreed through a defined process; establish a clear statutory procedure for the transfer of employees in the context of mergers and acquisitions; and clarify the interaction between employment transfer protections and insolvency proceedings, including the extent to which employee claims rank as preferential debts.

South Africa's Section 197 of the Labour Relations Act offers the most instructive model for Nigerian reform. It operates within a constitutional framework that, like Nigeria guarantees workers' rights; and its implementation over several decades has generated a body of jurisprudence that Nigerian lawmakers and courts can draw on directly. The EU Acquired Rights Directive and its domestic implementations across common law jurisdictions provide additional comparative guidance, particularly on the treatment of collective agreements and the rights of employees to object to transfer.

The current definition of "workers" under the Labour Act is unacceptably narrow, excluding large categories of professionals — including managerial and executive employees — who are most frequently affected by corporate restructuring. Any new statute must adopt an inclusive definition that reflects contemporary employment relationships, including those involving fixed-term, part-time, and agency workers.

2. AMEND SECTION 10 OF THE LABOUR ACT

Pending the enactment of a dedicated employment transfer statute, Section 10 of the Labour Act must be amended without delay. In its current form, Section 10 requires individual written consent from each employee to any assignment or transfer of their employment contract. This requirement is operationally unworkable in large-scale transactions and creates significant legal uncertainty for acquiring businesses and investors.

The amendments should: introduce a statutory presumption of consent to transfer where an employer has completed a prescribed information and consultation process with affected employees or their representatives; establish a streamlined, time-bound procedure for bulk endorsement of employment contracts in transactions involving multiple employees; impose a mandatory deadline on the labour officer endorsement process, with deemed approval where the deadline is not met and no valid objection has been raised; and create clear consequences for non-compliance by either party, including personal liability for officers who obstruct or delay the process without lawful cause.

3. INTEGRATE EMPLOYMENT PROTECTION INTO MERGER REVIEW

The Federal Competition and Consumer Protection Commission's merger review process must be strengthened to require applicants to disclose, at the notification stage, the employment implications of a proposed transaction, including projected workforce reductions, proposed changes to terms and conditions, and measures planned to mitigate adverse effects on employees.

Where a transaction is likely to result in significant redundancies or material changes to employment terms, the Ministry of Labour and Employment should have explicit statutory authority to impose employment-related conditions on merger clearance, including headcount guarantees for a defined period, obligations to offer redeployment before redundancy, and requirements to consult with recognised trade unions or employee representatives before implementation. Sectoral regulators — particularly in banking, telecoms, and energy — should be required to coordinate with the Ministry of Labour and Employment on employment impact assessments in transactions within their sectors, given the frequency and scale of restructuring activity in those industries.

4. MANDATORY DISCLOSURE AND CONSULTATION

The Labour Act must require employers proposing a restructuring transaction that will affect employees to provide comprehensive advance written notice to affected employees and their representatives. This notice must set out the nature of the proposed transaction, its anticipated employment consequences, and the specific measures proposed to protect affected employees. Consultation with employee representatives must be mandatory, subject to a minimum notice period of 30 days before implementation, and must be conducted with a genuine view to reaching agreement.

Nigeria has not ratified ILO Convention No. 158 on Termination of Employment. However, the National Industrial Court has drawn on its standards in a number of decisions, and those standards now inform the Court's approach to unfair dismissal and procedural fairness in restructuring contexts. What is required now is legislation that codifies these protections expressly, providing employers and employees alike with clear, predictable rules rather than reliance on evolving judicial interpretation.

5. STRENGTHEN INSTITUTIONAL CAPACITY

Legal reforms may be ineffective without institutions that are capable of implementing and enforcing these reforms. The Ministry of Labour and Employment requires investment in human resources and systems to handle the endorsement function under section 10,and any expanded function under a reformed regime. Persistent delays and inconsistencies in the current endorsement process reflect an institutional gap and must be addressed directly. The NICN requires continued investment in judicial capacity to handle the volume and complexity of employment disputes arising from corporate restructuring. The Court's ability to resolve these disputes efficiently and authoritatively is essential to the credibility of the employment protection framework.

The FCCPC must be resourced to conduct genuine employment impact assessments as part of merger review, rather than treating employment consequences as peripheral to competition analysis. This requires both dedicated expertise and a clear statutory mandate.

6. DEVELOP SECTOR-SPECIFIC GUIDANCE

The Ministry of Labour and Employment should develop binding sector-specific guidance on employment transfer for industries where restructuring activity is particularly frequent or where the employment consequences are particularly acute. The oil and gas sector's Staff Release Guidelines demonstrate that detailed, operationally useful guidance is achievable and effective. Comparable frameworks should be developed as a priority for the banking and financial services, telecoms, and manufacturing sectors — each of which has seen substantial restructuring activity in recent years with limited regulatory guidance on employment consequences.

Such guidance should address the specific transaction structures common in each sector, the categories of employees most affected, and the interaction between employment transfer obligations and sector-specific regulatory requirements.

CONCLUSION



The transfer of employment in corporate restructuring is not a peripheral topic in Nigerian employment law. It sits at the intersection of two of the most important legal regimes governing economic life: the law of corporate transactions, which determines how businesses are organised, combined, and reorganised; and the law of employment, which determines the rights and obligations of the millions of Nigerians who depend on employment for their economic security.

Nigeria's current framework for employment transfer is insufficiently developed to adequately support the complexities of a sophisticated, high-volume restructuring market. The consent-based model of section 10 of the Labour Act was designed for a simpler era of labour relations and a less complex corporate environment. It does not provide automatic protections that employees in comparable jurisdictions take for granted. It does not create the transactional clarity that acquirers and vendors need to incorporate employment considerations in their deal structures. It does not give the courts and regulatory agencies the tools they need to enforce employee rights effectively.

The practical case is reinforced every day by the experience of employees whose rights are extinguished or diminished in restructuring transactions that are commercially complete but legally deficient, and by the experience of practitioners who must advise clients to navigate a statutory framework that is outdated, incomplete, and inconsistent with the international standards that Nigeria's own courts apply.

Nigeria has the institutional capacity and the legal sophistication to build a world-class framework for employment transfer in corporate restructuring. The building blocks are in place: a specialist labour court with a strong labour rights orientation and a willingness to apply international standards; a constitutional framework that places labour rights among the fundamental rights of Nigerian citizens; a corporate law that has recently been comprehensively modernised; and a growing body of academic and practitioner scholarship that has mapped the deficiencies of the current system and pointed toward the solutions.

What remains is the political will to act — to enact the legislation that employees deserve, that practitioners need, and that Nigeria's position as a major commercial jurisdiction demands.

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