Corporate Finance and Capital Markets

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The Legal Identity of Debt Instruments: From Promise to Enforceable Right

1. Introduction

Financial promises play a significant role in economic activities and must be supported by appropriate legal frameworks to ensure their validity and enforceability. A debt instrument is one of those financial promises whose real value is derived from its contractual character. These debt instruments are securities floated on the capital market by an issuer (i.e., governments or enterprises) seeking to raise funds from investors, with a promise to repay the borrowed sum with interest or some profit at a predetermined date. Treasury bills, bonds, commercial papers and promissory notes, are common types of debt instruments that issuers use to raise capital.[2]

This article examines how the law transforms these debt instruments from mere financial promises into enforceable rights. It explains the legal nature of these instruments, the frameworks that ensure their validity, and the rights ascribed to persons who invest in debt instruments. Ultimately, it seeks to show that behind every debt instrument lies not just finance, but the law as the silent force that transforms mere promises to enforceable rights.

2. Debt Instruments from a Legal Standpoint

To the issuer, debt instruments provide cashflow that can support its financial needs or operational expenditure.[3] On the other hand, debt instruments provide investors with a stream of income in the form of interest payments and repayment of the principal at

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2 Adnan Ali, 'Debt Instruments', (*Cleartax*, June 19, 2024) <https://cleartax.in/s/debt-instruments>, accessed 19th October, 2025. See also, section 268 of *Investment and Securities Act*, 2025.

3 *Ibid.*

maturity.[4] These payments and other terms of the debt instrument's issue are both promises and obligations of the issuer.

Generally, investors do not participate in negotiating the promises or obligations of the issuer under a debt instrument. In most cases, the contract between the issuer and the investor is formed when the investor subscribes to the instrument and the issuer allots or issues it, thereby accepting the investment.[5] It is this contractual character that legitimises the promises and obligations of the issuer, transforming them into enforceable rights ascribed to the investor. Some of these enforceable rights are documented in disclosure documents (e.g., the prospectus) and other relevant contracts (e.g., trust deeds), while others are implied by relevant legal provisions.

3. Regulatory and Institutional Frameworks Fulfilling the Issuer's Promises.

3.1. Investment and Securities Act 2025 ("ISA 2025") and Securities and Exchange Commission (the "SEC")

The newly enacted ISA 2025[6] which replaces the *Investment and Securities Act* 2007, seeks to reinforce the legal and regulatory foundation of investments (including debt instruments) in Nigeria's capital market.[7] To that end, sections of ISA 2025 mandates the SEC to maintain a fair, efficient and transparent capital market, and ensure reduction of systemic risks that come with investing in the capital markets.[8] The forgoing function is further strengthened by specific provisions of the ISA 2025.

For instance, the issuer of a debt instrument shall not make any statement or promise in the debt instrument's prospectus which is misleading, false, deceptive, conceals material facts, with intent to induce an investor to invest in the debt instrument.[9] Any director or officer of an issuer who authorised the issue of such a prospectus commits an offence and is liable to conviction to a fine of not less than N1,000,000,000.00 (one billion Naira) or imprisonment of not less than three years or both the aforementioned.[10] Also, an issuer must not vary the terms of the contracts referred to in the prospectus or statement in lieu of prospectus of a debt instrument (e.g., a trust deed), except with

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4 Adnan Ali, (n2).

5 See, *Dikio v. N.S.I.T.F. Mgt. Board* (SC) (2025) 14 NWLR (Pt. 2004) page 173, paras. A-E; *A.T.B. v. Ezegbu* (CA) (1994) 9 NWLR (Pt. 367) page 216, paras. B-E. See also, section 151 of *Companies and Allied Matters Act*, 2020 (Act No. 3 of 2020), Nigeria.

6 Investment and Securities Act, 2025 (Act No. 2 of 2025), Nigeria (ISA 2025).

7 See, Nairametrics, 'Tinubu Signs Investments Act and Securities Act 2025 into law' (March 29, 2025) <https://nairametrics.com/2025/03/29/tinubu-signs-investment-and-securities-act-2025-into-law/>, last accessed 19th October, 2025.

8 Section 3(2)(a), ISA 2025.

9 Sections 113, 114, and 101(3)(b), ISA 2025.

10 Section 114, ISA 2025.

the approval of the SEC, and the consent of shareholders if the issuer is a company.[11] The approval of the investors of the debt instruments may also be a prerequisite for making such variation if the prospectus and other relevant contracts (like the trust deed) provides for such. These above provisions seek to forestall investors from falling victim to deceitful and fraudulent issuers of debt instruments.

To further ensure the protection of the investors, issuers of debt instruments are mandated to disclose their financials and meet eligibility thresholds before floating any debt instrument.[12] Also, an issuer in default of payment of interest or repayment of principal in respect of previous debt issuances for a period of more than one month is barred from issuing debt instruments.[13] The issuers of debt instruments may also appoint trustees who will hold the notes of the debt instrument in trust for the investors.[14] The trustee's primary role is to ensure that the issuer heeds to the terms of the debt instrument, as part of supervisory mechanisms provided for by ISA 2025. The ISA 2025 also mandates the SEC to supervise debt instruments, by conducting inspections and compliance reviews of issuers to ensure adherence to the above delineated legal provisions.[15] The inspections and compliance reviews may be carried out *suo motu* or after a complaint by the investor is made.[16] After carrying out the inspections and compliance reviews, the SEC may impose appropriate sanctions, which may include fines, suspensions, or criminal prosecution, to maintain market integrity and investor protection.[17]

3.2. Nigerian Regulation Limited ("NGX REGCO") and the Nigerian Exchange Rulebook ("NGX Rulebook")

In March 2021, the erstwhile Nigerian Stock Exchange was demutualized from a member-owned not-for-profit organization into a shareholder-owned, for-profit company known as the Nigerian Exchange Group Plc (the "NGX"). The NGX is a stock exchange that provides capital access to companies seeking to take advantage of the financial markets to fund their business expansion. Likewise, NGX provides domestic, regional, and international investors with an array of regulated securities (including debt instruments) to achieve their investment objectives. The NGX REGCO serves as the independent regulatory arm of the NGX. The NGX REGCO is tasked with

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11 Section 109, ISA 2025.
12 Section 308 (2), ISA 2025.
13 Section 308 (3), ISA 2025.
14 Section 283(1), ISA 2025.
15 Sections 30 to Section 34, ISA 2025.
16 Sections 3(4) i, k, l and m, ISA 2025.
17 See, Securities and Exchange Commission <https://home.sec.gov.ng/about/corporate-governance/performance-pledges/> accessed 20th October, 2025.

overseeing market activities like the trading of debt instruments, to ensure that listed companies, brokers, and other market participants adhere to relevant legal provisions.[18] Operating under the supervision of the SEC, the NGX REGCO plays a vital role in upholding fair and transparent market practices, promoting free and orderly trading, and safeguarding the interests of debt instrument investors through consistent enforcement of market regulations.[19] The NGX REGCO monitors all market activity on NGX to cultivate an open, competitive, transparent, and financially sound debt instrument market.

3.3. Principles of Law of Contract

As earlier explained, an investor's offer to invest in these debt instruments and the issuer's acceptance forms a valid a contract between the issuer and the investor. Like every other contract, fundamental doctrines of the law of contract apply to debt instruments. One of such doctrines is "*pacta sunt servanda*", (i.e., agreements must be kept).[20] At its core, every debt instrument represents a formal agreement in which the issuer promises to repay the investor a specified amount, with or without interest, at a predetermined date. Hence, the promises made by the issuer of a debt instrument to its investors must be kept in line the above doctrine, failing which the investor will be entitled to seek legal redress in a court of law towards enforcement of its rights under the debt instrument.

4. Rights Accruing to the Investors in Debt Instruments

The rights of investors are determined by the general laws governing the type of debt instrument issued and the terms set out in the prospectus and relevant contracts. Some of these rights include:

4.1. Right to Receive Payment of the Principal Amount

This right originates from the law of contract which recognises issuer's promise to pay as a legally enforceable obligation. Investors are entitled to recover or receive the amount lent to the issuer when the instrument matures.

4.2. Right to Receive Interest or Coupon Payments

Similar to the above, investors have the right to receive interest or coupons at intervals as stated in the prospectus and relevant contracts of the debt instrument. However, it

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[18] See, Nigerian Exchange Group <https://ngxgroup.com/regulation/what-we-do/> accessed 20th October, 2025.

[19] *Ibid.*

[20] See, *A. G. Nasarawa State v. A. G. Plateau State* (SC) (2012) 10 NWLR (Pt. 1309) 450 paras. A-B.

must be noted that not all debt instruments come with interest payments. Some debt instruments like treasury bills and commercial papers are usually issued to the investors at a discount price (i.e., an amount lower than its face value). On repayment, the issuer of such debt instruments pays the investors the face value, with the difference between the discounted issue price and the face value serving as the investor's profit.

4.3. Right to Accurate Information and Disclosure

Investors have a right to receive accurate and comprehensive information on the debt instrument they are investing in from its issuer.

4.4. Right to Seek Legal Redress

Investors are entitled to seek legal redress if there is a default on the part of the issuer, misrepresentation of facts or violations of relevant legal provisions. The investor may lodge a complaint with the SEC, which will then investigate and sanction any such defaulting issuer.[21] Any investor dissatisfied with the decision of the SEC, may file an appeal at the Investment and Securities Tribunal, and subsequently to the Court of Appeal.[22] However, any of the above actions brought 6 years after the debt instrument has been redeemed will be deemed statue barred.[23]

4.5. Right of the Investor to Transfer Ownership to its Investments

Unlike other legal contracts that may require an assignment or novation to transfer, debt instruments are freely transferable. Accordingly, the investor can freely transfer its rights in the debt instruments to a third party for value, if holding the debt instrument becomes undesirable.[24]

5. Conclusion

The legal identity of debt instrument is founded on the principle that what begins as a simple promise to repay evolves through force of law into a legally binding obligation that defines the relationship between the issuer and investors. It is this identity that fosters the trust and confidence that underpins all investments including debt instruments. Without this legal identity, debt instruments would be of no real value. This is why the regulatory and institutional frameworks delineated in this article ensures that

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21 Section 3(4) i, k, l, and m, ISA 2025.
22 Sections 331 and 336, ISA 2025.
23 Section 279(a), ISA 2025.
24 James Chan, 'What Is a Debt Instrument? Definition, Structure, and Types' (*Investopedia*, October 5, 2025) <https://www.investopedia.com/terms/d/debtinstrument.asp> accessed 25 October 2025.

the obligations of issuers of debt instruments are binding in law and subject to judicial enforcement in the event of default.

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