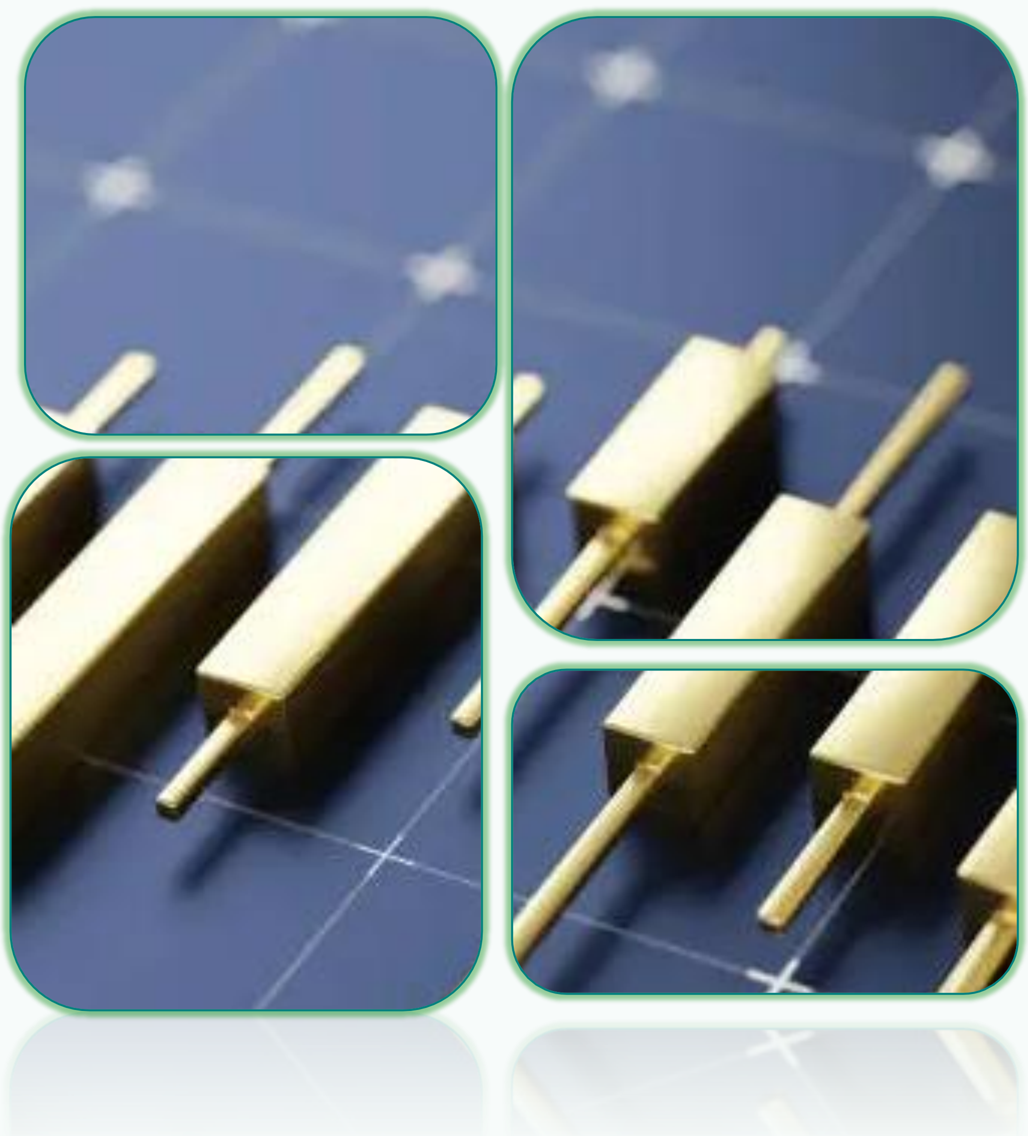

Distressed Transactions in Nigeria's Capital Markets: A Review of the Insolvency Provisions Under the Investment and Securities Act, 2025

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Introduction

The passage of the Investment and Securities Act, 2025[1] (ISA 2025/the Act), marks a deliberate and thoughtful progression in the development of Nigeria's legal framework governing capital markets. The ISA 2025 is a considered response to the complex realities of modern finance—realities that demand legal instruments that are both firm in structure and flexible in operation.

The increasingly global character of financial systems and the speed with which transactions now occur across jurisdictions make it imperative that the legal regime be equipped to ensure certainty, stability, and fairness. It is within this context that the Act was enacted, to promote investor confidence, sustain orderly market conduct, and accommodate innovation without compromising regulatory oversight.

A significant feature of this new Act is its departure from the traditional treatment of insolvency in the financial markets. Whereas insolvency rules have historically applied with general uniformity across sectors, the Investment and Securities Act, 2025 introduces specific and deliberate exclusions—particularly in relation to market contracts and transactions conducted through regulated exchanges and financial market infrastructures. These exclusions are not anomalous. They are grounded in the need to preserve the integrity of financial systems and to shield critical market operations from the disruptive consequences of insolvency proceedings.

This article examines the insolvency-related provisions of the Act, with particular emphasis on Section 45 and the sections that follow. It seeks to provide a careful analysis of the rationale behind these provisions, their practical implications, and the broader message they convey regarding the treatment of default, recovery, and systemic risk in Nigeria's capital market. It is hoped that this discussion will aid legal practitioners, regulators, and market participants in understanding both the letter and the spirit of the law as it now stands.

Overview of Key Insolvency Provisions in ISA 2025

Section 45 – Exclusion of Insolvency Law Provisions in Capital Market Operations

Section 45 of ISA 2025 draws a bold red line through the standard playbook of insolvency law. It introduces a targeted exception to the general application of insolvency law, reflecting a policy intent to preserve market integrity and ensure continuity of operations in the event of participant default. The section stipulates that, subject to its provisions, insolvency laws shall not apply to certain transactions and actions connected to market contracts and the operation of financial market infrastructures (FMI).[2]

Specifically, the section lists specific transactions and market activities that are ring-fenced from general insolvency proceedings. These include:

Market contracts;

- Actions taken under the rules of a securities exchange or financial market infrastructure;
- Transfers and settlements of cleared client or house contracts;
- Transfers of client trades and associated collateral; and
- Qualifying property transfers that occur according to a financial market infrastructure's (FMI) default rules.

These exclusions are structured to ensure that the legally binding processes and procedures established by exchanges and clearinghouses are not interrupted by external insolvency proceedings. This protects the sanctity and predictability of capital market processes.

Moreover, the above provision applies only in defined circumstances. They apply only to: [3]

- Insolvency proceedings involving members of securities exchanges;
- Members of financial market infrastructures;
- Parties to market contracts where default action has been initiated by an FMI

This carefully defined scope ensures that only relevant cases involving systemic actors are covered, thereby preventing any unwarranted circumvention of insolvency law outside the intended financial market context.

Notably, subsection (3) provides that claims or liabilities arising under defaulted market contracts cannot be proved in insolvency until the FMI's default process is concluded.[4] This provision ensures that the market's internal resolution mechanisms are exhausted before any external insolvency claims can be considered, thereby maintaining the primacy of default management protocols.

Furthermore, the section restricts the discretion of insolvency office holders such as liquidators or administrators. It prohibits them from selectively affirming, avoiding, or setting aside individual market contracts.[5] This prevents the disruptive practice of "cherry-picking" favourable contracts while repudiating unfavourable ones—an action that could otherwise distort the market's functioning and undermine contractual certainty.

Section 46: Protection of Market Arrangements from Insolvency Law Challenges

Building on the structural exclusions in Section 45, Section 46[6] offers a further layer of protection by expressly shielding a broad class of market-related arrangements from invalidation, avoidance, or challenge under insolvency law. The section unequivocally declares that neither bankruptcy law nor the principles of asset distribution in insolvency shall be grounds for questioning the validity of certain enumerated instruments and operations.

The items explicitly protected include:

- Market contracts and associated settlement rules;
- Transfers of clearing member client contracts and client trades;
- Transfers of collateral linked to those contracts;
- Any qualifying property transfer under default rules; and
- Net sums certified by a financial market infrastructure.

This approach ensures legal certainty—a cornerstone of effective market regulation. By immunising these arrangements from retroactive judicial scrutiny, the Act provides critical comfort to market participants, especially those involved in high-volume, time-sensitive transactions such as derivatives, securities lending, and repo markets. It also reflects a deep understanding of the operational demands of FMIs, which require enforceable and final rules to manage counterparty default without fear of subsequent legal reversal.

Importantly, the section concludes with a savings clause, clarifying that it does not limit the FMI's own rights under insolvency law or its internal rules. This ensures that the statutory shield operates symbiotically with the risk management architecture of the FMI, rather than constraining it.

Section 47: Supremacy over Conflicting Insolvency Orders

In a further and decisive legislative move, Section 47 fortifies the preceding provisions by expressly prohibiting any conflicting orders under existing insolvency legislation, including the Bankruptcy Act and the Companies and Allied Matters Act (CAMA). It also renders the protected market matters immune from challenge by insolvency office holders.[7]

This section enumerates a comprehensive list of protected matters, ranging from market contracts and collateral arrangements to the operation of default and netting rules.[8] The effect is twofold: first, it ensures that courts and insolvency practitioners are statutorily barred from interfering with or invalidating these market mechanisms; and second, it elevates the FMI's operational rules to a legally superior status in situations where they may conflict with general insolvency procedures.

By clearly removing the jurisdictional ambiguity that might otherwise invite conflicting orders, Section 47 provides the final piece of the legislative framework that preserves transactional integrity in the face of insolvency. This alignment significantly enhances Nigeria's attractiveness to foreign investors, global clearing institutions, and cross-border financial entities, who require such legal certainty when engaging with the Nigerian financial system.

Also, the approach adopted in Section 47 is consistent with global financial sector regulatory best practices, such as the UNCITRAL Legislative Guide on Insolvency Law,[9] the Financial Stability Board's Key Attributes of Effective Resolution Regimes,[10] and EU and US laws on insolvency carve-outs for financial contracts.

Section 48: Recognition and Set-off of Net Sums in Insolvency

Section 48 of the Act introduces a necessary convergence between insolvency processes and the operational reality of financial market infrastructures. This provision acknowledges that while certain FMI-related transactions are insulated from challenge, their economic consequences must eventually be integrated into insolvency proceedings. Specifically, Section 48 provides the legal bridge through which certified net sums arising from default procedures are recognised in liquidation or administration.

Under subsection (1),[11] where a net sum is certified under the default rules of an FMI as payable to or by a defaulting party, that sum is considered a provable debt in a winding-up or administration. The sum is also to be taken into account for purposes of set-off—just as if it were a pre-commencement obligation. This clarity is crucial. It ensures that while the mechanics of calculation and certification are governed exclusively by the FMI's internal rules, the resultant net obligation does not exist in a vacuum; it is recognised within the formal structure of insolvency proceedings and can be admitted or offset accordingly.

In practical terms, this provision ensures harmony between private market resolution mechanisms and statutory insolvency regimes. It avoids a legal disconnect where a net obligation determined by a clearinghouse or exchange might otherwise be excluded from insolvency accounting simply because it arose through protected default procedures.

However, subsection (2)[12] introduces an important caveat designed to curb opportunistic behaviour. Where the creditor had prior notice of impending insolvency proceedings—such as knowledge of a creditors' meeting, winding-up petition, or intended administration—the value of any profit derived from set-off of such a sum may be recovered by the insolvency office-holder. This clawback mechanism is meant to discourage tactical positioning or last-minute transactions designed to exploit the protective regime.

Importantly, the clawback provision does not apply where the sum arises from an "ordinary contract," which introduces a distinction between regular commercial arrangements and capital market contracts conducted within FMI structures. This careful calibration strikes a balance: while certified net sums are honoured and integrated into the insolvency estate, they are not immune from equitable adjustment where bad faith or undue advantage is present.

Section 49: Duty to Assist Default Proceedings and Deference to Secured Creditors

Complementing the provisions governing the treatment of net sums is Section 49, which imposes specific duties on persons controlling the assets of a defaulter and affirms the priority of secured creditors in the context of default and insolvency.

Subsection (1) imposes a legal obligation on any person who has control of the defaulter's assets—regardless of their legal interest in those assets—to provide reasonable assistance to a financial market infrastructure during its default proceedings. This provision has practical implications: for instance, custodians, trustees, brokers, or even payment banks holding client assets are required to cooperate with the FMI, ensuring that default management measures can be swiftly and effectively carried out.

Subsection (2) turns to the treatment of secured creditors. Where the person in control of the asset is a secured party—lawfully holding the asset as collateral—Section 49 mandates that insolvency office-holders must acknowledge and defer to the rights of that secured party. Notably, the secured party is not required to surrender the asset or elect between enforcement and surrender, as might otherwise be the case under general insolvency law. In effect, the security interest remains intact and enforceable notwithstanding the commencement of insolvency proceedings.

This deference to secured creditors is critical for maintaining confidence in collateralisation arrangements across Nigeria's capital markets. It ensures that security interests created under market contracts or collateral agreements are not second-guessed or diluted by subsequent insolvency processes. It also enhances Nigeria's competitiveness as a market for structured finance, derivatives, and other asset-backed transactions, where enforceability of collateral is a sine qua non.

This provision enhances the enforceability of default rules, ensuring that the FMI can recover, reassign, or liquidate assets without obstruction or delay. It also aligns with international best practice, particularly under regimes such as the European Market Infrastructure Regulation (EMIR) and the Principles for Financial Market Infrastructures (PFMI), which prioritise access to assets and information during resolution procedures.

Section 50: Disapplication of avoidances, fraudulent preference and priority of payment

The cumulative architecture built by Sections 45 through 49 of the Investment and Securities Act, 2025 culminates in Section 50, a keystone provision that decisively neutralises the potential disruptive reach of insolvency avoidance powers over core market operations. It is here that the Act most thoroughly aligns itself with international best practices by ensuring that financial market infrastructures (FMIs), their clearing members, and participants can rely on the finality and enforceability of contracts, collateral arrangements, and asset transfers.

Section 50[13] addresses four core areas of traditional insolvency interference—namely, avoidance of property dispositions and preferences; challengeable transactions; disclaimer of onerous contracts; and enforcement against collateral—and then proceeds to carve out express exclusions from each category.

Subsection (1): Displacement of Avoidance Principles

The opening provision categorically disapplies core avoidance doctrines of insolvency law—such as those relating to fraudulent preferences, priority of payments, or voidable transactions—insofar as they relate to market contracts and collateral structures. Protected items include:

- Market contracts and margin arrangements;
- Default fund contributions and their realisation;
- Dispositions of property under FMI rules;
- Collateral arrangements between clearing members and FMIs;
- Transfers of clearing member client contracts and client trades;
- Qualifying property transfers.

In essence, this means that a properly constituted margin or collateral transfer—executed in accordance with an FMI's rules—cannot be invalidated simply because it occurred shortly before insolvency, even if it might otherwise appear preferential. The implication is significant: counterparties can rely on the enforceability of transactions without fearing that they will later be unwound due to the debtor's insolvency.

However, the proviso at the end of subsection (1) introduces a narrow exception. Suppose a non-defaulting party had actual notice of an impending winding-up petition or similar proceeding when entering into a market contract or receiving margin. In that case, any profit realised may be recoverable by the insolvency office-holder—unless the court otherwise directs. Notably, this restriction does not apply where the contract was entered into by an FMI or under its default rules. This nuanced caveat ensures a balance between transactional finality and the prevention of abuse in the twilight zone of insolvency.

Subsection (2): Exclusion from Transactional Challenges

This subsection[14] goes further by shielding a wide range of transactions from being challenged as:

- Transactions at an undervalue;
- Preferences;
- Fraudulent dispositions aimed at defrauding creditors.

The list of protected actions mirrors the categories outlined in subsection (1) and includes all collateral and margin transfers, contracts for realising such collateral, default fund contributions, and qualifying property transfers. This broad immunity ensures that participants in capital market transactions can act without second-guessing their enforceability based on hindsight analysis in insolvency.

Of critical importance is the inclusion of market contracts entered into by a securities exchange or FMI, as well as those executed under their default rules. These are typically systemically important transactions. Their immunity from challenge preserves the integrity of post-default resolution mechanisms which rely on swift, enforceable transfers of assets and obligations.

Subsection (3): Disapplication of Disclaimer and Rescission Powers

Another important insolvency mechanism disapplied by Section 50 is the power to disclaim "onerous property" or rescind contracts. Generally, an insolvency office-holder may disclaim contracts that impose burdensome obligations on the debtor's estate. Section 50(3),[15] however, excludes this power with respect to:

- Market contracts;
- Collateral arrangements;
- Transfers of clearing member client contracts;
- Contracts entered into by FMIs to realise margin or default fund contributions.

By removing the ability to disclaim or rescind such contracts, the Act reinforces the sanctity of clearing and collateral mechanisms. These are not to be unpicked by liquidators simply because they may appear onerous or unfavourable in hindsight.

Subsection (4): Enforcement of Property Rights by Financial Market Infrastructures

The final subsection introduces powerful operational protections for FMIs. Where an FMI holds property (other than land) as margin or default fund contribution:

- It may apply the property in accordance with its rules, notwithstanding prior equitable interests, rights, or fiduciary breaches—unless it had actual notice of such interests at the time the property was received;
- Third parties cannot initiate or continue enforcement actions, levies, or legal processes against that property without the written consent of the FMI.

This provision is essential for uninterrupted default management. It ensures that FMIs have clear legal title and operational control over margin and default fund assets, insulating them from both pre-existing equitable claims and opportunistic creditor enforcement. The clause promotes certainty and efficiency, while maintaining fairness through the caveat that protections only apply absent actual notice of adverse claims.

Section 51: Protection of certain actions of financial market infrastructure

Section 51 of the Investment and Securities Act, 2025 makes an unequivocal policy statement: the operational rules of a financial market infrastructure (FMI) are to be given full force and effect, free from judicial second-guessing, insolvency interference, or contractual challenge. This provision encapsulates the legislative intent to position the rules and procedures of FMIs at the apex of market order and transactional certainty.

The introductory phrase—"without prejudice to any specific provision of this Section"—signals that Section 51 does not displace or weaken the protections granted in the earlier sections. Rather, it serves as a catch-all reinforcement, ensuring that any residual or indirect attempt to challenge FMI activity—whether under insolvency law, contract law, or equitable doctrines—is explicitly barred.

Scope of Protected Rules

The section protects nine categories of FMI rules and actions, each corresponding to a critical aspect of market functionality:

a. Settlement of Market Contracts and Transfer Orders

b. The netting of any rights and obligations of clearing member or participant in the financial market infrastructure under the rules of the financial market infrastructure or one or more market contracts;

c. The set-off of any obligations between the financial market infrastructure and a clearing member or participant or between clearing members/participants in the financial market infrastructure;

d. The termination, closeout or cancellation of any market contract;

e. The transfer of any market contract and any associated collateral;

f. The enforcement of any security interest of a financial market infrastructure in respect of any collateral provided by a clearing member/participant in respect of any market contract;

g. The appropriation of any collateral held by a financial market infrastructure pursuant to its default rules, in set off against any obligations of a clearing member/participant that has become a defaulter pursuant to such default rules;

h. Any qualifying collateral transfer;

i. The certification by a financial market infrastructure as to the final net sum representing any sums from a clearing member or participant to a financial market infrastructure, or from a financial market infrastructure to a clearing member or participant, following the completion of the financial market infrastructure's default proceedings, and any actions taken by a financial market infrastructure pursuant to such rules;

The concluding paragraph of Section 51 makes clear that none of the above processes or rules "shall be subject to challenge under the laws of contract or insolvency or any other provision of law in Nigeria." This is a sweeping legal shield, applicable not only to insolvency office-holders and participants but to "any person." It ensures that contractual doctrines (e.g., mistake, frustration, duress), equitable claims (e.g., unjust enrichment, breach of fiduciary duty), and statutory insolvency powers cannot be used to reopen or unwind validly executed market processes.

Section 53: Disapplication of General Insolvency Law to Transfer Orders and Collateral Security

Cementing the legislative architecture established in **Sections 45 to 51**, Section 53 of the Investment and Securities Act, 2025 (ISA 2025) affirms that the general body of insolvency law shall not apply to two foundational aspects of capital market operations: (a) transfer orders effected through a "system" and (b) collateral security arrangements. This statutory exclusion is both precise and essential—ensuring that neither the execution of transfer orders nor the enforcement of collateral can be disturbed by the onset of insolvency.

Subsection (2) further clarifies that the protections afforded by Section 53 (1) apply only in respect of:

a. Insolvency proceedings concerning a participant in the system; or

b. Insolvency proceedings concerning a system operator of the system.

It explicitly disapplies these protections to other insolvency proceedings, even if the relevant rights or liabilities arise from transfer orders or collateral security arrangements. The intent here is to limit the statutory carve-out to those cases where the insolvency event directly impacts the operational integrity of the settlement or clearing system.

Section 54: Reinforcing the Priority of System Rules over Insolvency Law

Section 54 of the Investment and Securities Act, 2025 significantly strengthens the ring-fence around financial market systems by asserting that neither Nigerian nor foreign insolvency law may override the finality of transfer orders, the application of default arrangements, or the enforcement of collateral provided in relation to a recognised financial system.

Subsection (1): Absolute Protection from Challenge under Domestic and Foreign Insolvency Laws

This subsection states that the following arrangements shall not be considered invalid—even if they conflict with insolvency law relating to bankruptcy, winding up, receivership, or even insolvency law in another country:

- Transfer orders;
- Default arrangements of a system;
- Rules for settling transfer orders not covered by default rules;
- Contracts to realise collateral provided in relation to participation in a system.

This provision removes all doubt: actions lawfully carried out under the operational rules of a financial market infrastructure cannot be invalidated or challenged, even when general insolvency law (whether in Nigeria or abroad) might otherwise provide for the avoidance, reversal, or restriction of such actions.

Subsection (2): Limitation on Court and Insolvency Practitioner Powers

Here, the Act takes an additional step by limiting the authority of both insolvency office-holders and the courts. Specifically, their powers may not be exercised in any way that would interfere with:

- Settlement of transfer orders outside of default arrangements;
- Action taken under default arrangements;
- Enforcement of collateral security outside default arrangements.

This provision reflects a policy choice: the operational rules of an FMI take precedence over external legal processes. This ensures that FMIs can continue operating efficiently, even in the face of insolvency, and that their contractual mechanisms remain the primary tool for resolving defaults.

Subsection (3): FMI Treated as a Secured Creditor of Priority

This is a powerful innovation. It provides that an FMI shall be treated as a secured creditor of priority status—regardless of the legal form of the collateral it holds—if the collateral was pledged by an insolvent participant. In practical terms, this means that the FMI need not prove that its collateral was granted through a formal mortgage, charge, or pledge. So long as it holds collateral under its rules, it has first-priority rights to realise it, ahead of other creditors

. Subsection (4): Comprehensive Override of Avoidance Mechanisms

This subsection removes a wide range of traditional insolvency powers from interfering with FMI operations. The following are disapplied:

- The invalidation of asset transfers made after insolvency proceedings begin;
- The disclaimer of onerous contracts;
- The avoidance of transactions made at an undervalue or preferential transactions;
- The suspension of enforcement (such as during an administration moratorium).

Crucially, the section specifies that none of these powers may be used to “frustrate” the protections given under Section 53, which covers transfer orders and collateral security.

Subsection (5): Timing of Proof and Set-Off of Claims.

Finally, the section reaffirms a principle introduced in Section 45 (3) of ISA 2025: that debts arising from transfer orders or related obligations cannot be admitted into the insolvency estate or used for set-off until the FMI’s default proceedings are completed. This ensures that the FMI’s internal processes remain the first point of resolution and are not prematurely overridden by insolvency procedures.

Section 54 therefore serves as a definitive statement of supremacy: it places the rules and protections of FMIs above competing insolvency laws, both local and foreign, and ensures that once assets enter a recognised market system, they cannot be pulled back or questioned later—even by insolvency authorities.

Section 55: Timing, Notice, and Limits to Protection

While the preceding sections offered broad protections to financial market transactions, Section 55 introduces necessary guardrails by defining when those protections cease to apply. The section primarily deals with the treatment of transfer orders entered into a system after an insolvency event (such as a winding-up order) has occurred.

Subsection (1): No Protection After Insolvency Event

This provision declares that the insolvency protections of this section do not apply to transfer orders entered into the system after:

- A court makes a winding-up order against the participant or system operator; or
- The participant passes a creditors' voluntary winding-up resolution.

In general, this means that once a participant is legally in winding-up, any new transfer orders they submit lose the benefit of legal protection—unless certain conditions are met.

Subsection (2): Exception for Same-Day Transfers Without Notice

There is an important exception to the above rule in subsection 1. Protection may still apply if:

- The transfer order was executed on the same business day the insolvency event occurred; and
- The system operator can show it had no notice of the insolvency event at the time the transfer order became irrevocable.

This exception reflects commercial reality: not all systems can immediately respond to an insolvency event that occurs during a business day. So, if a transfer order was processed in good faith and without knowledge of the insolvency, it remains protected.

Subsection (3): When a System Operator Is Deemed to Have Notice

To prevent abuse, the law provides that a system operator will be deemed to have notice of the insolvency event if it deliberately failed to make inquiries that a reasonable person in its position would have made. This introduces an objective test: system operators must act prudently and not ignore signs of distress among their participants.

Subsection (4): Default Management Exception for Registered FMIs

This subsection preserves full legal protection for certain transfer orders that are entered after a participant defaults, so long as three conditions are met:

- The system operator is a registered FMI authorised by the Securities and Exchange Commission (e.g., clearing houses, central counterparties, or settlement agents);
- A clearing member has defaulted;
- The transfer order was entered pursuant to the FMI's default rules to transfer that clearing member's positions or assets.

This is a critical carve-out. It allows FMIs to act quickly after a default—even post-insolvency—to transfer trades or collateral to new parties without delay. It ensures that the default resolution mechanism within the FMI remains legally effective, even after the formal insolvency of a clearing member.

Section 56: No Retroactive Impact of Insolvency Proceedings

Further fortifying the legal certainty around financial market transactions, **Section 56** of the *Investment* and *Securities Act, 2025* introduces an essential safeguard**: the principle of non-retroactivity in insolvency proceedings**. The section provides that:

> "*Insolvency proceedings shall not have retroactive effects on the rights and obligations of a participant arising from, or in connection with, its participation in a system earlier than the moment of opening of such proceedings.*"

In practical terms, this means that once a participant in a financial market infrastructure (FMI) or trading system becomes subject to insolvency, all valid transactions and obligations executed before the official commencement of insolvency proceedings remain unaffected. These pre-insolvency rights and duties are preserved and cannot be unwound, challenged, or invalidated on the basis that the participant later entered into insolvency.

Section 58: Limitations on Recognition of Foreign Insolvency Orders and Acts

Continuing the thread of insulating Nigeria's financial market structure from disruption caused by insolvency—whether local or foreign—**Section 58** of the Investment and Securities Act, 2025 addresses the **extraterritorial reach of foreign insolvency proceedings**. It expressly provides that:

> "*A Court shall not, under any law, give effect to any—*
>
> *(a) order of a court exercising jurisdiction in relation to the law of insolvency in a place outside Nigeria; or*
>
> *(b) (b) act of a person appointed outside Nigeria to perform any function under the law of insolvency in a place outside Nigeria, if the making of the order or the performance of the act is prohibited, in the case of a court within Nigeria or an official receiver or liquidator, by provisions made by or under sub-part C and D Part V of this Act.*

In other words, Nigerian courts are prohibited from recognizing or giving effect to foreign insolvency-related court orders or acts—where such orders or acts would be impermissible under Nigerian law, particularly as prescribed in Sub-Parts C and D of Part V of the ISA 2025.

Crucially, the proviso to **Section 58** affirms that the non-recognition only applies where the foreign act or order would have been prohibited had it originated within Nigeria. This maintains a balance between sovereignty and comity: Nigeria does not automatically reject foreign insolvency actions, but it does so only when such actions conflict with specific domestic legal safeguards designed to protect market stability.

By incorporating this gatekeeping clause, the ISA 2025 anticipates and pre-empts potential cross-border insolvency conflicts. It ensures that any foreign act or order must go through the filter of Nigerian statutory compliance before it can affect or change any legal or financial arrangement within Nigeria's financial market space.

Investor Protection in Cases of Insolvency: Sections 198(a) and 205(1)(a)

While the earlier sections of the Investment and Securities Act, 2025 (particularly Sections 45 to 58) are primarily concerned with preserving systemic stability and protecting financial market infrastructures from the disruptions of insolvency, the Act also recognises the need to protect the individual investor—especially where losses arise due to the failure of capital market operators.

This investor-focused protection is encapsulated in **Part XIV of the Act**, which provides for the establishment, governance, and application of an **Investor Protection Fund (IPF)**.[16] This fund serves as a vital safety net for investors who suffer financial loss through no fault of their own.

Under **Section 198(a)**[17], one of the expressly stated objectives of the **Investor Protection Fund** is "to compensate investors who suffer pecuniary loss arising from the insolvency, bankruptcy, or negligence of a dealing member firm of a securities exchange." This provision ensures that investors who engage with registered dealing firms—typically brokers and trading firms—have recourse to compensation where such firms become insolvent, mismanage client assets, or fail in their professional obligations.

In tandem, **Section 205(1)(a)**[18] empowers the **Board of Trustees** of the Fund to apply the Fund's resources toward the "payment of claims by investors arising from the insolvency, bankruptcy or negligence of a failed dealing member firm". This compensation is to be made in accordance with the procedures and determinations outlined in the Act.

Together, these provisions reflect a dual policy focus:

1. **Systemic protection (Sections 45–58):** Ensuring that financial market infrastructures, market contracts, and clearing systems are insulated from insolvency-related disruptions.

2. **Investor-centric protection (Sections 198 and 205):** Providing financial redress for retail and institutional investors who bear the brunt of insolvency events, especially in cases involving misconduct, mismanagement, or operational failure by dealing member firms.

These investor protection provisions also serve a broader strategic objective: building investor confidence in the Nigerian capital market. By assuring investors that safeguards exist not only at the infrastructure level but also at the individual level, the Act encourages wider participation and fosters a deeper, more resilient market.

Conclusion

The **Investment and Securities Act, 2025** presents a transformative approach to how insolvency risks are addressed within Nigeria's capital market ecosystem. Through a strategic combination of systemic insulation and investor protection, the Act ensures that market confidence, transactional integrity, and legal certainty are preserved—even in times of financial distress.

From **Sections 45 to 47**, the Act introduces robust insolvency carve-outs that shield market contracts, collateral arrangements, clearing systems, and default management processes from interference by traditional insolvency laws. These provisions affirm the finality of transactions executed through securities exchanges and financial market infrastructures, thereby preventing the ripple effects that a single insolvency event might otherwise trigger.

The inclusion of **Section 56**, which bars the retroactive application of insolvency proceedings, and **Section 58**, which limits the enforceability of conflicting foreign insolvency actions, reflects a deliberate legislative effort to uphold Nigeria's regulatory autonomy while aligning with global best practices in financial stability and cross-border risk management.

At the same time, Sections 198(a) and 205(1)(a) signal the Act's investor-centric ethos by ensuring that individuals and entities who suffer losses due to the insolvency or negligence of capital market operators are not left unprotected. The **Investor Protection Fund** thus complements the systemic protections offered to the market, creating a balanced, investor-friendly framework.

Taken together, these insolvency-related provisions establish a **progressive, resilient, and comprehensive legal foundation** for managing insolvency risks in the Nigerian capital market. They offer clarity to regulators, reassurance to investors, enforceability to market participants, and direction to legal professionals and insolvency practitioners navigating the interface between financial markets and insolvency law.

Endnote

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