

PRIVATE EQUITY

LEGAL CONSIDERATIONS FOR EXITS IN NIGERIAN PRIVATE EQUITY

L. FUBARA ANGA

Partner

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Legal Practitioners & Arbitrators

NASD PLC

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EXIT OPTIONS

- Trade Sales;
- Secondary Buy-Outs;
- IPOs - public listing on capital markets;
- Management Buy-Outs or Buy-Backs

EXITS IN AFRICA - OUTLOOK

- According to a recent EY/AVCA survey, there were 118 full exits in Africa between 2007 and 2012;
- Recent research by KPMG/SAVCA found over 600 successful exits over the same period
- EY/AVCA study found trade sale to be the predominant mode of exit
- KPMG/SAVCA study found there were 536 exits in South Africa of which that 65% were Management Buy-Backs and 13% were secondary sales to PE firms

IDEAL REGULATORY ENVIRONMENT FOR PE FUNDS

- The Emerging Markets Private Equity Association names the following as the features of the ideal regulatory environment for PE:
- Conformity with an international accounting standard
- Minimal use of regulatory requirements to restrict foreign investment
- Minimal restrictions on allocations by domestic investors to PE Funds
- Minimal restrictions on investment strategies
- Competition and anti-trust rules
- Minimal barriers to domestic credit markets
- Efficient, fair and transparent sector level regulations
- Open and transparent public appeals processes
- Availability of financial information
- Efficient, transparent and fair licensing regimes

CHALLENGES OF PE EXITS IN AFRICA

- Surveys disclose the following challenges for PE exits in Africa
 - Relatively weak financial markets (with the exception of South Africa) suffering largely from pricing, informational and transactional inefficiencies;
 - Relative illiquidity capital markets, with the exception of South Africa;
 - Low level representation of companies on the capital markets;
 - Complex and inconsistent legal and regulatory frameworks; in many jurisdictions in Africa thereby creating uncertainties about foreign exchange rules, Profit & dividend repatriation, Investment incentives, Capital gains tax, Transaction taxes such as withholding and value added taxes etc.

LEGAL CONSIDERATIONS FOR PRIVATE EQUITY EXITS IN NIGERIA

- Tax
 - Exits by equity divestments are generally tax neutral
- Complex/uncertain legal/regulatory environment
 - Impact on number of investors willing to assume risk, and price
- Listing requirements
 - IPOs - need to comply with listing requirements, SEC rules, NSE rules, NASD OTC rules
- Onerous requirements for obtaining credit
 - Potential buyers may need credit to facilitate chosen exit mode
- Corruption
 - FCPA and UK Bribery Act compliance

LEGAL CONSIDERATIONS FOR PRIVATE EQUITY EXITS IN NIGERIA (*Contd.*)

- Exchange controls
 - Effect on free profit & dividend repatriation
- Merger controls
 - SEC rules provide requirements for different types of mergers and acquisitions
- Sector specific regulatory consents
 - Depending on the sector being invested into, certain regulations may apply in addition to the general rules such as SEC rules.
 - E.g. Cabotage restricts divestments to Nigerians
 - Oil and gas regulators impose additional requirements for consent

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LEGAL PRACTITIONERS & ARBITRATORS

www.aelex.com

LAGOS

7th Floor
Marble House
1 Kingsway Road
Ikoyi, Lagos
Nigeria
T: (+234-1) 4617321-2,
2793367-8, 7406533
F: (+234-1) 4617092
lagos@aelex.com

ABUJA

4th Floor
Adamawa Plaza
1st Avenue,
Off Shehu Shagari Way
Abuja, FCT, Nigeria
T: (+234-9) 8704187;
(0)7098808416
F: (+234-9)520276
abuja@aelex.com

PORT HARCOURT

2nd Floor,
UPDC Building
26 Aba Road
Port Harcourt
Rivers State, Nigeria
T: (+234-84) 464514,464515
F: (+234-84) 464516
portharcourt@aelex.com

ACCRA

Vanguard House
No. 21 Independence Avenue
Ridge-Accra
PMB CT 72
Accra, Ghana
T: (+233-302) 224828
224845-6
F: (+233-302)224824
accra@aelex.com



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