

Mergers & Acquisitions

Practice Guide
(Nigeria)

2022



DEAL HQ
— PARTNERS —

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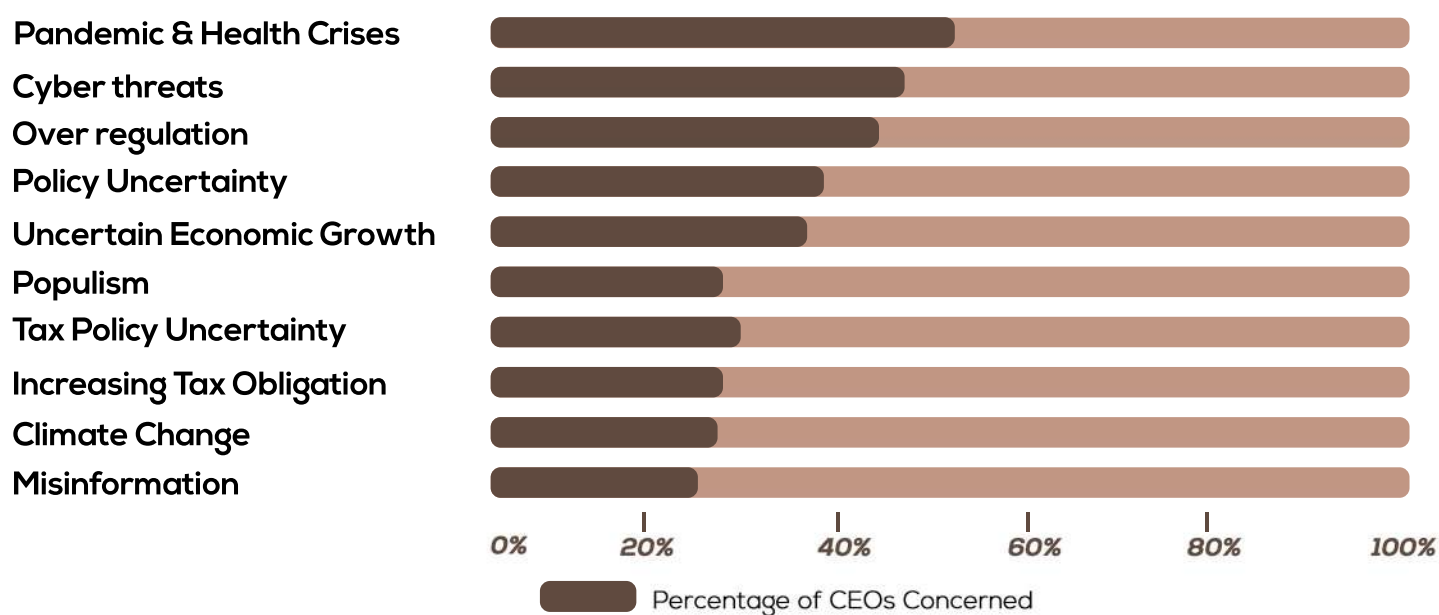


Mergers & Acquisitions involve the transfer of ownership or consolidation of corporate entities. These business restructuring procedures are likely to occur- at least once or in some instances multiple times- within the lifecycle of a high-income company.

There is no single reason or purpose for a company or a group of companies undertaking an M&A procedure, many times it is driven by one or more of the underlisted objectives. We note that the structure of the M&A procedure will likely be driven by the underlying objectives of such companies or parties to the proposed restructure:

- Desire for corporate growth
- Tax reliefs and asset benefits
- Synergies
- Economic factors (survival)
- Economics of scale to enhance and expand productive capacity
- Risk diversification
- Corporate leverage to increase its debt-equity ratio
- Technological drive through mergers
- Management expertise

The year 2020 saw the beginning of the global outbreak of the COVID-19 virus, leading to a worldwide shut down of business and temporary seizure in international trade. Deal making and business restructuring experienced a nosedive as markets became risky and largely uncertain. The effect of the global pandemic was quite severe, so much so that that in the Price Waterhouse Coopers (PWC) 24th Annual Global CEO Survey, released in 2021, the leading cause for concern among CEOs globally was noted to be the pandemic and health crises.



PWC 24th Annual Global CEO Survey

The second half of 2020 however saw a global return to business with deals and deal values exceeding records from the previous year. Evidently, businesses were determined to make up for lost opportunities. This trend continued into Q1 and Q2 of 2021 with each quarter seeing deals valued at over US\$1tn globally. Companies have begun to streamline their offerings to areas of competitive advantage, divesting from unperforming ventures and making strategic acquisitions into ventures which play to their strengths and possess greater growth potential.

By the end of the half year 2021 a global record of over USD2.45trn deal activities had been recorded, the surge in deals seems attributable to an almost recovered market in 2020, following which evidently more investible capital is now moving after fewer viable investment opportunities. As at the end of Q3, deal values topped at US\$4.4trn worldwide, making it the fifth consecutive quarter with deal values over US\$ 1trn.

Another emerging global trend, possibly a result of the pandemic, which saw a heavy reliance by businesses on technology to operate, is the increase in megadeals-deals valued at US\$5bn and above- originating from technology, media, and telecommunications companies. These constituted about 30% of the mega deals in Q1 and Q2 of 2021.

In addition to the above, H2 2020 and H1 2021 saw a rise in the activities of Special Purpose Acquisition Vehicles (SPACs) in M&A transactions. SPACs are public quoted companies formed specifically to merge with target companies and typically do not have any identified business at incorporation. They undertake an IPO to raise finance from the public and then utilize the proceeds from the IPO to acquire equity interest in target companies, which already have established businesses (typically private companies)

The new entity will benefit from the funds and public status provided by the SPAC and the business and expertise provided by the acquired target. The model is efficient because, as a new vehicle with no history, the SPAC will typically have no issues meeting the requirements for listing in its jurisdiction of operation, while the target, which will likely have been operating for a number of years, will typically avoid the arduous listing process. In the US, there are now over 180 SPACS which have raised over US\$65bn and are in search of acquisition targets, making them a very liquid buyer group. PWC places the global number of SPACs at almost 400 with as much as half a trillion US dollars in capital. It is noted that the end of 2020 also saw greater attention to dealmaking due diligence, particularly to metrics relating to ESG. Over 70% of global investors have now introduced ESG as a priority assessment criterion. It no more news that green financial products seem to be having their lay in the global financial market.

Notable global M&A transactions in 2021 include:

S/N	Acquirer	Target	Transaction Value	Industry	Country
1	Canadian National Railway	KCS	US\$30Billion	Transportation	Canada
2	Rogers Communication	Shaw Communication	US\$26Billion	TMT	Canada
3	Vonovia	Deutsche Wohnen	US\$22Billion	Real Estate	Germany
4	Microsoft	Nuance Corporation	US\$19.7Billion	TMT	USA
5	Thermo Fisher Scientific Inc	PPD Inc	US\$17.4Billion	Science and Technology	USA
6	Amazon	MGM Studios	US\$8.45Billion	Entertainment	USA

Africa continues to fall behind the rest of the world in terms of deal volume and value. In Sub-Saharan Africa, there were about 333 M&A deals announced in H1 2021, valued at about US\$ 57.7bn, according to Refinitiv data. A better performance than H1 2020 which saw 293 deals valued at US\$ 8.5bn. This is a far cry from the global US\$2.45trn reported for H1 by PWC. A majority of the deals came from South Africa which saw 169 deals worth US\$52bn.

Nevertheless, Africa remains hopeful. Africa has experienced some interesting developments in its M&A space which we expect should increase its performance overall.

Technology:

Africa has increasingly seen activity in its technology industry with numerous tech hubs developing around the continent, notably in Nigeria, South Africa, Kenya and Egypt. Technology companies experienced the most foreign deals in South Africa. Fin-tech, health-tech, agri-tech and mobility all seemed to attract growing interest. African creatives continually utilize technology to address numerous issues on the continent, with a lot of focus on providing solutions to financial issues such as enabling online payment or onboarding the unbanked. This has created an industry that is self-fed. That is, increased tech-based solution finding has led to an increase in foreign investment in the tech industry, which has in turn led to a further increase in technology-based solution finding from African entrepreneurs.

Pan-African M&A Activity:

Intra-African free trade, facilitated by the AfCFTA, commenced on the 1st of January 2021. Now in Q1 of 2022, it is clear that not a lot of activity has occurred in the way of cross-national trade, occurred in the way of

yet the continent remains optimistic. We envisage that in the very near future, inter-African M&A deals will begin to take place as member states begin to specialise in areas of competitive advantage and African entrepreneurs begin to capitalise on the competitive advantage of other countries by acquiring or merging with existing companies in those regions. Already, we have seen a number of intra-African deals taking place. In 2021, Nigeria's Access Bank PLC acquired 78.15% of Botswana's African Banking Corporation, South Africa's Grobank, Zambia's Cavmont Bank, and Mozambique's African Banking Corporation.

Private Equity:

We expect to see continued and even increased investments from foreign PE firms in Africa as international PE firms, VCs and SPACS, begin to ration out investment funds withheld during the uncertainty which followed the Covid-19 pandemic. According to White and Case, continued investment in Africa remains enticing as PE investors invest in essential and emergency services such as healthcare, food production, energy, and education.

Leading transactions in Africa

Some of the leading M&A transactions in Africa in 2021 include the following:

- Access Bank Plc acquired a majority stake of about 78.15% in African Banking Corporation of Botswana Limited ('BancABC Botswana').
- MFS Africa, and Frontclear, recently secured \$3.2 million worth of investments from FSD Africa Investments.
- After a series A funding round, crypto listing platform, CoinList, attained unicorn status as the \$100 million the firm raised during the funding round put the firm's valuation at \$1.5 billion.
- South African API fintech startup Stitch has gotten additional \$2 million for its seed round after raising \$4 million earlier this year bringing its total seed round to \$6 million.
- In a series B funding round, Sandbox, a blockchain-based virtual world that allows its users to create, build, buy and sell digital assets in the form of a game, was able to raise \$93 million to help the platform expand its NFT metaverse.



M&A transaction highlights, Nigeria

Nigeria recorded the second highest number of M&A transactions in Africa, following closely behind South Africa. In H1 2021, Nigeria saw about 28 M&A deals worth an underwhelming US\$1bn, with one of its largest deals being Mwendo Holdings BV's US\$182-million acquisition of Blue Lake Ventures Ltd (Media and Entertainment), which was announced in June 2021. Despite the underwhelming figures, Nigeria experienced a growth from the previous year with a deal value increase of 267% and a volume increase of 17%

Below is a summary of the key M&A transactions in Nigeria in 2021:

S/N	TRANSACTION
1	The acquisition of 100% stake in Enyo Retail and Supply Limited by Ardova Plc
2	The 100% divestment of Cititrust Holdings PLC from Cititrust Financial Services Plc Nigeria and its six subsidiaries and the subsequent acquisition of the entities by Clandun Business Advisory Services
3	The acquisition of majority stake in Fundall by Emerging Africa Group
4	The acquisition of 61% majority stake in Eterna by Rainoil
5	The acquisition of Disha by Flutterwave
6	The acquisition of a 60% stake in AllCO Pension Managers Limited by FCMB Pensions Ltd
7	The acquisition of Meddy, a Qatar- headquartered and UAE - based doctor booking platform by a Nigeria-based health tech startup, Helium Health
8	The Takeover of Union Bank by Titan Trust Bank



Market Rules, Sector Players and Regulators

The Nigerian M&A market is regulated primarily by the Federal Competition and Consumer Protection Commission, the Securities and Exchange Commission and in some cases specific sector regulators with oversight functions over the Transaction Parties. With the introduction of the FCCPC as the highest federal competition regulator in Nigeria, FCCPC has broad powers to regulate mergers and to proscribe abuse of a dominant position in any industry/sector by any business or undertaking.

a. Federal Competition and Consumer Protection Commission (FCCPC): The FCCPC remains the principal regulatory body for mergers in Nigeria. It was established by the Federal Competition and Consumer Protection Act, 2018 (FCCPA), which repealed some provisions of the Investment and Security Act, 2007, and transferred merger review/approval powers from the Securities and Exchange Commission (SEC) to the FCCPC.

The FCCPC mandates parties to a merger to notify it of proposed transactions which are likely to result in a change of control and provide adequate information to enable the Commission to determine whether the merger will result in a monopoly or engender an anti-competitive market.

The FCCPC generally takes the initiative to ensure a smooth process for obtaining an approval/clearance for merging parties. This includes constantly releasing regulations, guidelines, and amendments to the aforementioned, whenever practical and/or necessary. In October 2021, the commission launched a merger notification portal to fast track the merger application and review process. The FCCPC's recently released the Merger Review Regulations, 2020, provides clarity procedure and processes for merger applications by:

- Clarifying what transactions fall under the definition of a "merger" and within FCCPC's regulatory purview.

- Clarifying the considerations observed by the Commission when reviewing merger notifications: Introducing the negative clearance procedure (a procedure for applying for and receiving the clearance from the Commission that a proposed transaction does not fall within its purview and does not require its approval). This is a particularly helpful risk mitigator where a transaction is ambiguous or it is unclear whether a transaction requires approval. It ensures the avoidance of harsh penalties for failure to procure the approval of the FCCPC.
- Providing clarity on the applicable fees for merger notifications as revised upwards by the Merger Review (Amended) Regulations, 2021.

b. The Securities and Exchange Commission (SEC): The SEC was previously the primary regulator for mergers and acquisitions in Nigeria and is governed by the Investments and Securities Act, 2007 (ISA). Whilst FCCPC has taken on primary responsibility for sanctioning merger transactions, the SEC retains the power to regulate the following types of M&A transactions:

- Every merger, acquisition or business combination involving acquisitions of shares, assets, business, or subsidiaries of a public company;
- Any divestment of a controlling stake (valued at 15% or more of the company's total asset) in a public company;
- Any corporate restructuring by a public company (including any carve-out, spin-off, split-off, or other form of restructuring);
- Any takeover of a public company.

c. Central Bank of Nigeria (CBN): The CBN retains oversight over mergers and acquisitions involving a bank, specialized bank or other financial institutions.

d. National Insurance Commission (NAICOM): The NAICOM regulates mergers and acquisitions in the insurance industry.

e. Federal High Court: The Federal High Court is the designated court having jurisdiction to sanction for the court ordered meetings and for the authorization of merger schemes.

f. Corporate Affairs Commission (CAC): The CAC is the repository of all records and information of duly registered business entities and corporations in Nigeria. Therefore all post M&A filings required to be reflected in the records of parties to a Merger are required to be filed with the CAC within the prescribed timeframe.

Applicable Laws & Regulations in Nigeria

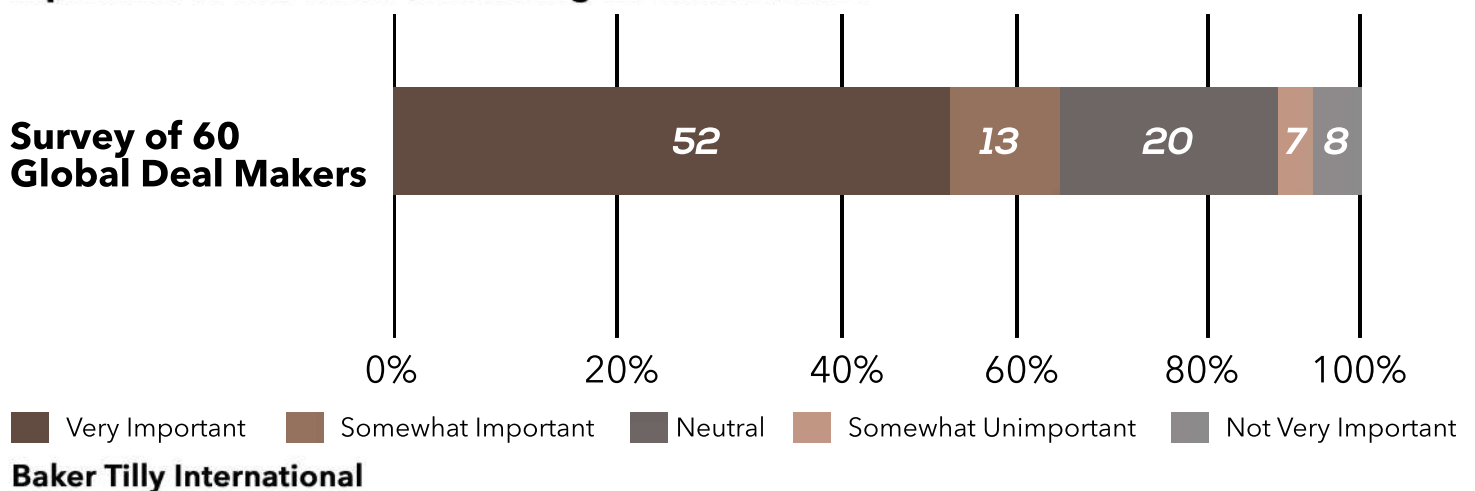
Below is a list of laws and regulations governing M&A transactions in Nigeria; we note that this list is not exhaustive and while some have general market application, there are sector specific laws or rules that apply only in specific industries or market sectors.

1. Federal Competition and Consumer protection Act 2018 (FCCPA)
2. Investment and Securities Act 2007
3. Securities and Exchange Commission Rules and Regulations 2013 (As amended)
4. Companies and Allied Matters Act 2020 (CAMA)
5. Companies Regulation 2020
6. Rulebook of the Nigerian Stock Exchange (now Nigerian Exchange) 2015
7. Some sector specific laws include:
 - Banks and Other Financial Institution Act 2020
 - the Petroleum Industry Act 2021
 - the Communications Act 2003
 - the Pension Reform Act 2014
 - the Insurance Act 2003

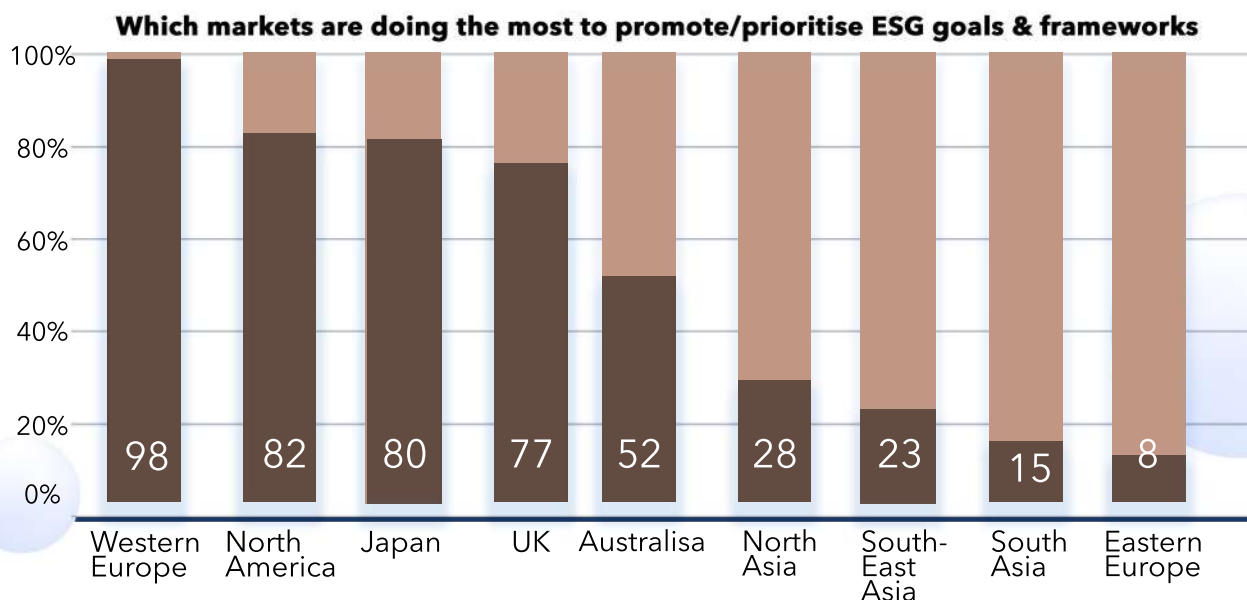
Enviromental & Social Governance (ESG)

Globally, ESG has become a major factor for M&A success. Consumers have become more inclined to inquire about the environmental, social and governance policies of organizations they patronize. In a survey of 7,500 consumers, Capgemini Research Institute noted that 79% have altered their purchase preferences based on sustainability considerations. This has led to global businesses being increasingly vested in ensuring compliance with ESG best standards.

Importance of ESG When Considering Investment/M&A

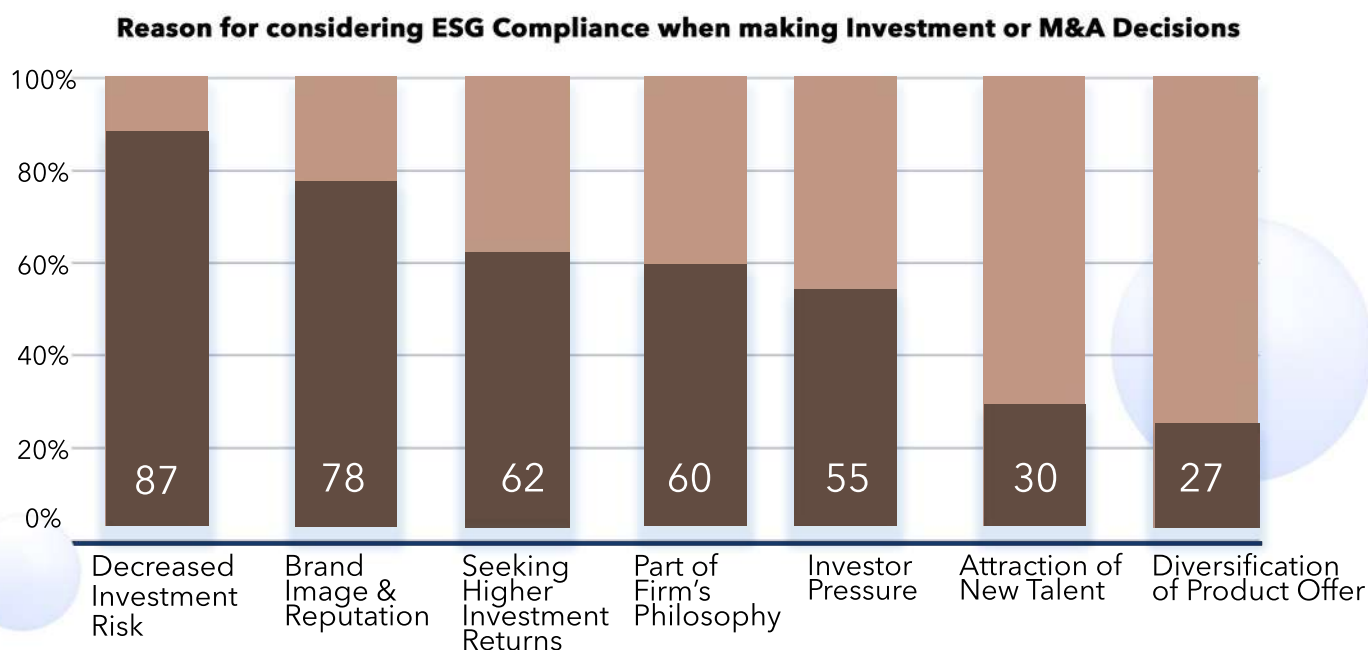


ESG compliance is increasingly becoming a crucial element for M&A transactions and directly affects risk and valuation considerations corporations look out for when assessing the propriety of a target for investment. BlackRock, a US based institutional investor, in a letter to its clients assured of its intention to place sustainability at the centre of its investment approach, further stressing the importance of making disclosures on its ESG compliance as a major determinant for investment. Baker Tilly International commissioned the canvassing of the opinion of 60 dealmakers in the Asia-Pacific region, North America and Europe and according to the findings, 60% stated that they have walked away from an investment due to a negative assessment on ESG issues at a potential target. Unsurprisingly, western markets are more prone to take an interest in ensuring ESG compliance. On a regulatory level, the EU required disclosure of non-financial statements on corporate social responsibility for listed companies since 2018, while in the US, disclosures are voluntary. The US Securities and Exchange Commission (SEC) chairman, Gary Gensler, has however noted the need for mandatory disclosure on climate risks, whilst the commission moves with urgency to publish a new rule to this effect.



Baker Tilly International survey of 60 Dealmakers

What are the driving factors for ESG requirements from potential targets other than consumer preference? One such factor is synergies and smoothness of integration for already compliant organisations, others include capitalising on already existing goodwill from compliant companies, assurance of intention for long term growth, reduced risk of potential liabilities. For example, Fiat Chrysler's merger with Peugeot (which formed Stellantis N.V.) was expected to help Fiat Chrysler avoid a potential \$2 billion in European carbon emissions fines.



Baker Tilly International survey of 60 Dealmakers

How ESG is influencing the Nigerian M&A Market

Bringing the discussion back to Nigeria, in 2019, the Nigerian Exchange (previously Nigerian Stock Exchange) released its first “Facts Behind the Sustainability Report” in which it encourages listed companies to adopt ESG practices, reporting and disclosures as well as adopt responsible long-term approaches to investment.

Nigeria currently possesses a number of regulations focused on acceptable principles of ESG, such as the requirement for the submission of an environmental impact assessment by government ministries and parastatals upon application for a permit to engage in activities which are likely to affect the environment, such as mining. In addition, President Muhammadu Buhari recently signed the Climate Change Act into law. This followed President Muhammadu Buhari’s earlier commitment to reach net zero carbon by 2060 at the UN climate change conference, COP26.

From a private sector point of view, we expect that Nigerian businesses will increasingly adopt ESG practices, particularly those which currently are in receipt or are hopeful to receive foreign investment. As we have seen, western investors will demand such compliance.

COP 26 and the Future of Deal Making

A major focus of the policy pledges by the non-state participants was the Finance Industry's commitment to sustainability, climate change and the overall reduction of carbon footprint. It is still unclear how the already ballooning influence of ESG on the M&A global markets will morph following the global commitments from COP 26 but with collaborations between the US and China, this is likely to influence investment direction in sub-Saharan Africa - Nigeria inclusive. Companies will make stronger efforts at embracing sustainable and environmental and socially responsible practices to boost their ESG ratings and/or perceptions in line with shifting investor and client/customer sentiments.

It is expected that ESG will become a major due diligence reporting criteria in the Nigerian M&A market and that major sector regulators will also embrace this criteria of reporting as mandatory especially for the extractive and manufacturing industries.



In 2022, the unfavourable economic climate, weak local currency and foreign exchange pressure is likely to continue to trigger significant M&A activity in the Nigerian market as many market participants seek to strengthen their capital positions through synergies and alliances where other sources of capital become unavailable, unattractive.

a. SPAC Mergers

Whilst SPACs are a valuable contributor to M&A deal numbers and are a useful tool for private companies seeking to go public, Nigeria is yet to have a legal regulatory framework on the subject matter. However, in December 2021, the SEC released its exposure draft rule on SPACs. Below is a highlight of some of provisions of the draft rules:

- A SPAC IPO issue size shall not be less than N10 billion.
- The promoters shall hold at least 15% and not more than 20% of the post issue paid up capital.
- Notwithstanding the minimum requirement prescribed above, a SPAC shall demonstrate that the gross proceeds to be raised from the IPO would be sufficient to undertake a qualifying acquisition (a merger with a target).
- The IPO shall be open for at least three (3) working days and not more than ten (10) working days.
- The net proceeds shall:
 - o only be utilized for the purpose(s) stated in the approved offer documents; and
 - o be domiciled (at least 90%) in an interest bearing escrow account opened and maintained specifically for that purpose with a custodian.
- The SPAC shall seek the prior approval of its shareholders holding at least 75% of the total value of securities held by all holders of voting securities (other than promoters) present and voting at a general meeting for the proposed qualifying acquisition.

- Where a shareholder (other than promoter(s)) votes against the proposed qualifying acquisition, he shall have the redemption right to convert his securities into securities into pro-rata portion of the aggregate amount held in the escrow account (net of taxes payable).
- The issuer shall complete the qualifying acquisition within the timeframe disclosed in the offer document but not exceeding thirty-six (36) months from the date of the close of the IPO.

We remark that the provisions are simply an exposure draft for the time being, however, it clearly evidences the intention of the SEC to introduce SPACs to the Nigerian capital market. Where this is achieved in 2022, we expect to experience a considerable rise in merger deals in Nigeria.

b. Increase in M&A Transaction Cost

In 2021, the Nigerian regulatory landscape witnessed the introduction of new laws which have significantly impacted overall transaction cost for M&As.

i. Finance Act 2021: The Finance Act 2021 introduced a 10% capital gains tax on proceeds from the disposal of shares in a Nigerian company other than:

- proceeds accruing from a disposal of Nigerian government securities;
- proceeds from the disposal of shares in a Nigerian company where the proceeds are reinvested within the same year in the acquisition of shares in the same other Nigerian companies;
- proceeds which, in aggregate, is less than N100,000,000 in any 12 consecutive months; and
- the shares are transferred between an approved Borrower and Lender in a regulated Securities Lending Transaction as defined in the Companies Income Tax Act.

ii. Federal Competition Consumer Protection Commission (FCCPC) Notification

Fees: The Merger Review (Amended) Regulations, 2021 reviewed upwards the merger notification fee payable to the FCCPC. At the moment, the effect of the increase in transaction cost remains yet to be seen.

c. Regional Synergies

As the region begins to implement the cardinal objectives of the AFCFTA, we expect to see momentary growth in cross-border M&A transactions in 2022 as new policies and initiatives are constantly being implemented to bring the initiative to a reality, such as the Pan African Payment and Settlement System (PAPPS). The PAPPS is a cross border payment and settlement market infrastructure which was launched on January 13, 2022 in Accra following a pilot test in Gambia, Ghana, Guinea, Liberia, Nigeria and Sierra Leone. The structure will enable seamless payment processing, clearing and settlement of cross border transactions within Africa. With Africa morphing into a single borderless market, there is no doubt that enterprises across the region will begin to take position to expand into stronger, formidable regional businesses.

d. Talent Synergies

Much more than ever before, in 2022 we expect that talent will become a key deal consideration metrics for many M&A transactions especially in Nigeria. Specific sector such as healthcare have suffered significant talent drain over the last 24 months. We therefore expect to see M&A deals driven by critical talent synergies.

e. Key Sectors to Watch

There are indications that these sectors have developed attractive fundamentals likely to attract significant capital drive from foreign investors and local capital :- technology, fintech, health care, agro business, mining, real estate, manufacturing, education and consumer goods.

Without a doubt, 2021 saw a global increase in M&A transactions in terms of deal numbers and value. The market is experiencing a gradual recovery from the upset caused by the COVID-19 pandemic. In Nigeria, a number of initiatives can be implemented to take hold of the momentum and ride the waves of expected capital investments as far as it will carry, as, considering the global estimated number of SPACs in existence and the value they jointly possess, the global private equity landscape, and consequently, the M&A landscape, is expected to experience an explosion of transactions.

Considering the above, Nigerian businesses must reposition themselves in anticipation of the capital inflow from international institutional investors. This can be achieved by developing capacity in industries of interest such as technology, healthcare, food production, energy and education; industries in which international investors have consistently shown interest.

ESG is fast becoming a global requirement for businesses and Nigerian businesses risk leaving money on the table and being overlooked in a scenario where they do not begin to modify their operational framework and policies to ensure compliance with global sustainability standards and best practices.

On a regional note, the commencement of the AfCFTA puts its African member states in a prime position to commence intra-African dealmaking. This will likely be spearheaded by businesses seeking to break into foreign markets, or to utilize the competitive advantages of other African countries (such as specialisation, reduced cost of raw materials, reduced cost of labour, etc).

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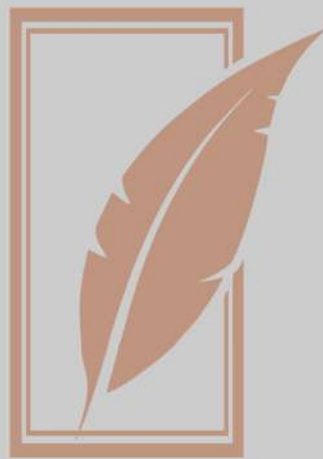
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