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Compliance Pitfalls in Private Placements in Nigeria and How to Avoid Them[1]

1. Introduction:

Private placements have become a well-used method for raising capital in Nigeria. They offer both start-ups and established companies an opportunity to secure funding without undergoing the highly regulated process associated with public offerings. Private placements allow issuers to approach a targeted group of investors, negotiate terms privately, and raise funds under a lighter regulatory structure.

In simple terms, a private placement refers to an arrangement where a company offers its securities to a limited and specifically chosen group of investors. The issuing company may be private or public, and the securities involved may take the form of shares or debt instruments. The funds raised are often used for defined development goals within the company.[2]

However, due to the fact that private placements operate under a lighter regulatory structure, it has led to many compliance failures. In reality, Nigerian law, through the *Investment and Securities Act* 2025[3] (ISA 2025), the *Securities and Exchange Commission (SEC) Rules*, and the *Companies and Allied*

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2 Securities and Exchange Commission, Nigeria, 'Modes of Public Offering in the Capital Market' available at:< https://sec.gov.ng/our-mandate/development/investor-education/investment-basics/modes-of-public-offering-in-the-capital-market/#:~:text=Private%20Placement.%20As%20the%20name%20implies%20a,the%20security%20may%20be%20debt%20or%20equity.> accessed on 8th December 2025.

3 See, *Investments and Securities Act*, 2025 Act No. 2 of 2025.

Matters Act[4] (CAMA), provide the parameters for private placements and define the limits within which issuers must operate to comply with the law.

The laws/rules governing private placements consists of carefully defined exemptions, restrictions, and compliance duties. The failure to comply often exposes issuers, directors, professional advisers, and intermediaries to administrative penalties, investor rescission rights, transaction invalidation, and even criminal liability.

This article identifies the recurring compliance issues in private placements in Nigeria and sets out straightforward practical ways to address them.

2. Regulation of Private Placements in Nigeria

The SEC Rules (including the 2024–2025 updates), CAMA and other applicable regulations impose clear boundaries on how private placements may be conducted. Some of the key limitations include:

2.1 Limits on Private Companies

Generally, Private Placements undertaken by private companies are not regulated by the Commission.[5] Private companies in Nigeria conduct private placements under exemptions from full public offer regulations, but strict limits prevent these from morphing into unauthorised public solicitations under the ISA 2025 and SEC rules.

Thus, Securities and Exchange Commission has oversight where a private company issues any document or application form intended to be completed and returned with money. Such an action is deemed under section 97 of the ISA to constitute an invitation to the public to acquire shares or deposit funds.[6]

i. Under section 97(1) an invitation to the public includes any offer or invitation to make an offer for securities that is calculated to result in the securities becoming available to persons other than those who receive the offer directly.

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4 See, *Companies and Allied Matters Act* 2020 Act No. 3 of 2020.

5 Securities and Exchange Commission Nigeria, "Modes of Public Offering in the Capital Market" available at <https://sec.gov.ng/our-mandate/development/investor-education/investment-basics/modes-of-public-offering-in-the-capital-market/#:~:text=Private%20Placement.%20As%20the%20name%20implies%20a,the%20security%20may%20be%20debt%20or%20equity>. accessed on 8th December 2025

6 The resolution law firm "PROCEDURE FOR PRIVATE PLACEMENT IN NIGERIA" <https://www.resolutionlawng.com/procedure-for-private-placement-in-nigeria/> accessed on 10th December 2025.

ii. Section 97(2) provides that offers extended to existing shareholders, employees, or debenture holders (with limits) may be exempt if not advertised widely.

iii. Section 97(3) stipulates that the issue of any form of application for shares or debentures (or any form intended to be filled for the purpose of raising money or securities) by a company to the public shall be deemed an invitation to the public, irrespective of the issuer's status.

This provision also mandates SEC registration, prospectus requirements, and public offer compliance, preventing private companies from evading oversight through broad or formalised solicitation. By capping the scope, regulators protect unsophisticated investors from unregistered schemes while allowing private companies efficient capital access for growth, expansions, or projects without the costs of prospectuses.

Private placements by private companies in Nigeria differ from public offers mainly in their restricted scope, targeting, and execution methods under the ISA 2025 and SEC rules. Summarily, these differences are:

i. In private placements by private companies, investor targeting is restricted. A private placement may be offered to no more than 50 subscribers and is typically directed at existing shareholders or carefully vetted investors.[7]

ii. Secondly, private placements must not be publicised. The law prohibits advertisements in newspapers, radio, television, or online platforms. Instead, the offer must be conducted through direct and private communication with the selected investors.[8]

iii. Finally, the timeline and scale of private placements are also regulated. The offer period is usually limited to a maximum of 10 working days, and the size of the offer must not create the impression that the

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7 Chris Ugwu, "New SEC rules for private companies' caps maximum capital raise at N15 billion" available at**:** <https://nairametrics.com/2024/05/10/sec-issues-new-rules-on-issuance-allotment-of-private-companies-securities/ > accessed on 13th December 2025.

8 Udo Udoma & Belo-Osagie, "Nigeria's Investments And Securities Act 2025 –What Is Changing For Private Equity and Venture Capital?" available at : <https://uubo.org/wp-content/uploads/2025/05/Updated-Detailed-Analysis-Of-Isa-2025-What-Is-Changing-For-Pe-And-Vc-Funds-1.pdf> accessed on 13th December 2025.

company intends to facilitate trading on a secondary market without first obtaining approval from the Securities and Exchange Commission[9]

Private companies conduct private equity placements to qualified investors under 50 sophisticated offerees, with no public ads or circulation primarily under sections 116-117 CAMA 2020 without prior SEC registration unless triggering ISA 2025 section 97 (invitation to public via broad offers, forms returned with funds, or media). However, they must self-monitor to evade section 97 ISA triggers like ads or over 50 subscribers that could reclassify the offer as public which will invite the scrutiny of SEC.

Private companies in Nigeria indeed face lighter upfront SEC scrutiny for purely private placements to qualified investors, but the 2025 SEC Rules on Issuance and Allotment of Debt Securities by Private Companies introduce registration requirements for certain debt securities offers, even those structured as private placements. These rules, effective April 24, 2025, mandate SEC registration via Form SEC 6 for debt securities (like bonds, debentures, or sukuk) that qualify as "public offers" under the rules specifically if they are renounceable/assignable, as advertised. The Rules also impose a cap of ₦15 billion on the total amount that may be raised annually through a maximum of three issuances.[10]

2.2 Limits on Public Companies

Private placements by public companies in Nigeria require prior SEC approval and detailed filings, unlike those by private companies which operate under exemptions with minimal oversight. Public companies face higher transparency demands due to their listed status, while private companies enjoy flexibility but risk reclassification if limits are breached. Both share core limits like no more than 50 subscribers and no publicity, but enforcement differs significantly.

Public companies in Nigeria must obtain required prior SEC registration or approval not just a no-objection for private placements of securities and some of the process involves submission of required disclosures under Rules 338-340 of the SEC Rules, including three years of audited financial accounts,

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9 Enobong Shittu, “SEC Nigeria New Approved Rules April 2025: A New Era for Nigeria’s Capital Markets” available at: https://nairametrics.com/2024/05/10/sec-issues-new-rules-on-issuance-allotment-of-private-companies-securities/ accessed on 13th December 2025.

10 Securities and exchange Commission, Nigeria available at: <https://sec.gov.ng/documents/1323/New-Rules-and-sundry-amendments-April-2025.pdf > accessed on 14th December 2025.

detailed investor suitability proofs (e.g., accreditation certificates for high-net-worth individuals or institutions), and a full prospectus or information memorandum covering risks, use of proceeds, and dilution effects. Post-issue, they also submit allotment returns utilisation certificates, and monitoring reports to SEC.[11] Breaches can lead to trading suspensions, approval revocations, or fines up to ₦20 million or more under ISA 2025.

For public companies, applications must include CAC compliance confirmations, underwriter consents where applicable, and legal opinions on the company's authority to carry out the transaction. The SEC may also condition its approval on fair pricing and audits of how the proceeds will be used.[12]

3. Common Compliance Issues in Private Placements

Private placements in Nigeria involve offering securities to a limited number of investors without public solicitation, but they carry significant compliance risks under the ISA and SEC rules. Companies assume that once an offering is not advertised widely, it automatically qualifies as a private placement. The Nigerian SEC has repeatedly emphasised that the number, nature, and expertise of offerees determine whether an offering is public or private.

3.1 The Key Compliance Pitfalls:

3.1.1 Common issues arise from misinterpreting "private" offerings, resulting in unintended public solicitations that trigger full registration requirements. Public companies often overlook the need for a special resolution and proof of dire funding needs before proceeding. Fraudulent misrepresentations or failure to verify qualified investors expose issuers to investor claims and SEC sanctions.[13]

3.1.2 Private placements in Nigeria rely on the assumption that targeted investors, such as high-net-worth individuals or institutions, possess

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11 Udo Udoma & Belo-Osagie, "Nigeria's Investments And Securities Act 2025 –What Is Changing For Private Equity and Venture Capital?" available at: <https://uubo.org/wp-content/uploads/2025/05/UPDATED-DETAILED-ANALYSIS-OF-ISA-2025-WHAT-IS-CHANGING-FOR-PE-AND-VC-FUNDS-1.pdf > accessed on 15th December 2025.

12 Udo Udoma & Belo-Osagie, "New Rules On Issuance And Allotment Of Private Companies Securities" available at: <https://www.mondaq.com/nigeria/securities/1638202/new-rules-on-issuance-and-allotment-of-private-companies-securities > accessed on 15th December 2025.

13 LWEditorial, "Understanding Private Placement Compliance: Key Legal Considerations" available at: < https://lawlifted.com/private-placement-compliance/> accessed on 15th December 2025.

sophistication to evaluate risks without retail-level protections under the *Investments and Securities Act* (ISA). SEC Rules 2025 mandate issuers to verify investor eligibility beyond self-declarations, ensuring subscribers meet financial thresholds like minimum commitments or institutional status. Relying solely on self-certification exposes issuers to SEC invalidation of exemptions, potential rescission, and penalties for non-compliance.[14]

3.1.3 Inadequate disclosure and breach of anti-fraud obligations represent a critical issue in Nigerian private placements, as issuers must provide sufficient information to sophisticated investors while avoiding misrepresentations under SEC rules. SEC Rule 340 mandates detailed information memoranda covering financials, risks, use of proceeds, and company status, submitted for pre-approval, with no public advertising allowed. Failure to disclose material facts like dire funding needs or prior defaults violates ISA section 69 and exposes issuers to claims of omission. Anti-fraud provisions in SEC Rules prohibit misleading statements, requiring verified data to prevent investor deception.[15]

3.1.4 Under Nigerian law, a private placement must not involve any public communication or advertisement. Many issuers inadvertently breach this rule through WhatsApp broadcasts, social media posts, or bulk emails. These may constitute public solicitations.

3.1.5 Non-compliance with filing and post-transaction reporting requirements are some of the major pitfalls in Nigerian private placements. Public companies must obtain prior SEC approval by submitting Form SEC 6, board and shareholder resolutions, financial statements, and an information memorandum. Private companies, although exempt from most filings, must still be mindful of actions that could trigger SEC involvement under ISA section 69(3). After the placement, issuers are required to submit post-allotment reports within 10 days, including

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14 Oluwaseun Ojo et al,"Legal Mechanism for Investor Protection in Private Equity Transactions in Nigeria" available at: < https://topeadebayolp.com/legal-mechanism-for-investor-protection-in-private-equity-transactions-in-nigeria/ > accessed on 15th December 2025.

15 Adeleke Alex Adedipe et al, "Overview of the Securities and Exchange Commission's Proposed New Rules on the Issuance and Allotment of Private Companies' Securities" availae at : <https://www.doa-law.com/wp-content/uploads/2024/06/Overview-of-the-SEC-Proposed-Updates-to-the-Issuance-and-Allotment-of-Private-Companies-Securities.pdf> accessed on 16th December 2025.

details of allotments and evidence of payment of statutory fees. Failure to comply may result in suspensions or fines starting from ₦100,000 in addition to percentages of the issue value.[16]

3.1.6 Many private placements use generic templates that do not reflect Nigerian legal requirements. Issues include ambiguous rights, weak warranties, poor indemnity structures, lack of dispute-resolution clauses, and inconsistent transaction documentation.

3.1.7 Private placements may be exploited for money laundering activities. Nigerian Anti-Money Laundering (AML) laws including the *Money Laundering (Prevention and Prohibition) Act* 2022, *CBN AML Regulations*, SEC AML Framework, and *Nigeria Financial Intelligence Unit (NFIU) Guidelines* require rigorous KYC and due diligence. Common lapses include insufficient source-of-funds checks and failure to identify beneficial owners. These lapses expose issuers to sanctions and reputational damage.[17]

4. How To Avoid Compliance Failures in Private Placements

Avoiding compliance failures in Nigerian private placements requires planning, proper documentation, and strict adherence to SEC Rules, the ISA, CAMA, and AML obligations. Issuers can significantly reduce regulatory risks by following a structured and well-supervised process.

4.1 Pre-Transaction Steps

Issuers should begin with a thorough legal assessment carried out by SEC-registered advisers. This includes reviewing the funding objectives, preparing a tailored private placement memorandum, and obtaining all necessary board and shareholder approvals before any filings.[18]

Investor verification must also be taken seriously. Beyond self-declarations, issuers should confirm investor sophistication through financial documentation,

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16 Udo Udoma & Belo-Osagie, "New Rules On Issuance And Allotment Of Private Companies Securities" available at: <https://www.mondaq.com/nigeria/securities/1638202/new-rules-on-issuance-and-allotment-of-private-companies-securities > accessed on 15th December 2025.

17 Oluwaseun Ojo et al,"Legal Mechanism for Investor Protection in Private Equity Transactions in Nigeria" available at: < https://topeadebayolp.com/legal-mechanism-for-investor-protection-in-private-equity-transactions-in-nigeria/ > accessed on 15th December 2025.

18 Securities and Exchange Commission, Nigeria, "Registration of Securities Checklist**"** **<**https://sec.gov.ng/about/resources/checklists/registration-of-securities-checklist/> accessed ion 17th December 2025.

full KYC, and AML checks. This ensures that the subscriber limit of 50 investors is not breached.

4.2 Disclosure and Solicitation Controls

Clear and comprehensive disclosures are essential. Issuers should provide accurate information about the company's financial position, risks, and the intended use of proceeds. Documents must follow SEC-approved standards rather than generic or recycled templates.[19] Solicitation must remain fully private. All communication should be directed only at eligible high-net-worth or institutional investors, and records of correspondence should be maintained to show that there was no public advertising or solicitation.

4.3 Ongoing Compliance Measures

Issuers should adopt compliance calendars to track important deadlines such as Form SEC 6 submissions, the post-allotment returns, CAC updates, Person with Significant Control (PSC) filings, and AML reporting obligations to the NFIU.[20] Working with issuing houses and competent legal or financial advisers helps ensure that documentation is accurate and complete. Source-of-funds checks must be incorporated into the process, and all records should be properly stored for future audits or regulatory reviews.

5. Conclusion

Private placements are an important way for companies to raise capital quickly as it offers simpler and less burdensome alternative to public offerings. Companies can avoid common compliance pitfalls by carefully verifying investors, providing clear and accurate disclosures, keeping all communications private, and meeting SEC, CAC, PSC, and AML requirements. Working with professional advisers and legal consultants, and following a structured process helps ensure compliance, protect investors, avoid penalties, and maintain the company's reputation.

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[19] *Ibid.*

[20] Chaman Law Firm Team," Procedure and Guidelines for Private Placement in Nigeria: 7 Powerful Steps for Positive Investment Opportunities" available at: <https://chamanlawfirm.com/procedure-and-guprivate-placement-in-nigeria/ > accessed on 17th December 2025.

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