PEVCA

PRIVATE EQUITY AND VENTURE CAPITAL ASSOCIATION, NIGERIA

2024 MID-YEAR REVIEW AND STRATEGIC OUTLOOK

20 years of the PRA: Catalysing Impact on PE & VC | FX Market and CBN Policy | ESG, Climate Change, and Investment Strategy | WHT Reforms and Foreign Firms

Tax on FX Transactions | SEC Rule Amendments for PE & VC Funds | Bank Recapitalisation: Response Pathways for Operators | Fund Manager Insights on Sectors

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Forward

We are pleased to introduce this inaugural edition of PEVCA Nigeria's 2024 Mid-Year Review and Outlook, a publication that delves into the key trends, challenges, and opportunities shaping Nigeria's private equity and venture capital landscape.
It brings together expert insights from leading fund managers, general counsel, legal, financial, tax, and other professional advisers, and industry stakeholders, offering a thorough analysis of the most critical developments and strategic issues specific to the Nigerian market, that are impacting the Nigerian market today.

The collection of articles, interviews, and thought leadership pieces examine the impact of recent economic reforms, regulatory updates, and emerging market dynamics with the objective of equipping Nigeria-focused investors, fund managers, and stakeholders with the insights and strategies necessary to navigate this rapidly evolving market, thereby driving sustainable growth and success in the Nigerian market.

The past year has been characterised by significant regulatory and fiscal reforms, economic transitions, and shifting market dynamics. These changes have opened new opportunities and presented challenges for Nigerian private equity and venture capital stakeholders.

On the regulatory front, the Securities and Exchange Commission (SEC) has released exposure drafts proposing amendments to the rules governing private equity and venture capital funds. These proposed changes include extending the submission timeframe for offer documents, removing the 28-day offer period for infrastructure funds, expanding the definition of private equity funds, and introducing new definitions and requirements for venture capital funds. While these updates are a step forward, some ambiguities remain, for instance, concerning investments in early-stage companies.

The threshold for private equity fund registration is proposed to be raised to NGN5 billion. While this is a positive step in principle, current economic conditions and exchange rate fluctuations may require further adjustments to ensure the threshold aligns with market realities. In addition, certain proposed restrictions on fees, including minimum requirements on management and performance fees, may have unintended restrictive effects on the industry.

Economic reforms, such as the floating of the Naira, the removal of petroleum subsidies, and the introduction of tax incentives aimed at stimulating both foreign and domestic investments, are also shaping the investment landscape. Our contributors provide in-depth analyses of these reforms, exploring their impact on private equity transactions, particularly in light of recent changes to capital gains tax, withholding tax, and the implications of the Nigerian Finance Act.

While these reforms have led to short-term challenges, such as inflation, they are paving the way for a more robust investment environment. This is evident in sectors like renewable energy and technology, where environmental, social, and governance (ESG) criteria and climate change considerations are becoming increasingly central to investment strategies. Nigerian companies are aligning their operations to attract impact investors, particularly in sectors where these considerations are gaining traction.

Sector-specific opportunities continue to emerge, especially in technology, healthcare, and agribusiness sectors. Our fund manager perspectives highlight these key industries and the regulatory developments that are shaping their growth potential. The technology sector, for example, has outpaced oil in contributing to Nigeria's GDP, underscoring its high growth potential and attractiveness to private equity and venture capital investors.

The ongoing banking recapitalisation efforts present unique opportunities for private equity and venture capital firms to engage further in Nigeria's financial sector, despite the current macroeconomic challenges and regulatory complexities. This publication also benefits from expert insights on fundraising trends in the evolving landscape for private equity and venture capital in Nigeria. It explores the cautious optimism surrounding projected GDP growth, assesses the potential positive effects of recent foreign exchange market reforms and Central Bank of Nigeria policy updates, and discuss the complexities of cross-border transactions and the strategic considerations necessary for successful deal-making in Nigeria.

The concluding outlook offers critical perspectives on the broader political and security environment in Nigeria, highlighting the risks and opportunities that arise from the current socio-political climate. We propose tools for assessing and managing risks effectively in this dynamic market.

In our CEO Spotlight interview, Oguche Agudah, CEO of PENOP, reflects on 20 years of pension reforms, PENOP Milestones and objectives, and explores how pension funds might play a more significant role in private equity and venture capital investments, potentially fuelling further growth in the sector. We also present insightful interviews with Mojisola Fashola, Managing Director and General Counselof

Kuramo Capital (New York), and Dipo Okuribido of Verod Capital, who share their respective perspectives on the practical implications of regulatory changes and how they are adapting to the evolving landscape to provide strategic advice on mitigating risks and leveraging opportunities to the teams they support.

All of the contributions emphasise the importance of understanding the nuances of the Nigerian market and developing market-specific risk management strategies
On behalf of the PEVCA Legal & Regulatory Committee, we extend our gratitude to Oguche Aguda, Moji Fashola, and Dipo Okuribido, and to Aelex, Argentil Capital Partners, Control Risks, Deloitte, Detail Solicitors, Duale, Ovia and Alex-Adedipe, Ernst & Young, G. Elias & Co., Olaniwun Ajayi LP, PricewaterhouseCoopers, and Udo Udoma & Belo-Osagie, for their invaluable contributions to this maiden edition of the PEVCA Mid-Year Review and Strategic Outlook for 2024.

Our aim is to provide valuable guidance to our members and sector stakeholders as they navigate regulatory challenges and optimise their portfolios in the current economic climate. As the industry continues to evolve, PEVCA's Legal and Regulatory Committee remains committed to supporting PEVCA, its members, and the private equity and venture capital sectors in Nigeria, through advocacy, capacity building, and fostering collaboration across the industry to create sustainable value for all stakeholders.

'Folake Elias-Adebowale and 'Dipo Okuribido
For: THE PEVCA NIGERIA LEGAL AND REGULATORY COMMITTEE

Oguche Agudah

CHIEF EXECUTIVE OFFICER
PENSION FUND OPERATORS ASSOCIATION OF NIGERIA (PENOP)

20 Years of Pension Reform: Reflections on Progress, Milestones, and Strategies for Catalysing Pension Fund Investments in Private Equity and Venture Capital in Nigeria

The 20th anniversary of the Pension Reform Act, passed on June 25, 2004, and amended in 2014, marks a significant milestone for Nigeria's pension industry.

In this conversation with Oguche Agudah, CEO of the Pension Fund Operators Association of Nigeria (PENOP), we explore the progress made in pension fund management over the past two decades.

Agudah highlights the collective efforts that have driven substantial growth in assets and contributors, emphasising the crucial role of a private-sector-driven model in ensuring transparency and better returns.

He also shares PENOP's strategies to enhance investments in private equity (PE) and venture capital (VC), addressing key challenges like perceived risks and currency mismatches.

As the industry looks ahead, Agudah offers insights into the future of PE and VC sectors, underscoring the importance of collaboration and data-driven approaches to overcoming barriers and driving sustainable growth.

PEVCA LRC: As we celebrate the 20th year of the Pension Reform Act of 2004, could you outline the major achievements of PENOP in enhancing the growth and security of pension fund investments? What are the upcoming priorities for PENOP to further fortify the pension industry?

OGUCHE: I think the success over the last 20 years has been a collective achievement of the pension operators, regulators, the executive and legislative arm of Government, and Nigeria as a whole. The growth has been characterized by a strong growth in assets under management, a sound pension industry, a growing number of contributors, and the pooling of capital for investments. These have been very positive over the last 20 years, and everyone deserves commendation for the part they played in this growth. I think the main priority is to ensure that the model we operate within Nigeria is enhanced and not dismantled. We need to continue to ensure that pensions are private-sector driven as that guarantees transparency, professionalism, competition, improved service, and higher returns for the owners of the capital. These are our priority themes over the next 20 years.

PEVCA LRC: Considering the significant growth of Nigerian pension funds and their pivotal role in local capital markets, what strategies is PENOP considering to further mobilise pension fund managers towards investing in private equity and venture capital?

OGUCHE: I think the key strategy in this regard is constant dialogue and engagement between the two complementary industries. We continue to promote ways to engage and dialogue as this will help to reduce the gap between the industries and improve understanding amongst ourselves. Furthermore, we will continue to use data and facts gleaned by surveys from pension fund managers about what are the barriers and what they are looking to get from PE and VC investments. We had done an inaugural research report/survey in conjunction with the AVCA and will continue to produce such reports that reveal insights into the thinking of pension fund managers with regards to private capital investments.

PEVCA LRC: From your perspective, what are the principal factors driving growth and what are the main obstacles hindering pension fund investments in Nigerian private equity and venture capital?

OGUCHE: In my view, I think we can sum it up in two words- Safety and Returns. I think there is a perception of higher risk without the commensurate returns offered by investments in these asset classes locally. From a risk perspective, issues like a weak exit environment locally exacerbate these concerns. Furthermore ,the currency mismatch is a big barrier. A situation where the bulk of pension assets are in local currency, whilst the majority of PE/VC vehicles are in foreign currency is a big deterrent and barrier. In any case, the possibility of higher returns than public markets will always be an attraction for pension funds, but this has to be proven over time.

PEVCA LRC: Are there any specific initiatives that PENOP has launched or plans to launch to overcome the challenges to pension fund investment in private equity, such as the challenging exit environment or the limited number of established African General Partners?

OGUCHE: From our own point of view, we will continue our engagements with various bodies, agencies, and organizations. Our key is to ensure that any solution(s) or initiatives are market-driven and co-created with the various parties in the ecosystem. In that regard, we continue to encourage discussions and engagements. For example, working with development partners, we are looking at facilitating structures that speak to local currency arrangements, amongst others.

PEVCA LRC: In the context of evolving market dynamics and regulatory environments, what specific actions can PENOP, PEVCA, and other industry stakeholders undertake to foster and sustain collaboration with various entities within the private equity and venture capital ecosystem? How can these collaborations be structured to maximize shared knowledge, align strategic objectives, and enhance investment outcomes? What roles can technological innovations, joint ventures, and policy advocacy play in strengthening these partnerships?

OGUCHE: I think we can do a couple of things together to move the needle on pension fund investments in PE and VC. We need to do joint surveys and research. I think the right information can help to bridge the gap. Pension funds need to be aware of key milestones within the PE/VC ecosystem. Things like exit information, fund close, company investments, etc, need to be made available to the pension industry on an ongoing basis. Furthermore, joint events and seminars that bring professionals in these industries together cannot be over-emphasized. These events help to engender shared learnings across board for all parties, from the top to the lowest. Further collaboration on encouraging first time fund managers, also needs to be looked into if we are to bring diversity and sustainability to this asset class. Joint regulatory engagements between PenOp and PEVCA are also something to look into.

PEVCA LRC: What is your outlook for the PE and VC sectors through H1 2024 to H2 2025, and what key takeaways might our industry stakeholders consider for navigating the anticipated challenges and opportunities?

OGUCHE: I think the industry, in looking for higher returns will consider PE investments. VC investments perhaps not yet, in the current structure. The industry will be looking for local currency based funds; funds that have a specific focus, e.g Infrastructure, real estate, health, or sectors that generate USD earnings and help to reduce overall pressure on the local currency will have a favourable uptake etc.

OUTLOOK:

FACTORS THAT WILL INFLUENCE PRIVATE CAPITAL FLOWS IN NIGERIA



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Introduction

In the dynamic realm of Nigeria's economic landscape, the convergence of local expertise with global financial networks is reshaping the trajectory of private capital flows. Nigerian businesses are forging ahead with ambitious ventures bolstered by international partnerships and investments. This article delves into the critical factors steering these capital flows: the strategic importance of "glocal" strategies, the impact of evolving market trends, challenges surrounding fund repatriation, and the implications of unpredictable policy landscapes.

Go *"glocal"* or go home

The term 'glocal' encapsulates a setting where local and global dynamics converge, highlighting the interconnectedness between domestic and international markets. This trend is particularly notable in Nigeria, where businesses are increasingly operating on a global scale, blending local expertise with global financial backing to drive significant investments across various sectors.

Glocal businesses in Nigeria are taking the lead in attracting private capital. Indigenous entities are leveraging foreign financial support to fund major ventures. This synergy allows local companies to undertake substantial projects previously dominated by international players. It not only supports economic growth but also enhances the country's competitiveness in the global market.

In the oil sector, the glocal approach involves increased divestment by International Oil Companies (IOCs). Nigerian-owned companies are acquiring substantial assets with financial backing from local and foreign banks, utilizing both debt and equity financing to facilitate these transactions. Additionally, the tech industry exemplifies glocalism through the rise of locally owned funds collaborating with large pan-African global funds. This partnership model enhances access to capital for Nigerian tech startups, fostering innovation and market expansion.

As Nigeria continues to embrace the glocal paradigm, stakeholders should anticipate further integration of local capabilities with global financial networks. This trend promises to unlock new opportunities across diverse sectors, positioning Nigerian businesses on a stronger footing in the global economy.

Trends dictate where the money goes

In recent years, the landscape of funding preferences has evolved significantly, marked by shifting buzzwords that define each era. A decade ago, terms such as sustainability, inclusion, and impact investing dominated discussions. Today, the focus has transitioned to ESG (Environmental, Social, and Governance), AI (Artificial Intelligence), and Green initiatives.

Entities and projects integrating these elements into their processes or initiatives are increasingly likely to attract funding. Despite imperfections in the criteria, there is a discernible trend favoring investments aligned with these current market priorities. This underscores the strategic advantage of incorporating evolving trends in today's competitive funding landscape to enhance attractiveness to potential investors and opportunities.

Considering global sanctions in investments in Nigeria

Since Russia's full-scale invasion of Ukraine in 2022, international sanctions regimes have grown in volume and complexity. Two years on, it is becoming increasingly clear that further expansion of sanctions regimes will be met with strong opposition from governments whose economies would suffer direct consequences, or who are trying to take an independent path in global politics.

Global regulators are shifting their focus to the implementation of existing sanctions, pushing companies to boost their sanctions compliance defences. This is a formidable task for many businesses who will need to approach sanctions risks on many levels: from technical expertise on the movement of certain goods, complicated diligence of control and ownership structures, to grasping fluid and divisive geopolitics that drive changes to sanctions regimes. Nigerian private equity firms seeking funding from DFIs must consider adherence to local and international regulations when investing. In so doing, caution must be exercised by conducting due diligence and performing an end-to-end review of the investments that they seek to target to ensure that the supply chain has considered this aspect. Control Risks Global Sanctions 2024 report discusses key sanctions developments and outlooks in different geographies and sectors.

Repatriation issues make for a riskier climate

In Nigeria, the business landscape has historically carried inherent risks, exacerbated recently by foreign exchange crises that have dampened market appeal. This downturn is particularly evident in sectors such as Fast-Moving Consumer Goods (FMCG), where declining private consumption and escalating inflation have further eroded investor confidence.

The prevalence of fundamental risks, notably issues surrounding repatriation of funds, narrows the attractiveness of immediate investments to a select group: those with robust long-term strategies, political affiliations, or a high tolerance for risk. However, such investors remain a minority.

Minister of Trade and Investments, Doris Uzoka-Anite, highlighted in February this year that direct engagements with foreign investors have resulted in substantial interest and commitments totaling USD 30 billion since Tinubu's inauguration. Despite these commitments, actual investments have yet to materialize due to investor apprehension over the forex market's instability. This hesitation perpetuates a cycle where delayed investor actions impede the prospect of a market recovery.

Unpredictable and contradicting policies to hamper success

The introduction of policies with competing goals and interests will remain a deterrence for investors. Policies lack consistency and, in some cases, appear to be more of a knee-jerk reaction rather than a well thought out plan. Specifically, a number of short-term revenue generation goals continue to compete with the goal of creating a favourable business environment that attracts investors.

For example, after months of courting investors for FDI, the government in March announced the introduction of an expatriate levy for companies operating in Nigeria. This was suspended one week later following backlash from stakeholder groups on the levy's potential negative impact on forex inflow. If implemented, this policy would make the business environment less friendly. Nevertheless, the reversal contributes to policy uncertainty and suggests that the government does not collaborate with the relevant private sector stakeholders during policy formulation. Additionally, on 26 March, the Central Bank of Nigeria (CBN) increased monetary policy rates, a move that is unlikely to sufficiently address inflationary concerns but that will instead reduce the credit available to local businesses, limiting job creation and tax revenue growth.

Meanwhile, a number of key government agencies and departments, such as the Securities Exchange Commission (SEC), remain without a board. This follows Tinubu's move to 'clean shop' in June 2023, when he dissolved all statutory agencies, ministries and departments. New appointments have yet to be made, stalling economic activity.

Conclusion

Navigating Nigeria's evolving business landscape requires careful consideration of these factors shaping private capital flows. Embracing glocal strategies, aligning with market trends, preparing for repatriation risks, and advocating for policy consistency are pivotal for attracting sustainable investments. Stakeholders must collaborate to mitigate uncertainties and foster an enabling environment conducive to long-term economic growth and investor confidence.

In summary, proactive measures to harmonize local strengths with global opportunities will not only bolster Nigeria's competitive edge but also sustainably drive private capital inflows, paving the way for robust economic development.

For Africa-based private equity investors, there are opportunities in markets from which other investors may shy away. Recent industry surveys have indicated that General Partners (GPs) ranked West Africa as a preferred region for investment, despite the risk of coup contagion and defaults. Most GPs appear to be planning to increase their investments across the continent, particularly in impact investments.

While investors will have much to watch out for when it comes to evaluating their investments, many opportunities remain. For those aware of Africa's various political, economic, and security environments, the opportunity to create value and find success in these markets outweighs the risks.

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Investments in AI Startups in Silicon Valley Outpaces Rest of Tech - Bloomberg

"MTN to cut costs and hike prices at Nigeria unit after naira hit", Reuters

"Examining President Tinubu's economic policies", Tribune Online

"FG secured $30bn foreign investments in eight months – Minister", Punch

"Navigating the Global Sanctions Landscape in 2024 report", Control Risks

"African private equity in 2024: risks and opportunities", (ControlRisks.com)

REGULATORY WATCH:

AN ANALYSIS OF THE SEC'S H1 2024 EXPOSURE DRAFT AMENDMENTS TO THE SEC RULES ON PRIVATE EQUITY AND VENTURE CAPITAL FUNDS


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OVERVIEW

Recent industry reports track a discernible shift in the African private capital industry towards smaller deals and a dominance of venture capital deals, reflecting a cautious yet active investment landscape. Despite consistent exit volumes in East Africa, however, regional disparities persist, with Southern and West Africa experiencing fluctuating deal values and significant declines in deal volumes. Nigeria's potential as a leader in private capital activity, driven by digital transformation and numerous startups, especially in technology, healthcare, and financial services remains to be realised with stakeholder surveys reporting high operational costs, funding difficulties, and regulatory uncertainties.

Against this backdrop, in H1 2024, the Nigerian Securities and Exchange Commission (SEC) released 2 (two) exposure drafts proposing amendments to its rules on funds and collective investment schemes (CISs). The 4th January 2024 amendments address green, social, sustainability, sustainability-linked, and transition bonds, as well as registration requirements for commodity brokers, CISs, and private equity funds. The 20th June, 2024 draft defines venture capital funds and prescribes requirements for SEC authorisation and prospectus contents.

Generally, the amendments appear to aim to address longstanding issues by providing clearer guidelines, which can improve operational efficiency, and enhance investor protection. While fund managers and investors may initially face an adjustment period, innovations such as extended submission timelines and standardised fee structures align with global best practices, potentially conferring long-term benefits to fund managers through the increased clarity and predictability of a more streamlined and transparent regulatory framework.

These changes have the potential to lead to more successful fund launches and better-managed portfolios, where investors can expect greater transparency and accountability, reducing investment risks. Striking a balance between safeguarding investors and maintaining regulatory integrity while encouraging innovation and investment and catalysing positive growth in the industry, is essential. A nuanced, and dynamically responsive adaptable approach that treats private equity and venture capital funds as discrete asset classes and which takes into account practical challenges and their impact on investor perspectives is key.

RULES ON COLLECTIVE INVESTMENT SCHEMES (CIS)

Amendment of Rule 450(B) – Offer Process for Closed-Ended CIS

Submission of Offer Documents

The timeframe for submitting executed offer documents of closed-ended CISs to the SEC has been extended from 5 (five) to 10 (ten) working days post-SEC clearance. This extension addresses the impracticality of the previous five-day limit due to challenges like geographical distances and delays in stamping the offer documents at the Federal Inland Revenue Service (FIRS).

The extended timeframe allows for more realistic scheduling, accommodating logistical delays and reducing the pressure on fund managers to meet tight deadlines, thereby enhancing compliance and accuracy in submissions. However, further delays may still occur, necessitating additional flexibility, and the extension could prolong administrative processing, potentially delaying fund approvals and market entry.

Encouraging digital submissions through a dedicated SEC e-portal could reduce reliance on physical document transfers, minimising delays, and integrating a feedback mechanism to monitor the effectiveness of the new timeframe to help make necessary adjustments based on practical experience and stakeholder input.

Exemption for Infrastructure Funds and Alternative Investment Schemes

The removal of the 28-day offer period requirement for Infrastructure Funds and alternative investment schemes targeted at qualified investors is a pragmatic adjustment. This amendment recognises the extensive capital-raising processes that these funds require, typically involving lengthy meetings, thorough due diligence, and investment committee approvals, which can extend up to 2 (two) years. The amendment offers fund managers greater flexibility to align fundraising timelines with actual demands, acknowledging the practical realities of raising capital for large-scale projects.

While this flexibility can encourage more investment in infrastructure and alternative schemes essential for economic development, there may be a slight risk of reduced market discipline and potential inefficiencies without a set timeframe. To address these challenges, clear guidelines and robust monitoring mechanisms may be considered for implementation to ensure efficient fund utilisation and maintain investor confidence. Regular updates to investors and performance metrics can further ensure the extended periods are justified and productive.

Amendments to Rule 450(C) – Offer Process for Open-Ended CIS

(a) Registration Requirements

A "schedule of scheme set-up costs" is now required to accompany the Registration Statement for an open-ended CIS. This amendment ensures compliance with the regulatory cap on setup costs, which is capped at 1% (0.2% regulatory fees and 0.8% professional fees).

(b) Filing of Executed Scheme Documents

The submission timeframe for Executed Scheme Documents for an open-ended CISs offer has been extended from 3 (three) to 10 (ten) working days post-approval. This change addresses the logistical challenges faced by fund managers in meeting the previous deadline.

General Rules for CISs

(a) Supplementary Shelf Prospectus

A supplementary Shelf Prospectus must state the offer period, which should not exceed 28 working days from the date of issue unless extended by the SEC. Infrastructure Funds and other Alternative Investment Schemes for qualified investors are exempt from this provision.

(b) New Sub-rule on Capital Utilisation

A new sub-rule mandates that no subsequent series of an infrastructure fund or alternative investment scheme targeted at qualified investors shall be issued until at least 50% of the previous issuance's proceeds have been utilised according to the fund's investment objective and policy. The aim of this change is to prevent scenarios where fund managers are raising additional capital without utilising existing funds effectively.

(c) Annual Supervisory and Regulatory Fees

The basis for computing annual supervisory fees for CISs and regulatory fees for portfolio products is proposed to change from Net Asset Value (NAV) to total Assets Under Management (AuM). This amendment, which is in line with global practices, provides a more comprehensive view of the total assets that a fund manager is responsible for and addresses loopholes where fund managers could avoid fees by netting client assets and investments.

(d) SEC Fees on Market Deals

The SEC proposes a NGN50,000 fee for each submission of advert materials for CISs, distinguishing it from the higher NGN500,000 fee for companies' proxy materials. The SEC's proposal aims to reduce financial pressures on smaller funds and encourage compliance.

However, potential challenges are conceivable. First, given the current macro environment and currency volatilities, ensuring that the NGN50,000 fee covers administrative costs will be important in that if it is insufficient, it could potentially compromise regulatory oversight.

The significant fee disparity should ideally and transparently reflect the difference in resource allocation. For small or emerging CISs (as defined by the Rules), however, even the lower fee could be burdensome, potentially deterring new funds. A tiered fee structure based on a CIS size could address this, ensuring fair regulation while fostering market participation.

Comparing these fees with those in other markets is also essential for competitiveness. Excessive fees might make Nigeria less attractive to fund managers. The impact on market dynamics should be considered, as deterrence could further reduce market transparency.

It might also be beneficial to conduct a detailed analysis to ensure fees are proportional to administrative efforts and consider implementing a tiered fee structure. Regular reviews based on market feedback could help keep the fees fair and effective.

AMENDMENTS TO RULES REGULATING PRIVATE EQUITY FUNDS

Amendment to Rule 557 – Expanded Definition of PEFs

Under the Amendments, Private Equity Funds (PEF) are now defined as a type of CIS that invests primarily in private equity/unlisted companies, whether or not in an attempt to gain control, based on a specified investment strategy and defined investment horizon. This expanded definition accommodates various fund types beyond traditional mutual funds.

By classifying PEFs as CISs, it appears that the SEC aims to create a consistent framework that applies similar standards across various investment vehicles.

This helps streamline oversight, ensuring that all funds operate under comparable rules, thereby potentially enhancing investor protection through rigorous disclosure requirements and governance standards which could potentially attract more capital.

The classification could, however, lead to increased compliance costs and operational constraints for PEFs. The obligation to regularly report on activities and to adhere to specific investment limits might reduce their flexibility, hindering the high-risk, high-reward nature of private equity investing.

The stringent regulations may also stifle innovation, making it harder for PEFs to pursue unconventional strategies or support high-risk ventures.

There is also still a need to distinguish clearly between these funds and venture capital funds that also invest in private unlisted companies.

To address these challenges, there must be discrete and specific regulations that account for the unique characteristics of private equity funds, allowing more flexibility in investment strategies and management practices.

A tiered compliance approach could adjust the regulatory burden based on fund size and type, reducing costs for smaller funds. Conducting regular reviews of the regulatory framework and stakeholder engagements for feedback will help it to remain relevant and adaptable to changing market conditions and investment practices.

Amendment to Rule 558 – Increased PEF Registration Thresholds

PEFs with a target fund size of NGN5,000,000,000 (five billion Naira) or less will not be required to register but must file governing documents for SEC's no objection before commencing operations. This raises the threshold from the previous minimum commitment of NGN1,000,000,000 (one billion Naira)

Raising the registration threshold for PEFs reduces the regulatory burden on smaller funds, allowing them to operate more efficiently. In the current macroeconomic environment, however, with significant currency volatilities, testing this threshold increase to ensure that it is meaningful is crucial to avoid overregulation.

The higher threshold must genuinely reflect the economic realities and fund sizes to minimise the risk of excessive regulatory overheads while still protecting investors.

Amendment to Rule 560 – Expanded Restrictions on PEFs

The expanded restrictions on PEFs include maintaining a minimum 3% investment in the fund where pension fund assets are involved, capping total management fees and expenses at 2% of the total sum raised in Nigeria, and limiting performance fees to 20% of the total sum raised.

While these changes aim to protect institutional investors, encourage diversification, and standardise fees, they may inadvertently stifle fund flexibility and innovation.

High compliance costs and reduced incentives for fund managers could deter investment and limit the growth of the private equity sector, particularly in high-risk, high-reward ventures that drive economic innovation.

In addition, sophisticated investors typically negotiate higher or lower fees based on specific circumstances making these restrictions potentially restrictive as they will potentially limit the ability of such investors to secure optimal investment terms.

Amendment to Rule 561 – General Requirements

Conflict of Interest Policy

A policy on conflict of interest is now required for the authorisation and registration of a PEF. Requiring the policy should enhance transparency and governance, which are crucial for investor protection.
Implementing this requirement may, however, be challenging for some stakeholders. Smaller funds may struggle with the additional administrative burden, potentially increasing operational costs and compliance complexity.

Overly stringent policies might deter fund managers from taking necessary risks or making decisions that could benefit the fund's performance. While laudable and well-intentioned, however, it will be important for the policy to strike a balance between ensuring transparency and maintaining operational flexibility to avoid stifling fund innovation and efficiency.

To balance transparency with flexibility in conflict-of-interest policies for PEFs and ensure investor protection while maintaining operational efficiency and innovation, there may be a need to adopt scalable and proportional requirements through clear guidelines and practical examples, to offer support and build capacity through training, to refine approach through continuing stakeholder feedback, and to generally use a risk-based supervisory approach.

Amendment to Rule 562 – Enhanced Reporting Requirements

PEF Managers must issue semi-annual reports to investors, including details on total commitments, drawdowns and distributions, changes to investment strategy, current and new investments, detailed realisation summary by investment, valuation of each investment, and statements of benefits, fees, and net management fee.

Requiring PEF Managers to comply with these obligations will conceivably enhance transparency and investor confidence. The detailed reporting of commitments, drawdowns, distributions, strategy changes, new and current investments, and valuations may, however, increase administrative burdens and costs, particularly for smaller funds. Ensuring the accuracy and timeliness of such detailed information may also be difficult.

Balancing detailed reporting with operational efficiency, for instance by Implement scalable, automated reporting systems to reduce manual effort and errors, offering training for efficient reporting and compliance, and considering tiered reporting based on fund size to ease the burden on smaller funds while maintaining transparency for larger ones, however, will be key to making these amended requirements practical and beneficial.

Amendment to Rule 563 – Valuation Methodology

The amendments require that the valuation of PEF assets must be conducted "in good faith" by the PEF Fund Manager based on approved principles and reviewed annually by the statutory auditor. This amendment replaces the previous fair value regime, aiming for a standardised valuation methodology, while maintaining fairness and operational efficiency.

Subjective interpretations of the term "in good faith" may lead to inconsistencies in valuations across different funds, which could conceivably result in disputes or discrepancies in reported asset values. Annual reviews by statutory auditors can be costly, particularly for smaller funds, adding to their operational expenses and potentially reducing the capital available for investments. Moving from a fair value regime to a standardised methodology may require significant adjustments in current valuation practices, causing temporary disruptions and necessitating additional training for fund managers.

It will be important to have detailed guidelines and examples of what constitutes "in good faith" valuations, to reduce subjectivity and ensure more consistent application across funds. Offering government subsidies or support for smaller funds to cover the costs of annual audits may help mitigate financial burdens. Phasing in the new methodology gradually can allow fund managers to adjust without significant disruption.

AMENDMENTS - NEW VENTURE CAPITAL FUND RULES

The SEC's proposed amendments to Section 555 of the SEC 2013 Consolidated Rules focus on the definition of venture capital funds (''VC Fund"), requirements for authorisation by the SEC and contents of a prospectus.

Definition of VC Funds

VC Funds are now defined as a type of collective investment scheme that invests primarily in early-stage companies.

Analysis

Inclusion of VC Funds within the CIS Framework: Implications, Potential Issues, and Overview of Comparative Approaches in 6 Jurisdictions

The modification of these rules has the potential to enhance transparency, proper governance, and compliance in the management and operation of venture capital funds. Such changes also align with the SEC's broader regulatory framework for collective investment schemes and private equity funds. Having said this, however, potential challenges and issues could arise from classifying Venture Capital Funds within the CIS framework.

1. VC Funds and traditional CISs serve different purposes and operate under different principles. While CISs typically aim for diversified, lower-risk investments suitable for a broader investor base, VC Funds usually focus on high-risk, high-reward investments in early-stage companies.

2. Applying CISs regulations to VC Funds could lead to inappropriate regulatory requirements that do not match the operational realities of VC Funds. CISs generally target retail investors who expect liquidity and regulatory protections that are not suitable for VC investments.

3. VC funds, on the other hand, are usually aimed at institutional or accredited investors who are prepared for higher risks and longer investment horizons. Using CIS frameworks could conceivably mislead investors about the nature of risks involved in VC investments.

4. VC funds often take an active role in the management of portfolio companies, which is a key difference from the typically passive investment strategies of CISs. This active involvement is crucial for the success of early-stage investments but is not accounted for in CIS regulations, which focus more on diversified and passive investment approaches.

5. Overregulation could impede the flexibility that VC funds need to effectively manage their investments. Regulations designed for CISs might impose administrative burdens that stifle innovation and reduce the attractiveness of VC funds to potential investors and entrepreneurs.

6. Imposing CIS regulations on VC funds could create confusion in markets, leading to misaligned expectations about liquidity, risk, and return, which might, in turn, deter both domestic and international investors, potentially driving capital to more favourably regulated markets.

Comparative Overview of Regulation of VC Funds in 6 Different Jurisdictions

Jurisdictions That Regulate VC Funds Under Discrete Frameworks

In jurisdictions where VC funds are regulated separately, like the United States of America, the United Kingdom, Singapore, and the European Union, there is typically more flexibility in terms of fund structure, management, and reporting requirements. This flexibility is crucial for the high-growth, high-risk nature of VC investments. In contrast, where VC funds are strictly or primarily regulated under CIS frameworks, fund managers might face constraints that hinder their ability to support startups effectively, potentially leading to a slowdown in innovation and economic growth.

Regulation of VC Funds: USA

In the U.S., venture capital funds are regulated under the Investment Advisers Act of 1940 but are exempt from many of the Act's provisions if they meet the definition of a "venture capital fund" under the Dodd-Frank Wall Street Reform and Consumer Protection Act. This exemption allows for greater flexibility in fund structure, management, and reporting requirements. For example, VC funds do not have to register with the SEC if they meet certain criteria, such as not holding more than $150 million in assets under management in the U.S. This flexibility supports the high-risk, high-growth nature of VC investments by reducing regulatory burdens.

Regulation of VC Funds: EU

The European Venture Capital Funds (EuVECA) Regulation provides a tailored regulatory framework for VC funds in the EU. This regulation allows qualifying VC funds to market their funds across the EU with a lighter regulatory burden compared to traditional investment funds. EuVECA funds benefit from a passporting regime, enabling them to raise capital across member states without additional national requirements, which simplifies the fundraising process and supports the high-risk, high-reward investment model typical of VC funds.

Regulation of VC Funds: UK

In the UK, VC funds can be structured as Enterprise Investment Scheme (EIS) funds, which offer tax incentives to investors and are subject to different regulatory requirements compared to traditional collective investment schemes. This structure provides flexibility in terms of fund management and reporting, making it easier for VC funds to attract investment and support early-stage companies.

Regulation of VC Funds: SINGAPORE

Singapore provides a specific regulatory framework for venture capital funds, exempting them from certain requirements that apply to other types of funds. For instance, VC managers in Singapore are subject to simplified regulatory requirements under the Securities and Futures Act, which reduces the compliance burden and supports the agility needed for venture capital investments.

Jurisdictions That Regulate VC Funds under CIS Frameworks

There appears to be a discernible trend of relatively stricter regulation of VC funds in emerging markets like India and South Africa. Such jurisdictions have a rapidly developing or well-developed financial sector and strong industrial base.

The classification of VC Funds within the CIS framework in such markets, however, appears to be driven by a combination of the need for market stability, investor protection, regulatory capacity constraints, historical financial instability, less developed legal and financial infrastructure, and goals of promoting responsible investment practices.

Such factors would contribute to a more cautious regulatory approach in the referenced jurisdictions to manage the inherent risks perceived or associated with VC investments in emerging markets, as indicated below, and may also inform the SECs' cautious approach.

Regulation of VC Funds: INDIA

In India, venture capital funds are regulated under the Securities and Exchange Board of India (SEBI) and Alternative Investment Funds (AIF) Regulations, 2012.

These regulations, while providing a specific category for venture capital funds (Category I AIF), impose numerous restrictions and compliance requirements similar to those for traditional collective investment schemes.

In such frameworks, higher compliance costs and administrative requirements can reduce the amount of capital available for actual investment in startups.

Stringent rules regarding fund structure, investment restrictions, and reporting requirements can limit the operational flexibility of VC funds, making it harder to respond quickly to market opportunities. The increased regulatory burden can deter both domestic and foreign investors from participating in venture capital activities, potentially slowing down innovation and economic growth.

Regulation of VC Funds: SOUTH AFRICA

In South Africa, 'venture capital companies' (VCCs) are subject to regulations under the South African Revenue Service (SARS) and must comply with Section 12J of the Income Tax Act.

Although these provisions offer tax incentives, they also come with strict compliance and operational requirements akin to CIS frameworks. Potential challenges include the dual oversight by SARS and other regulatory bodies, for instance, creates complex compliance landscapes, making it difficult for VC funds to operate efficiently.

Requirements such as minimum investment periods and specific compliance criteria can restrict the ability of fund managers to adapt their strategies as needed. Potential investors might be discouraged by the stringent regulations, affecting the flow of capital into venture capital markets and hampering the growth of innovative startups.

Where VC funds are regulated under stricter CIS frameworks, they might face constraints such as restrictions on fund structures and operations that may limit the ability of VC Fund managers to respond quickly to investment opportunities and manage high-risk investments effectively. In addition, the regulatory and administrative requirements and increased compliance costs may reduce funds available for investments in startups, and venture capital activities, which may ultimately impact the rate of innovation and economic growth.

Requirements for Authorisation

The SEC 2013 Consolidated Rules provide detailed requirements for the authorisation of VC funds, including the submission of a draft prospectus, trust deeds (where the fund is a trust structure), or constitutive documents (where the fund is a company or partnership or other structure), letters of consent from involved parties, and detailed information about the fund provider and manager. In addition, evidence must be present that the VC Fund manager's paid-up capital complies with SEC requirements.

This approach taken in the old rules (and retained in the proposed new rules) is quite restrictive for VC Funds. Typically, the manager will not have detailed information on fund providers at the point that it applies to the SEC to register a fund. It is usually only after the fund has been authorised and the manager has secured commitments from investors that it would be in a position to provide detailed information on them. Of even greater concern is the ambiguity surrounding the requirement for fund managers to participate in the business in which the fund invests. VC funds typically invest in a diverse range of companies, often acquiring minimal stakes with limited rights to influence the company. Given the volume of such investments, it may be impractical and unproductive to require that fund managers participate in all of the businesses or even necessarily participate directly in the management of such companies

The requirement that VC Fund Managers Must Manage the Business in which the Fund is Invested

While the SEC's 2013 Consolidated Rules aim to ensure transparency, proper governance, and investor protection, therefore, they also present several challenges for VC Funds. One key amendment and requirement is that venture capital companies are no longer required to be the general partner; instead, the fund manager of the VC Fund is required to be the general partner. In addition, the Fund Manager, for instance, is required to manage or participate in the management of the business in which the VC Fund is invested.

This requirement may introduce operational complexities. Fund managers will need to have the requisite skills and expertise to manage the relevant businesses directly. This requirement could, conceivably, lead to potential conflicts of interest, as the VC Fund manager's role as a general partner involves significant fiduciary responsibilities that may conflict with such obligations.

Administrative Obligations

Preparing the extensive documentation required by the SEC can be costly, especially for smaller venture capital funds that may not have the resources to handle these administrative tasks efficiently. Meeting ongoing compliance requirements, including reporting and maintaining updated documentation, can be challenging and resource intensive. Fund managers will need to be vigilant in staying abreast of regulatory changes to ensure continuous adherence. Prescribing detailed and stringent requirements may also increase the risk of non-compliance, which can result in penalties, delays, or the revocation of authorisations, adversely impacting VC Fund operations.

Capital requirements

Demonstrating that a VC Fund manager's paid-up capital complies with SEC requirements can be a significant barrier to entry, particularly for new or smaller fund managers who may struggle to meet financial thresholds. The need to maintain a certain level of paid-up capital could limit the fund manager's ability to deploy capital efficiently, potentially reducing the funds available for investment in startups and other high-growth opportunities.

Contents of Prospectus

The prospectus is required to include a summary of the issue, details of directors and parties involved, information on target companies (including investment opportunities, past performance, and other unique factors of entrepreneurship), exit strategies, and other relevant financial and operational details. It should also include statements of assets and liabilities, profit and loss accounts, and cash flow forecasts.

The requirement to submit a draft prospectus, trust deeds, or constitutive documents, letters of consent from involved parties, and detailed information about the fund provider and manager may create a significant administrative burden for fund managers) especially for smaller VC Funds, which may delay the authorisation process and increase costs. Notably, the requirement for the submission of a prospectus, aligns more closely with requirements elsewhere in the SEC Rules for public offerings than with the private nature of these transactions involving sophisticated investors., for which an information memorandum or private placement memorandum might be more appropriate. Requirements such as 5-year statements of assets and liabilities and 3-year forecasts may prove too stringent for fund managers particularly those setting up shop for the first time.

CONCLUSION

The SEC's H1 2024 Amendments seek to address practical challenges by simplifying regulatory requirements, ensuring compliance, and standardising processes for CISs, and Private Equity and Venture Capital Funds.

These amendments are timely, given the need for a consistent, robust, and transparent investment environment to foster growth and stability in Nigeria's private equity and venture capital industry.

It will be crucial to balance investor protection and regulatory integrity with the need to support innovation and investment. A supportive and flexible regulatory framework will be key to bolstering investor confidence and regaining positive momentum in the industry.

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SECTORAL UPDATES:

INSIGHT INTO KEY SECTORS SUCH AS TECHNOLOGY, HEALTHCARE, ENERGY, AND AGRICULTURE AND THEIR ATTRACTIVENESS FOR INVESTMENT.

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Nigeria presents a dynamic investment landscape across various sectors, offering distinct opportunities and challenges. This article provides insights into the legal and regulatory frameworks impacting Nigeria's technology, healthcare, energy, and agriculture sectors. Understanding recent regulatory developments is crucial for evaluating investment opportunities, managing portfolio companies, and assessing prospects in Nigeria. This knowledge is essential for making informed decisions in the evolving economic environment. Each sector has unique challenges, but strategic and well-informed investments can yield significant rewards. Investors should explore each sector's specific drivers and hurdles, leveraging local insights to navigate Nigeria's dynamic investment landscape effectively.

Technology Sector: Encouraging Policy and Legal Environment.

The technology sector in Nigeria has rapidly evolved, driven by a booming startup ecosystem, increasing digital adoption, and significant investments in infrastructure. This sector is a testament to Nigeria's potential as a tech hub in Africa. Key legislative and regulatory developments have recently shaped the landscape, fostering growth, protecting consumers, and ensuring stability in the tech industry.

In June 2023, the Nigeria Data Protection Bill became law, replacing the existing Nigeria Data Protection Regulation (NDPR). This legislation establishes a comprehensive framework for data protection in the country, aligning Nigeria's data protection standards with global best practices and ensuring the privacy and security of personal data. Key provisions include establishing the Nigeria Data Protection Commission, enhanced rights for individuals regarding their data, and stricter rules governing companies' collection, processing, and storage of personal data. Businesses must carefully determine the applicable basis for their data processing and ensure valid legal justification, such as consent, contract performance, legal compliance, and protection of vital, public, and legitimate interests.

The Central Bank of Nigeria (CBN), in recent times, has introduced a regulation that promotes fintech growth whilst ensuring consumer protection and financial stability. In February 2021, the CBN introduced a comprehensive open banking framework to enhance data accessibility and collaboration between Banks and FinTech companies. This framework has been pivotal in fostering a more inclusive financial ecosystem. In 2023, the CBN issued operational guidelines for open banking to stimulate innovation and competition further. Recent measures include requiring funded Tier 1 accounts without a BVN and NIN to be placed on Post No Debit or Credit from March 2024 and enhancing KYC requirements with social media verification under the Customer Due Diligence Regulations, 2023.

The Nigerian Startup Act (2023) was enacted to create a favourable regulatory environment for startups, driving innovation and growth in the technology sector. The Act provides tax incentives, a "Startup Label" for qualifying companies, government funding and grants, and simplified business registration and compliance processes. This legislation is designed to position Nigeria as Africa's leading digital tech hub by providing an enabling environment for startup establishment, development, and operations. The Startup Act also aims to foster the growth of technology talent, encouraging the development of skills essential for the tech industry to thrive.

The National Blockchain Policy (2023) aims to regulate and promote blockchain technology adoption across sectors, recognising its potential to drive innovation and efficiency. The regulatory framework provides guidelines for compliance and standardisation, supports innovation through grants and incentives for startups, prioritises consumer protection and data privacy, and fosters collaboration among government, private sector, and academia. This policy underscores Nigeria's commitment to embracing and integrating emerging technologies into its economy.

Energy Sector: Improving Energy Access

Nigeria remains Africa's most populous and largest economy, with vast energy resources. Yet, energy access remains a significant issue, with only 60.5% of the population having access to energy and 80% relying on diesel generators for electricity. Over the years, the government has made various efforts to improve the energy situation through regulations and reforms.

Recently, Hon. Afam Victor-Ogene proposed establishing a standalone ministry for renewable energy to provide incentives, encourage research into alternative energy sources, and boost investments in the sector. This initiative reflects Nigeria's commitment to diversifying its energy mix and reducing its reliance on fossil fuels. Creating a dedicated ministry for renewable energy would streamline efforts to develop renewable energy projects and attract investment in this critical sector.

Additionally, the government commissioned a 200KWp solar hybrid mini-grid in the Danchitagi Community, Niger State, as part of the Nigerian Electrification Project's initiative to deploy 80 mini-grids. These efforts aim to improve electricity access and mitigate the impact of fuel subsidy removal on underserved communities. By investing in mini-grids, the government is working to provide reliable and sustainable energy to rural areas, which the national grid has historically underserved.

The Nigerian Gas Expansion Program is also gaining momentum, focusing on increasing domestic natural gas use. The government aims to improve gas infrastructure, promote gas-to-power projects, and incentivise using compressed natural gas (CNG) and liquefied petroleum gas (LPG) as alternatives to petrol and diesel. These initiatives are crucial for reducing greenhouse gas emissions and promoting cleaner energy sources. Expanding the natural gas sector is expected to create jobs, stimulate economic growth, and provide Nigeria with a more sustainable energy solution.

The Electricity Act 2023 aims to reform the power sector by addressing generation, transmission, and distribution challenges. It encourages private sector participation, improves regulatory oversight, and promotes renewable energy. The Act prioritises renewable energy through initiatives like feed-in tariffs, local content requirements, and tax breaks. New environmental regulations ensure sustainable practices in the energy sector, including stricter guidelines on environmental impact assessments (EIA), waste management, and pollution control. These updates reflect Nigeria's commitment to transforming its energy sector, promoting sustainability, and creating a conducive investment environment.

Given Nigeria's commitment to increasing its renewable energy mix and promoting energy efficiency, investors should consider renewable energy investments. Opportunities exist for energy infrastructure projects, such as gas pipelines, modular plant development, transmission and distribution infrastructure, and innovative metering solutions. These projects provide an opportunity to generate carbon credits, which can also be sold on international carbon markets. Furthermore, the government's introduction of new initiatives and incentives, such as tax holidays, import duty exemptions, and favourable tariffs, enhances the sector's attractiveness for short-term and long-term investments.

The government's focus on renewable energy is not just about meeting current energy needs but also about ensuring a sustainable energy future. The National Renewable Energy and Energy Efficiency Policy (NEP) outlines the government's commitment to promoting renewable energy and energy efficiency. This policy encourages competition and private sector investment, creating a favourable environment for investors looking to enter the renewable energy market.

Agriculture Sector: A Gold Mine of Opportunities

Nigeria is endowed with abundant natural resources, including fertile agricultural land. Before the discovery of crude oil, Nigeria's economy heavily relied on agriculture. Despite a significant decline due to the nation's overdependence on oil resources, agribusiness still plays a vital role in the economy, contributing 24.65% to nominal GDP in the fourth quarter of 2023.

The National Development Plan (2021-2025) aims to address key development challenges, specifically focusing on enhancing support for farmers. The plan prioritises infrastructure development, macroeconomic stability, social investment, and climate change adaptation. Food security is a central concern, emphasising dietary diversity, food quality, nutritional education, and access to healthcare and sanitation. These measures are crucial for ensuring a sustainable and resilient agricultural sector.

The Federal Government has recently approved a new withholding tax regime to ease burdens on businesses, especially SMEs and farmers. Notable policies include the Green Imperative Program Implementation, Climate-Smart Agriculture Policies, and the CBN Anchor Borrowers' Program (ABP), which provides financing to smallholder farmers. These reforms simplify compliance, curb tax evasion, and improve liquidity by enhancing credit processes. The government's focus on creating a favourable business environment for farmers is essential for boosting agricultural productivity and ensuring food security.

The agricultural sector offers vast opportunities across its value chain. Investing in precision farming, cold chain storage, and logistic businesses can improve farming efficiency and reduce post-harvest losses. The sector presents limitless opportunities from primary production to processing, distribution, and value-added services. Precision farming technologies can significantly increase crop yields and reduce waste, while investments in cold chain infrastructure can address the issue of post-harvest losses.

The adoption of climate-smart agriculture practices is essential for ensuring the sustainability of Nigeria's agricultural sector. These practices include using drought-resistant crop varieties, efficient irrigation systems, and integrated pest management techniques. Investing in these areas can help mitigate the impact of climate change on agriculture and enhance food security. The government's emphasis on climate-smart agriculture highlights the importance of adopting sustainable practices to ensure the long-term viability of the agricultural sector.

Nigeria's agribusiness sector has significant export potential. The government is focusing on increasing the export of agricultural products to diversify the economy and reduce reliance on oil exports. Investors can explore opportunities in the production and export of cash crops such as cocoa, cashew nuts, and sesame seeds. Additionally, there is potential for exporting processed agricultural products, which can fetch higher prices in international markets. The government's efforts to improve agricultural infrastructure and streamline export processes are crucial for enhancing the competitiveness of Nigerian farm products in the global market.

Investors looking to enter the Nigerian agricultural sector should also consider AgriTech opportunities. Integrating technology into agriculture can revolutionise farming practices, improve productivity, and reduce costs. AgriTech solutions, such as drones for crop monitoring, automated irrigation systems, and digital platforms for market access, offer immense potential for transforming the agricultural sector. By leveraging technology, investors can contribute to the modernisation of Nigerian agriculture and tap into the growing demand for innovative farm solutions.

The agricultural sector also presents opportunities for value-added processing. Investing in food processing and packaging facilities can add value to raw agricultural products and create higher-quality, market-ready goods. This approach can enhance the competitiveness of Nigerian agricultural products, reduce post-harvest losses, and create employment opportunities. The government's support for value-added processing is evident in its policies and initiatives promoting agro-industrial development.

Healthcare Sector: Opportunities for Growth

Nigeria’s healthcare system is primarily underfunded, with healthcare spending accounting for 3.6% of GDP in 2022. Healthcare facilities are predominantly located in urban areas, while Nigeria grapples with a scarcity of healthcare professionals and a heavy burden of preventable diseases. The healthcare system operates under a three-tiered government structure, which can lead to inefficiencies due to overlapping responsibilities and budgetary leaks.

To accelerate the sector's growth, the government has introduced regulations for telemedicine and health insurance reforms. These reforms aim to expand coverage, improve service delivery, and enhance regulatory oversight. Telemedicine has the potential to bridge the gap in healthcare access, especially in rural areas where healthcare facilities are scarce. The government's efforts to streamline licensing requirements for telemedicine practitioners, establish standards for telehealth platforms, and ensure patient data protection and confidentiality are crucial for the sector's growth.

President Tinubu recently emphasised the importance of improving Nigeria's healthcare sector by significantly increasing investments and allocating more funds to sector in the 2024 budget. The government's commitment to fostering public-private partnerships (PPPs) aims to enhance healthcare infrastructure, service delivery, and access. These initiatives are expected to stimulate investment in the sector and improve the country's overall quality of healthcare services. The focus on PPPs is crucial for mobilising private sector resources and expertise to address the healthcare challenges in Nigeria.

Nigeria's pharmaceutical sector presents significant investment opportunities. Most pharmaceutical manufacturers in Nigeria focus on chemically synthesised drugs, with limited Active Pharmaceutical Ingredient (API) manufacturers. Investing in pharmaceutical R&D and biologics production can drive the development of innovative treatments for diseases prevalent in Nigeria. The country's heavy reliance on imported medications, such as anti-malaria drugs, highlights the potential for local pharmaceutical manufacturing. By investing in the local production of essential medicines, investors can contribute to improving healthcare outcomes and reducing dependency on imports.

With over 70% of Nigerians spending out-of-pocket for medical care, the potential for investment in health insurance is substantial. Expanding health insurance coverage can improve access to healthcare services and reduce the financial burden on individuals. Additionally, there are opportunities for investing in healthcare supplies and equipment, healthcare infrastructure, and telemedicine solutions. Enhancing healthcare infrastructure, including hospitals, clinics, and diagnostic centres, is essential for improving the overall quality of healthcare services. The government's efforts to improve health insurance schemes aim to increase enrollment rates, enhance service delivery, and ensure transparency and accountability.

Investors can also explore opportunities in medical tourism. Nigeria's healthcare system has the potential to become a destination for medical tourism, attracting patients from neighbouring countries seeking high-quality medical care. By investing in specialised healthcare facilities and services, investors can tap into the growing demand for medical tourism and contribute to developing a robust healthcare system in Nigeria. The government's focus on improving healthcare standards and promoting medical tourism is evident in its policies and initiatives to enhance healthcare infrastructure and service delivery.

The healthcare sector also presents opportunities for digital health solutions. Integrating technology into healthcare can improve efficiency, reduce costs, and enhance patient outcomes. Digital health solutions, such as electronic health records (EHRs), telehealth platforms, and mobile health applications, offer immense potential for transforming the healthcare sector. By leveraging technology, investors can contribute to the modernisation of Nigerian healthcare and address the challenges of access, quality, and affordability.

Conclusion

Nigeria's investment landscape is rich with opportunities across the technology, energy, agriculture, and healthcare sectors. These sectors' dynamic regulatory and legislative developments highlight the country's commitment to fostering growth, innovation, and sustainability. For investors, understanding these frameworks is crucial for making informed decisions and maximising returns. Investors can effectively tap into Nigeria's potential by leveraging local insights and navigating each sector's specific drivers and hurdles. Strategic and well-informed investments will yield significant rewards as the nation evolves and contribute to Nigeria's broader economic growth and development.

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NAVIGATING THE IMPACT OF THE DEDUCTION OF TAX AT SOURCE (WITHHOLDING) REGULATIONS 2024 ON FOREIGN PRIVATE EQUITY INVESTMENTS IN NIGERIA



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Introduction

Over the years, Nigeria has witnessed growth in the private equity (PE) segment of the economy. The first quarter of 2024 also saw a 321.8% increase in PE investments in Nigeria. 1An effect of this is the availability of alternative sources of funding for start-ups and established businesses. Most PE deals in the country occur by way of acquisition of shares or other securities (including debts) by foreign Private Equity Funds (PEFs) which are established outside Nigeria.

Nigerian law guarantees the repatriation of returns on investment for foreign PEFs, subject to the fulfilment of certain conditions, the Companies Income Tax Act as well as Personal Income Tax Act, also place obligations on the investee company to withhold at source, a portion of the investment proceeds (dividends or interest) accruing to the foreign PEFs and remit same to the relevant authority – Federal Inland Revenue Service (FIRS).

Recently, the Minister of Finance and Coordinating Minister of the Economy of the Federal Republic of Nigeria (the Minister) issued a new withholding tax regulation titled and cited as the Deduction at Source (Withholding) Regulations 2024 (the Regulation), which effectively supersedes all other regulations in respect of deductions at source or withholding tax in Nigeria. This article examines the implication of the Regulation on foreign PEFs with investments in Nigeria.

A brief overview of the WHT Regulations 2024 and its implication on foreign PEF investments in Nigeria

With a commencement date of July 1, 2024, the Regulation prescribes and unifies the rules governing the deduction of tax from taxable persons in respect of eligible transactions under the Capital Gains Act (CGTA), Petroleum Profits Tax Act (PPTA), Personal Income Tax Act (PITA), and Companies Income Tax Act (CITA). The Regulation also introduces several changes in respect of the deduction and remittance of withholding tax (WHT) in Nigeria, especially as it relates to eligible persons, exempted persons, timing of deduction, submission of returns, issuance of WHT receipts, penalties, exempted transactions, and applicable rates.

We have examined below, these changes to Nigeria's WHT regime and how they impact foreign PEF investments in Nigeria.

1. Commencement date – Effective from the commencement date, deduction of WHT on dividends and interest payments to foreign PEFs are expected to conform to the provisions of the Regulation. The challenge with the commencement date is that the Regulation does not provide for a transition period to enable businesses adjust to the relevant changes being introduced. This is especially as the Regulation was made available on the same date it was supposed to have commenced.

   The implication of the foregoing is that businesses will not have enough time to familiarize themselves with the changes introduced by the Regulation in order to comply with same, thus foreign PEFs and their investee companies may potentially face the risk of non-compliance in the early days of implementation of the Regulation. Additionally, there is the potential for business disputes between foreign PEFs and their investees in respect of transactions consummated under the previous WHT regime.

   It is therefore pertinent that the Minister provides a reasonable transition period to enable persons required to make WHT deductions familiarize themselves with the provisions of the Regulation. In the interim, a possible mitigation strategy for the above challenge is for parties to seek early clarification on relevant provisions of the Regulation from their tax advisors and the relevant tax authorities.

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1 Bunmi Bailey, "Nigeria's private equity investments up 322% on energy, edtech", Business Day Newspaper of July 9, 2024 < https://businessday.ng/news/article/nigerias-private-equity-investments-up-322-on-energy-edtech/:~:text=Nigeria%20recorded%20the%20highest%20private,value%20of%20mergers%20and%20acquisitions.>

2. Applicable rates for persons without a Tax Identification Number – The Regulation prescribes a deduction of double the WHT rate in instances of payment for the supply of goods, services or any other eligible transaction involving passive income, where the payee does not have a Tax Identification Number issued by the FIRS. The implication of this on foreign PEFs is that, where the PEF has entered into a contract with the investee company for the supply of goods, services or any other transaction involving passive income (including dividend and interest), the foreign PEF will be required to register with FIRS and obtain a Tax Identification Number, as failure to do so will result in a deduction of double the amount of WHT which the investee company would ordinarily have deducted.

3. Persons eligible to make deductions at source – Under the Regulation, the list of persons required to make deductions at source has been expanded to include agents. Thus, where a person obligated to deduct WHT makes payment to a foreign PEF through an agent, the agent is obligated to deduct WHT and remit same to the relevant authority.

4. Applicable WHT rates for eligible transactions – The Regulation introduces new and simplified WHT rates for eligible transactions. This includes reduction in rates in respect of some transactions as well as the introduction of new eligible transactions with their respective applicable rates. Some of the transactions include management and brokerage fees for corporate residents which have been reduced to 5%. Additionally, the rate for supply or rendering of services not specified in the Regulation will now attract rates of 2% and 5% for corporate and non-corporate residents respectively.

   The rates applicable to WHT deducted from dividend and interest payments to non-residents remain unchanged, whilst the Regulation prescribes an increased WHT rate for director's fees for non-residents. Thus, payment of dividend and interest to foreign PEFs will continue to attract WHT at the existing rates or not more than the rates contained in the respective treaties where the foreign PEF is resident in a jurisdiction which has a double tax treaty with Nigeria. Also, the fees of any non-resident director appointed by the foreign PEF will attract WHT at 20%, save where such PEF or director is resident in a country with which Nigeria has a double tax treaty with a lower WHT rate.

   The amount deducted on payments to the foreign PEF or director shall be final tax in respect of such payments, provided that, in the case of the foreign PEF, such income is not subject to further tax by reason of the foreign PEF establishing a taxable presence in Nigeria.

5. Timing of deduction – Another change introduced by the Regulation is in respect of when the obligation to deduct arises. Under the Regulation, the obligation arises when payment is made or when the amount due is otherwise settled, whichever is earlier. As it relates to transactions between related parties, the obligation to deduct WHT will arise when the payment is made or the liability is recognized, whichever is earlier.

   The above provision of the Regulation has brought some clarity on when the obligation to deduct shall arise. Under the previous regime, there was an option of having the obligation arise upon recognition, but this has been limited to related party transactions. Thus, investee companies can no longer merely recognize the WHT tax in their books without actually remitting to the tax authority.

   It is important to note that the above provisions of the Regulation are in contradiction with the provisions of PITA and CITA (as it relates to rent, dividend, and interest). Under PITA and CITA, the obligation to deduct WHT on rent, dividend and interest arises when the amount is paid or credited (recognized/accrued), whichever is earlier. Thus, considering that the Regulation derives its authority from the relevant parent legislations, the provisions of the Regulation cannot amend/supersede the provisions of the parent tax legislations. Accordingly, the change introduced by the Regulation on timing of deduction may be null to the extent of its inconsistency with the aforementioned parent legislations.

6. Requirement to issue receipts upon deduction – Prior to the issuance of the Regulation, a collection agent who had deducted and remitted WHT to the FIRS was expected to obtain relevant WHT credit note from the FIRS and submit same to the person from whom the deduction was made as evidence of the remittance. Thus, where the collection agent fails to remit the WHT deducted to the FIRS, the taxpayer who suffered deductions will be unable to claim tax credit from the tax authority. However, the Regulation appears to have rectified this malady by recognizing receipts issued as evidence of WHT deduction. Accordingly, taxpayers who suffer WHT deductions may enjoy tax credit prior to actual remittance by the collection agents as the tax exposure will be passed on to the collection agents.

   With WHT being the final tax for a foreign PEF, the foreign PEF ordinarily is not required to claim WHT credit from FIRS. However, this provision may become operative where the activities of the foreign PEF create permanent establishment in Nigeria.

7. Exceptions – Distributions or dividend payment to Real Estate Investment Trust or Real Estate Investment Companies as defined in the section 80(5) Companies Income Tax Act have been excepted from WHT. The exception was also extended to interest and fees paid to Nigerian banks by way of direct debit of funds domiciled with such banks. Thus, where the foreign PEF through its Nigerian permanent establishment (if any) pays out dividend to a Real Estate Investment Trust or Real Estate Investment Company, or pays back any loan obtained from a Nigerian bank via direct debit, such payments are exempted from WHT.

Conclusion

The growth of the PE industry is crucial to the availability of alternative funding models for Nigerian businesses. Thus, there is need to provide a conducive environment for foreign PE investments in the country through, amongst others, the implementation of tax reforms aimed at instilling investor confidence, not only in the profitability of the investee companies, but also in the ability of the investor to earn a reasonable return on its investment.

Undoubtedly, in addition to the unification and simplification of the WHT regime in Nigeria, the Regulation has introduced changes that aim to benefit businesses through reduced rates and conditional exemption of small companies from the obligation to withhold. Overall, it represents a giant step towards promoting the ease of doing business in Nigeria and the commitment of the Nigerian government to foster business sustainability. From a Non-resident perspective, it is an equilibrium, as Non-resident entities (including foreign PEFs and directors) will be subject to higher WHT rates in respect of some payments and reductions for some others especially as it relates to investee companies. The Regulation will mean more cashflow for investee companies and clarity on the side of the foreign PEFs.

Whilst the Regulation is not without its challenges, it is expected that any initial setback will be improved upon as all relevant stakeholders properly familiarise themselves with the provisions of the Regulations.

OVERVIEW OF FOREIGN EXCHANGE MARKET TRENDS, CENTRAL BANK OF NIGERIA POLICIES, AND THEIR IMPACT ON PRIVATE EQUITY, VENTURE CAPITAL, AND STARTUP INVESTMENTS


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Introduction

The foreign exchange ("**FX**") market is a market for trading and exchanging any currency pair. The Foreign Exchange (Monitoring and Miscellaneous Provisions) Act of 1995 (as amended) ("**FEMMP Act"**) is one of the primary legislation that provides the regulatory framework for the FX market in Nigeria. The Central Bank of Nigeria ("**CBN**") has regulatory oversight on FX matters and is empowered to issue guidelines and circulars on FX transactions under the FEMMP Act.

Other laws that govern FX transactions in Nigeria include the CBN Act, the Banks and Other Financial Institutions Act, 2007 ("**BOFIA**"), the Exchange Control Act of 1962, and the Money Laundering (Prohibition) Act, 2011 (as amended).
Prior to June 2023, Nigeria operated three (3) different FX markets:

(i) The official market: This was operated by the CBN to supply foreign currency to authorised dealers.[2] The official market also acted as a reference for FX transactions.

(ii) The parallel market: Also called "the black market", diverges from the government's official rate. It is a willing buyer and willing seller market and is susceptible to high volatility influenced by factors like political instability and speculation, which fluctuate based on prevailing market conditions. The parallel market existed due to the scarcity of funds from selling crude oil, the primary US dollar source for Nigerian imports;[3] and

(iii) The Investors & Exporters (I&E) window served as the market trading segment primarily for investors, exporters, and other wholesale end users. Exchange rates for transactions within this window are agreed upon between authorised dealers and their counterparties, promoting transparency and liquidity.

2 any bank licensed under the Banks and Other Financial Institutions Act, and such other specialise bank and issued with licence to deal in foreign exchange
3 Legal basis for foreign exchange trading in parallel market https://guardian.ng/legal-basis-for-foreign-exchange-trading-in-parallel-market/

However, in June 2023, the CBN consolidated all three (3) markets into the Nigerian Foreign Exchange Market (NAFEM), which is determined by the market forces of demand and supply (willing buyers and sellers).

CBN policies, interventions and role in regulating the Nigerian FX market

Over time, the CBN has adopted different exchange rate systems, such as controlled, floating, and managed float, alongside intermittent interventions to achieve extended market stability.[4] These policies are outlined below:

S/N	Policy	Implementation
1.	Development of the parallel market for foreign exchange.	This was introduced in 1982 to address the foreign exchange crisis birthed from an increasing demand for FX and the shrinking supply of FX. The crisis encouraged the development of a flourishing parallel market for foreign exchange. Also, to enlarge FX supply, policies establishing Bureaux de Change were introduced in 1989 to create a market for privately sourced FX.
2.	Controlled rate adoption	Volatility in FX rates further necessitated reforms which were introduced in the Foreign Exchange Market in 1994. The CBN determined a fixed exchange rate under the FX regime.
3.	Introduction of the Managed Floating Policy	In 2016, the CBN introduced the managed floating system due to increased demand for FX. Under the floating policy, the value of the Naira in the inter-bank FX market was majorly driven by the forces of demand and supply.

4 Foreign Exchange Market in Nigeria. Central Bank of Nigeria | Foreign Exchange Market (cbn.gov.ng)

S/N	Policy	Implementation
4.	Introduction of the 'willing buyer, willing seller' model.	In 2023, the CBN adopted a 'willing buyer, willing seller' model for trade transactions, unifying the foreign exchange market. The policy change led to the abolishment of FX market segmentation and the collapse of the previously existing segments into the I&E window, which has now been renamed the Nigerian Foreign Exchange Market (NAFEM)[5]. All eligible transactions are permissible at the NAFEM and processed by Deposit Money Banks. [6] NAFEM is currently the only official market for all permitted dealings in FX on a "Willing Buyer, Willing Seller" model. Consequently, the applicable exchange rates in the official market are now market-driven on a willing buyer, willing seller basis. Therefore, the CBN no longer determines a benchmark exchange rate as the rates in the official market are now defined by the trades conducted in the NAFEM during each trading day and published by the FMDQ Exchange Plc on its website.

The multiple exchange rate regime was characterised by disparity and inefficiencies, creating opportunities for arbitrage currency speculation and overall hindering the growth of the Nigerian economy[7]. In addition, the CBN also had to intervene in the market to defend the Naira, which resulted in the depletion of Nigeria's foreign exchange reserve.

By allowing market forces to determine the exchange rate, unification reduces the reliance on government interventions in the FX market and creates a more stable economic environment by reducing uncertainty for investors. While there are benefits to the FX unification, there have also been short-term challenges associated with it, such as exchange rate volatility and high inflation.

Impact of CBN FX policies on Private Equity, Venture Capital, and Startup Investments in Nigeria.

The fluctuating exchange rates of the Naira and its depreciation have directly impacted foreign investors and local businesses in Nigeria. The uncertainty created by the depreciation and fluctuation has made it difficult for investors to plan adequately. [8] Liquidity risks also increased due to the uncertain availability of foreign currency, undermining investor confidence in the convertibility and repatriation of their investments at a preferred time.[9]

For investors, the CBN's unified exchange rate policy impacts their portfolios denominated in Naira, as startups operating in Nigeria that previously reported revenues using Nigeria's official exchange rate had to change it to the NAFEM rate. Thus, the unification of exchange rates in Nigeria became a hurdle for companies in providing adequate returns and value to investors.

The volatility of FX has also led to concerns about the valuation of the startups and impacted growth projections, which has a significant influence on future financing and the success of such businesses. Furthermore, because inflation is significantly impacted by FX volatility, consumers may experience a loss of purchasing power, which means that consumers have less

5 Foreign Exchange Market in Nigeria. Central Bank of Nigeria | Foreign Exchange Market (cbn.gov.ng)

6 Such as FX applications for Medical Needs, School Fees, Business Travel Allowance/ Personal Travel Allowance (BTA/PTA), and Small and Medium Enterprises (SMEs).

7 Nigeria to unify exchange rate, Nairametrics. Nigeria to unify exchange rate - President Tinubu - Nairametrics.

8 Nigeria's multiple exchange rate windows: How do the markets operate, and who can access them? https://crossboundary.com/nigerias-multiple-exchange-rate-windows/

9 Nigeria's multiple exchange rate windows: How do the markets operate, and who can access them? https://crossboundary.com/nigerias-multiple-exchange-rate-windows/

money to spend on goods and services, increasing competition between consumer wants and prioritisation. Therefore, some companies might resort to cost-cutting measures, potentially resulting in layoffs, as the higher exchange rate has also caused an increase in the cost of importing goods and services required for operations.[10] Despite the challenges associated with the implementation of the CBN's unified exchange rate policy, foreign investments have increased in Q1 of 2024 in comparison with Q1 of 2023, as seen in the table below:

S/N	Q1 2023[11]	Q1 2024[12]
1.	Foreign investors' equities trading was US$1,132.65 million.	Foreign investors' equities trading rose 198.06% to US$3,376.01 million.
2.	Portfolio Investment, which accounted for 57.32% (US$649.28 million) of total capital imported.	Portfolio Investment ranked top with US$2,075.59 million, accounting for 61.48% of total capital imported.
3.	Top 3 countries of capital Importation: 1. The United Kingdom with US$673.64 million (59.47%); 2. The United Arab Emirates with US$108.28 million (9.56%). 3. The United States valued at US$95.36 million (8.42%)	Top 3 countries of capital Importation: 1. United Kingdom, with US$1,805.83 million (53.49%). 2. the Republic of South Africa, with US$582.34 million (17.25%); 3. the Cayman Islands, with US$186.21 million (5.52%).

Based on the above, critical sectors of the economy, such as the banking, trading, and Production/Manufacturing sectors, are attracting significant foreign investment. Additionally, due to its overall market size, Nigeria's venture capital market is expected to continue to experience a surge as tech startups are attracting international investors, signalling a growing interest in the country's innovation ecosystem. Therefore, Nigeria is expected to see a total capital raise in the venture capital market of US$704.9 million in 2024.[13]

Conclusion

The current FX volatility in Nigeria is a risk factor that investors typically consider before investing in Nigeria, as it can erode profits and increase capital costs. Depending on the stability of the foreign exchange market, the startups and companies that have received foreign investments can consider utilising some of their foreign currency inflows to guarantee, hedge, and secure local currency financing, which will be used to satisfy local currency costs. Startups can also utilise currency swap agreements to ensure the availability of foreign currency to meet their FX obligations.

Over the years, the CBN has adopted various mechanisms and policies to sustain the Naira and attract investors. It is projected that the CBN will continue tightening policy by increasing MPR in the near term, which seems necessary to more fully control inflation and attract foreign investment, as rapid credit and money-supply growth suggest a still-loose monetary context[14]. However, there are risks of inadvertent growth slowdown associated with

10 Beyond Numbers: The Impact of The CBN's Unified Exchange Rate Policy on the 2023 H1 Performance of Nigeria's Corporate Giants https://www.linkedin.com/pulse/beyond-numbers-impact-cbns-unified-exchange-rate-policy-aribisala-1f
11 Nigeria Capital Importation Q1 2024 https://nigerianstat.gov.ng/elibrary/read/1241527
12 Nigeria Capital Importation Q1 2024 https://nigerianstat.gov.ng/elibrary/read/1241527

13 Statista, https://www.statista.com/outlook/fmo/capital-raising/traditional-capital-raising/venture-capital/nigeria
14 Fitch Ratings, Nigeria Policy Tightening Is a Step Towards Addressing Economic Challenges. Nigeria Policy Tightening Is a Step Towards Addressing Economic Challenges (fitchratings.com)

the policy. With the real sector already burdened by high borrowing costs and inflation, the CBN's decision could further shrink the sector by disincentivising investments and may give rise to higher non-performing loans.[15] To address Nigeria's FX challenges, monetary policymaking must improve credibility and consistency and be aligned with fiscal policies, resulting in a sustained reduction of inflation and distortions in the FX market.

15 KPMG: Nigeria's Monetary Tightening Policy Will Attract More FX Inflows, But Not Enough To Tame Inflation. KPMG: Nigeria's Monetary Tightening Policy Will Attract More FX Inflows, But Not Enough To Tame Inflation - Arise News

MERGERS AND ACQUISITIONS (M&A) ACTIVITY: ANALYSIS OF RECENT M&A DEALS, REGULATORY CHALLENGES, AND STRATEGIC CONSIDERATIONS FOR PRIVATE EQUITY AND VENTURE CAPITAL FIRMS



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OVERVIEW

Mergers and acquisitions (M&A) are strategic corporate actions driven by various economic factors, whether arising from internal restructuring initiatives, compliance with regulations, or external market forces. The fluctuating rate of M&A deals in Nigeria reflect the impact of macroeconomic headwinds such as economic expansions, recessions, political shifts, and regulatory framework. These elements shape the trends and patterns of M&A in Nigeria's business terrain.

We have herein considered the Nigerian M&A landscape in H1 2024, including recent M&A activities, regulatory challenges, and strategic considerations for private equity and venture capital firms.

ANALYSIS OF RECENT DEALS IN THE M&A SPACE

Amid challenges ranging from political instability to foreign exchange risks, Nigeria witnessed significant M&A activities across various sectors, in terms of deal values and volumes. According to a report from Business Day, private equity investments in Nigeria surged by 321.8% percent in the first quarter of 2024. This significant increase reflects sustained investor interest and emphasizes the country's promising long-term potential.

The biggest transactions were recorded in Nigeria's energy space. International oil companies (IOCs) continue to divest their assets in Nigerian's onshore sector in alignment with international pressure to cut funding for fossil fuel as well as operating challenges. IOCs exits present opportunities for local oil companies to increase their production capacity. In January 2024, Shell agreed to sell its 30% interest in its Nigerian onshore subsidiary the Shell Petroleum Development Company of Nigeria Limited (SPDC) to Renaissance, a consortium of 4 Nigerian firms and 1 foreign company for $2.4 billion [16] .Similarly, in February 2024, TotalEnergies announced that it is seeking to sell its 10% interest in SPDC [17]. Deal activities continued in March 2024 as Savannah Energy acquired its partner Sinopec International Petroleum Exploration and Production Corporation's 49% stake in the Stubb Creek oil and gas field for a total of $61.5 million.[18]

In the entertainment space, Universal Music Group (UMG) made a significant play in February 2024 by acquiring a majority stake in prominent Nigerian music label Mavin Global, subject to regulatory approval[19].The deal value was undisclosed, but it aims to accelerate Mavin Global's global expansion and talent showcasing capabilities by leveraging UMG's vast resources and reach.

In June 2024, the Fast-Moving Consumer Goods (FMCG) sector witnessed a landmark deal: Singapore-based conglomerate Tolaram Group expanded its footprint in Nigeria's FMCG sector. Tolaram Group acquired Diageo's 58.02% stake in Guinness Nigeria Plc, under terms that include long-term license and royalty agreements for continued local production of the Guinness brand and other Diageo beverages[20].

Another notable transaction involves Dubai-based EnjoyCorp Limited's acquisition of 100% shares in the Raysun Nigeria Limited (a subsidiary of Heineken International B. V) in June 2024, resulting in an indirect acquisition of an 86.5% controlling stake in Champion Breweries plc[21], a leading regional brewery company. The deal aims to facilitate increased local participation in Nigeria's FMCG sector.

The dominance of foreign venture capital in Nigeria's technology sector leads to funding volatility in response to global shocks and cautious pullback by foreign

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16 cf215e_0a8f063f1ad84117bb55f23dbed2b35d.pdf (dealmakersafrica.com)

17 https://www.reuters.com/business/energy/totalenergies-looks-exit-nigerian-onshore-oil-following-shell-2024-02-08/

18 https://www.reuters.com/business/energy/totalenergies-looks-exit-nigerian-onshore-oil-following-shell-2024-02-08/

19 Universal Music Group to acquire majority stake in Mavin Global - Businessday NG

20 Diageo transforms business model in Nigeria | Diageo

21 Champion Breweries - EnjoyCorp acquires Champion Breweries.pdf (ngxgroup.com)

investors. However, several deals were recorded within the period under review. In March 2024, Moove, Nigeria-founded mobility company announced a $100 million Series B funding round led by Uber, marking the rideshare company's first investment in Africa22. Three deals were announced in May: Renda, a logistics company raised $1.9 million in pre-seed funding for expansion to other Nigerian cities and Kenya; Seamfix, a 17-year identity solutions company23, raised $4.5 million from Alitheia Capital24; and Brass announced its acquisition by an investment group led by Paystack25, with participation from PiggyVest, Ventures Platform, and P1 Ventures.

We envisage a wave of M&A activities in the banking sector, following the recapitalization guidelines for Nigerian banks released by the Central Bank of Nigeria (CBN) in March 2024 with a deadline of March 2026. This increase comes nearly 2 decades after the last recapitalization exercise in 2004 and marks a 9004% increase.

NAVIGATING REGULATORY COMPLEXITIES: KEY CHALLENGES FOR PE/VC FIRMS IN M&A TRANSACTIONS IN NIGERIA

For private equity (PE) and venture capital (VC) firms operating in Nigeria, M&A transactions are often pivotal to their investment strategies. However, navigating the country's regulatory landscape can present significant challenges that must be carefully managed to ensure compliance and mitigate risks.

Most PE/VC firms are sector-agnostic, and primary regulatory hurdles arise from the diverse range of regulators overseeing their portfolio businesses. Consequently, investments in highly regulated sectors may require obtaining approval or notifying the relevant regulatory authority before consummating a transaction.

As investors look for regulatory certainty and shortened transaction timeline, a general key consideration is notification and approval under the Federal Competition and Consumer Protection Commission (FCCPC). Further to Section 93(4) of the FCCPC Act 2018 and the Notice for Threshold for Merger Notification 2019, the FCCPC shall be notified of an M&A deal where the undertakings meet the required threshold that is the combined annual turnover of the acquirer and target in, into or from Nigeria that equals or exceeds ₦1 billion or the annual turnover of the target undertaking in, into or from Nigeria that equals or exceeds ₦500 million. A transaction is also notifiable if it would result in a change of control. The investors should also take into cognizance the processing fees required for the notification range from 0.3% of the first 500 million, to 0.225% of the next 500 million, and 0.15% of any sum thereafter of the valuable consideration.

Beyond the FCCPC, PE/VC firms must also navigate sector-specific regulatory bodies and their respective requirements. For instance, investments in the financial services sector may require approvals from the CBN or the Securities and Exchange Commission (SEC), while energy sector investments may involve the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) or the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA).Failure to comply with these regulatory requirements can result in significant legal and financial consequences, including fines, penalties, and potential nullification of the M&A transaction.

Navigating this complex regulatory landscape can be a strenuous task, often plagued by bureaucratic delays and inefficiencies. PE/VC firms may encounter lengthy approval processes, multiple rounds of documentation submissions, and opaque decision-making processes, which can significantly prolong M&A transaction timelines. These delays can have far-reaching implications, including increased transaction costs, potential erosion of deal value, and missed market opportunities.

To overcome these challenges, PE/VC firms must adopt a proactive and comprehensive approach to planning and

22 cf215e_0a8f063f1ad84117bb55f23dbed2b35d.pdf (dealmakersafrica.com)

23 https://empowerafrica.com/nigerian-logistics-startup-renda-secures-1-9-million-pre-seed-funding/:~:text=Renda%2C%20a%20Nigerian%20logistics%20startup,participation%20from%20several%20other%20investors

24 Seamfix Secures $4.5 Million Funding from Alitheia IDF To Expand Digital ID And Credential Services across Africa - Seamfix

25 https://www.trybrass.com/blog/product-updates/paystackandBrass

structuring deals. This involves seeking legal counsel and engaging with relevant regulatory authorities timely to identify and address potential legal hurdles.

STRATEGIC CONSIDERATIONS FOR PRIVATE EQUITY AND VENTURE CAPITAL FIRMS

Diligent preparation and strategic considerations are key elements to ensure the successful outcome of a deal. PE/VC firms looking to deploy investment funds into identified businesses are often keen to avoid any showstoppers in the middle of deals. The following are strategic considerations for PE/VC firms and would apply both to considerations for investing for the buy side, and demonstrate preparedness for the sell side.

Due diligence, exit strategies, and portfolio optimization are key strategic considerations for PE/VC firms in Nigeria.

TRANSACTION TIMELINE & COSTS

A key consideration for dealmaking is streamlining the transaction timeline and costs. Certain options may be considered while entering into deals, such as requesting expedited notification and approval from regulators.

Regulation 21 of the FCCPC Merger Review Regulation (MRR) 2020 provides an opportunity for merging parties to apply through a simplified and expedited procedure. This option is available when the parties assess that the proposed merger is less than likely to prevent or lessen competition and no further evidence will likely be uncovered to revise the finding. Similarly, there is a simplified and expedited procedure for foreign-to-foreign mergers with Nigerian component. Under the expedited procedure, the FCCPC concludes its review and issues decisions within 15 business days.

DUE DILIGENCE

A key step for diligent preparation in Nigeria's dynamic M&A environment is to place heightened emphasis on rigorous due diligence processes, with a strong focus on legal due diligence. Conducting comprehensive assessments that go beyond financial metrics is essential, and legal due diligence plays a pivotal role in unearthing and mitigating legal and regulatory risks to ensure watertight compliance. It is vital to scrutinize corporate governance structures, evaluate contractual obligations, assess intellectual property rights, and identify potential liabilities or legal disputes that could impact the target company's operations or valuation or result in significant financial implications post-acquisition.

Additionally, legal due diligence plays a crucial role in structuring the transaction itself, including negotiating the valuation and purchase price, ensuring proper legal documentation in terms of conditions, warranties and indemnities. This process can significantly impact the potential risks, liabilities, and post-acquisition integration challenges faced by the acquiring firm.

EXIT STRATEGIES

A defined route to a successful exit is a paramount consideration for investors looking to recoup their equity investment post-close of M&A transactions. As portfolio companies mature and reach critical growth stages, these firms must carefully navigate the intricate process of exiting their investments by employing strategic approaches to maximize value creation.

In recent times, PE/VC firms experienced global lull in sale of interest in portfolio companies. According to data published by the African Private Equity and Venture Capital Association, PE firms achieved 17 exits from portfolio companies across Africa in the first 6 months of 2023. In Nigeria, the decline in exit activity is driven by issues such as high interest rates, inability to repatriate capital due to FX instability, the devaluation of the naira, and socio-political issues. This difficulty in finding suitable exit opportunities has resulted in longer holding periods beyond sunset targets or lower liquidity.

An integral part of any successful exit strategy is a thorough review of the terms and conditions outlined in the relevant agreement governing the PE investment. Provisions such as passage of time, fulfillment of financial objectives, liquidation and other investors rights, must be carefully examined, as they often stipulate specific conditions or trigger events that could impact the timing, valuation, and overall feasibility of the exit.

Additionally, PE/VC firms must identify and obtain any necessary regulatory approvals or notifications required for the exit process. Depending on the portfolio company's industry, approvals may be mandated from bodies such as the FCCPC, the SEC, or other relevant regulatory authorities.

Finally, evaluating and optimizing the tax implications of an exit is a critical step in maximizing returns. PE/VC firms should seek guidance from tax experts to navigate the complexities of capital gains tax, withholding tax, and any available tax incentives or exemptions. As exits are ultimately dependent on market and economic conditions, PE/VC firms may need to proactively renegotiate the terms of the exit or explore alternative contractual arrangements to achieve a successful exit.

PORTFOLIO OPTIMIZATION

Portfolio optimization and consolidation should also be a strategic priority. PE/VC firms should continuously evaluate their existing portfolios, pruning non-core or underperforming assets to allocate capital more effectively. Identifying consolidation opportunities within portfolio companies can lead to scale advantages, and cost synergies.

Furthermore, adopting a balanced approach to portfolio diversification is crucial for managing concentration risks. While certain sectors like technology and consumer-focused businesses may present compelling opportunities, maintaining a diversified exposure across sectors, geographies, and investment stages can mitigate the impact of potential shocks or downturns in specific industries.

CONCLUSION

Dealmaking activity relies on a great deal of certainty and compliance. Firms operating in Nigeria must strike a delicate balance between capitalizing on growth opportunities and exercising prudent risk management. This requires a vigilant examination of macroeconomics and sociopolitical elements. Proper appraisal of key elements, often uncovered during market research, technical, financial, and legal due diligence, can assist in deciding whether to deploy equity or debt capital or a hybrid.

ÆLEX

FIRS CIRCULAR ON THE TAXATION OF FOREIGN EXCHANGE DIFFERENCES: HIGHLIGHTS AND KEY TAKEAWAYS FOR PRIVATE EQUITY AND VENTURE CAPITAL FUNDS


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Introduction

Given Nigeria's volatile foreign exchange (FX) environment, the tax treatment of FX gains and losses is a crucial factor for investors, especially in managing the treasury functions and FX liquidity of portfolio companies. Understanding the tax implications of FX gains and losses is vital for funds and fund managers as it directly impacts companies' profitability.

While the International Financial Reporting Standards (IFRS) offer guidelines for accounting for foreign currency transactions, these standards do not always align with Nigerian tax laws. To address this, the Federal Inland Revenue Service (FIRS) issued an information circular titled "***Tax Treatment of Foreign Exchange Transactions***" on June 14, 2024 (the Circular). This article examines the key provisions of the Circular and essential takeaways for private equity (PE) and venture capital (VC) investors with investments in local companies.

Unrealised FX Gains and Losses

According to the Circular, unrealised FX gains and losses, which result from the revaluation of foreign currency items for accounting purposes, have no impact on tax liabilities.
Therefore, for PE and VC investors, fluctuations in FX rates that do not involve actual cash transactions will not affect the tax position of their portfolio companies, allowing for more stable financial planning.

Realised FX Gains and Losses

Realised FX gains and losses, however, do impact tax liabilities. The Circular distinguishes between realised FX gains and losses arising from revenue-generating transactions and those arising from non-revenue-generating transactions such as asset purchases or loan repayments (capital differences). The classification of any FX transaction depends on the nature of a taxpayer's ordinary business.

Revenue Gains and Losses

Realised FX revenue gains and losses are to be included in calculating profit liable to Companies Income Tax (CIT). Realised FX revenue gains are subject to CIT, while realised FX revenue losses can be deducted as an expense in computing CIT. This treatment will affect the net profitability of portfolio companies, as revenue gains will increase taxable income, whereas revenue losses will reduce it, impacting overall returns.

Capital Gains and Losses

Realised FX capital gains are subject to a 10% capital gains tax, but realised FX losses are not deductible. This would affect the after-tax returns on capital transactions. Investors need to account for this in their financial planning to forecast returns accurately.

Monetary Items

FX gains and losses on the settlement or recovery of a monetary item are treated as realised FX differences. Additionally, FX gains and losses on any monetary item are treated as taxable income or deductible expenses for income tax purposes unless the underlying transaction represents the principal component of a capital item. This impacts the treatment of various financial instruments and transactions, necessitating careful consideration in financial management strategies.

Hedging Transactions

The Circular states that the tax treatment of gains and losses from hedging is to be delayed until the underlying hedged item is realised. Upon realisation, the treatment—either as revenue or capital—depends on the classification of the underlying item. This is crucial for managing FX risk and requires careful consideration in hedging strategies to ensure optimal tax outcomes.

Tax Exemptions and Documentation

The Circular specifies that FX gains and losses related to tax-exempt items are neither taxable in the case of a gain nor deductible in the case of a loss.

Also, companies must maintain comprehensive records of foreign currency transactions and provide detailed reconciliations in their tax returns. This requirement emphasises the importance of robust documentation and compliance, which is crucial for portfolio companies to avoid tax disputes and penalties.

Artificial Transactions and Other Considerations

The Circular states that the FIRS will scrutinise transactions that appear to artificially realise or defer FX gains and losses for tax avoidance purposes and will make necessary adjustments.

The FIRS will also apply transfer pricing rules to peer-to-peer exchange rates in related-party transactions. Additionally, the Circular emphasises that commissions, fees, and other charges must be wholly, reasonably, and exclusively incurred to be deductible. Companies are also required to segregate FX gains and losses by line of business and applicable tax regimes.
This highlights the need for transparency and proper structuring of transactions to ensure compliance with tax regulations and avoid adjustments or penalties.

Key Takeaways

The Circular is perhaps more noteworthy for its timing than for its contents, given that it mostly restates principles which had been in application in the Nigerian tax system for some time.

The FIRS has been known to issue circulars for the purpose of reminding taxpayers of pre-existing provisions of the tax laws and signalling an intention to enforce those provisions more strictly going forward. In addition, the Circular may also have been intended to form part of a coordinated monetary and fiscal policy response to the extreme FX market volatility that Nigeria has experienced over the past year.

Furthermore, it is probably not coincidental that the issuance of an initial iteration of the Circular on 14 June, 2024 was quickly followed by the presentation of an executive bill proposing to impose a 50% tax on Nigerian banks' windfalls. The proximity of both events signals an intensification of government scrutiny on FX-related transactions.

It would therefore be prudent for investors with portfolio companies which transact in FX or which have FX hedging solutions in place to proactively develop risk management strategies in relation to the issues raised in the Circular in anticipation of stricter enforcement going forward. Flowing from the Circular, some of the issues on which more scrutiny is expected from the FIRS include related-party transactions, segregation of FX gains and losses according to business lines, and documentation of transactions generally.

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Introduction: Private Equity and Venture Capital in Nigeria

Private Equity (PE) and Venture Capital (VC) have seen significant advancement in recent years, especially post COVID-19. Investment themes have veered from entirely focusing on making profit and a rather shallow enforcement of ESG concerns to a justifiable emphasis on sustainable impact before, during and as a result of investment. Securing investments that are geared towards improving collective wellbeing by investing along socially responsible lines have become critical. Consequently, by providing access to funding for a wide range of business outfits, PE and VC investments are taking the lead in improving the business landscape in Nigeria.

Nigeria has hosted some of the largest investments into Africa, in terms of deal volume and value. In the first quarter of 2024, Nigeria's total capital importation saw an increase to $3.37 billion26. It has been reported that private equity investments in Nigeria jumped by 321.8 per cent in Q1 of 2024, with investments largely on deals from energy and educational technology (edtech) firms,27 and it is quite clear that investments by PE and VC firms contribute greatly towards the growth of the economy, particularly in the non-oil sector.28

While returns and profit are important to investors, there are other emerging investment trends in the PE/VC ecosystem that are fast becoming investor favourites. These trends include ESG investing, impact investing, diversity-focused investments and digital transformation, including artificial intelligence, cybersecurity and moonshot technologies. Now, more than ever, investors are concerned about how much impact their funding can make in improving environmental sustainability, social interactions with a company's stakeholders and steering a company's leadership along the path of sound corporate governance.

Environment, Social, Governance (ESG) Investing

ESG is a set of standards used to measure an organisation's environmental, social and governance impact.29 ESG investing is an investment approach that incorporates Environmental, Social, and Governance factors into the investment decision-making process.30 The environmental aspect of the ESG standards addresses the environmental impact of companies' operations and encourages environmental accountability. The social factors entail how a company handles relationships with stakeholders, its labour practices, diversity and inclusion policies, and how sustainable value is created for stakeholders, while the governance criterium refers to a company's management philosophy, policies, including stakeholders' rights. Integrating ESG considerations into investment processes means recognising that ESG is not a standalone concept. It is considered at various stages of the investment process, including portfolio construction, due diligence, and investment monitoring. Integration aims to identify and manage risks and opportunities related to ESG criteria, ultimately seeking to enhance

26 Nairametrics available at https://nairametrics.com/2024/07/02/top-10-sectors-that-attracted-most-foreign-investment-in-nigeria-in-q1-2024/ as culled from the National Bureau of Statistics (NBS) Q1 2024 report, accessed on 04 July 2024.

27 BusinessDay Newspaper Article of Tuesday 09 July 2024; Nigeria's private equity investments

up 322% on energy, edtech; available at https://cdn.businessday.ng/wp-content/uploads/2024/07/BD_20240709.pdf accessed on 12 July 2024.

28 According to the Nigerian Gross Domestic Product Q4 2023 Report by the National Bureau of Statistic, the growth in the non-oil sector of Nigeria was driven mainly by financial institutions, telecommunication, agriculture, trade, construction, manufacturing and real estate. We note that these are sectors that PE and VC investments contribute to in great proportion.

29 Tom Krantz, Alexandra Jonker, "What is environmental, social and governance (ESG)?", 24, January, 2024, available at https://www.ibm.com/topics/environmental-social-and-governance accessed on 04 July 2024.

30 United States Private Equity Council, "From Risk To Reward: How ESG Investing Is Revolutionizing Private Equity", 30 June 2024 available at https://www.uspec.org/blog/from-risk-to-reward-how-esg-investing-is-revolutionizing-private-equity accessed on 12 July 2024.

long-term investment performance and sustainability.31 Over the years, ESG has gained popularity and now forms one of the key considerations for investors. In 2020, it was reported that as much as 85% of investors considered ESG factors in their investments.32 In 2024, this figure has risen to 89%.33

The growing implementation of ESG standards has taken different forms since the beginning of 2024. For example, The International Sustainability Standards Board's (ISSB) disclosure standards are effective for reporting periods beginning on or after January 1st, 2024 34. Although currently voluntary in many jurisdictions, there is a high likelihood of enforcement in the future.

In Nigeria, there has been no specific legislative development in furtherance of ESG investing since the beginning of 2024, however, there are existing legislative instruments which principally focus on ESG reporting like the Securities and Exchange Commission (SEC) Guidelines on Sustainable Financial Principles for the Nigerian Capital Market 2021, the various sectoral codes of corporate governance, the Sustainability Disclosure Guidelines in 2019 released by the Nigerian Exchange (then Nigerian Stock Exchange)35. These have in recent years formed a basis of assessment for investors looking to invest in Nigerian companies, typically for companies listed on the Exchange. However, from our experience advising on PE and VC deals, that it is becoming a growing practice for funds to require portfolio companies to comply with and adopt prescribed ESG standards upon the investment being made.

However, ESG investing in Nigeria is fraught with challenges such as data inaccessibility, limited ESG disclosure, complexity of undertaking ESG due diligence, inadequate regulation, and the challenge of balancing financial returns and impact. 36 In dealing with the challenges of ESG investing, stakeholders in the PE/VC ecosystem are encouraged to (i) collaborate, establishing industry-wide standards for ESG data collection, reporting, and disclosure to improve the availability and quality of data, (ii) actively engage with portfolio companies to encourage enhanced disclosure practices, (iii) collaborate with ESG experts or specialized service providers in dealing with the concerns of ESG due diligence, and (iv) adopt a long-term perspective, focusing on the potential benefits of sustainable practices and responsible investments.

Impact Investing

Impact Investing refers to investments made with the intention to generate positive, measurable social/environmental impact alongside financial returns37. Impact investments are typically classified as a form of sustainable investing. While the primary objective of traditional investors lies in maximizing profits, impact investors prioritize effecting tangible socio-economic or

31 De Souza Barbosa, A., da Silva, M.C.B.C., da Silva, L.B. *et al.* Integration of Environmental, Social, and Governance (ESG) Criteria: Their impacts on Corporate Sustainability Performance. *Humanit Soc Sci Commun* 10, 410 (2023), available at https://doi.org/10.1057/s41599-023-01919-0 accessed on 04 July 2024

32 Swetha Venkataramani, "The ESG Imperative: 7 Factors for Finance Leaders to Consider", Gartner, 10 June 2021, available https://www.gartner.com/smarterwithgartner/the-esg-imperative-7-factors-for-finance-leaders-to-consider accessed on 04 July 2024

33 Key ESG, "50 ESG statistics you need to know in 2024" available at https://www.keyesg.com/article/50-esg-statistics-you-need-to-know-in-2024 accessed on 04 July 2024.

34 ESG Global Advisors, "6 ESG Trends That Will Shape the Market in 2024", 17 January 2024 available at https://www.esgglobaladvisors.com/news-views/2024-esg-trends/ accessed on 04 July 2024.

35 Now the Nigerian Exchange Limited (NGX)

36 United States Private Equity Council, "From Risk To Reward: How ESG Investing Is Revolutionizing Private Equity", 30 June 2024 available at https://www.uspec.org/blog/from-risk-to-reward-how-esg-investing-is-revolutionizing-private-equity accessed on 12 July 2024.

37 Global Impact Investing Network, 'What You Need to Know About Impact Investing' (The GIIN) < https://thegiin.org/publication/post/about-impact-investing/what-is-impact-investing> accessed 27 June 2024.

environmental development. This strategy involves directing funds into projects or organisations that are expressly tailored towards clear social/environmental goals, with a view to profit financially when these ventures succeed.38

The global impact investing market is projected to grow from $478.15 billion in 2023 to $550.52 billion in 2024, representing a compound annual growth rate (CAGR) of 15.1% 39 . Sub-Saharan Africa, noted for its green investment potential, is increasingly attracting impact investment capital. The Global Impact Investing Network (GIIN) reports that 10% of global impact assets under management are allocated to sub-Saharan Africa, following Europe (23%) and the U.S. and Canada (29%)40. Notably, the GIIN also highlights that geographic priorities are evolving. Specifically, 56% of investors intend to increase their impact assets in sub-Saharan Africa, underscoring the region's growing appeal41.

The multitude of socio-economic challenges facing Nigeria, such as inadequate healthcare, insufficient infrastructure and a high level of illiteracy, present ample opportunity for impact investment. Key drivers of this market include global trends and investor preferences, alongside the adoption of impact investing towards achieving global sustainable development goals (SDGs). Domestically, factors such as the rise of technology, the need to finance development, and the growing activities of developmental agencies, are also pivotal.42

The impact investing landscape in Nigeria has witnessed notable growth, particularly highlighted by the activity from 2015 onwards. Notable sectors with observable impact investing engagement include agriculture, education, technology, healthcare and infrastructure. From 2015 to 2019, agriculture, education, and healthcare sectors in Nigeria received 20%, 10.9%, and 0.4% respectively, of non-DFI impact capital which together accounted for 56% of the impact capital invested43. Also, from 2019 to 2021, a significant portion of DFI investments were geared towards health, education and agriculture.44

In the clean energy sector, Okra Solar, a Nigerian start up focused on making affordable solar systems accessible to rural communities, secured $12,000,000 in series A funding45. WeCyclers, a Nigerian company which fosters environmental sustainability and economic development through recycling initiatives in low-income communities, received $2,000,000 in investments. 46 The African Development Bank (AfDB) committed $134 million to bolster Nigeria's agricultural sector, aiming to significantly boost food production and enhance food security.47

38 Optimy, 'Introduction to Corporate Impact Investing' (Optimy, 24 May 2022) <https://www.optimy.com/blog-optimy/introduction-to-corporate-impact-investing:~:text=On%20the%20other%20hand%2C%20the%20goal%20of%20impact,financially%20when%20that%20project%20or%20business%20is%20successful> accessed 27 June 2024

39 The Business Research Company, 'Impact Investing Global Market Report' (The Business Research Company) <https://www.thebusinessresearchcompany.com/report/impact-investing-global-market-report:~:text=The%20impact%20investing%20market%20size,(CAGR)%20of%2015.1%25> accessed 27 June 2024.

40 Global Impact Investing Network, 'Impact Investing Allocations, Activity & Performance' (2023) <https://s3.amazonaws.com/giin-web-assets/giin/assets/publication/research/2023-giinsight-%E2%80%93-impact-investing-allocations-activity-and-performance.pdf> accessed 27 June 2024.

41 Global Impact Investing Network, 'Emerging Trends in Impact Investing' (2023) <https://s3.amazonaws.com/giin-web-assets/giin/assets/publication/research/vol-4-2023-giinsight-%E2%80%93-emerging-trends-in-impact-investing.pdff> accessed 27 June 2024.

42 Ibid.

43 Nigerian National Advisory Board for Impact Investing, 'Investing for Impact in Nigeria: A Deep Dive into Agriculture, Education, and Health Sectors' Impact Investors Foundation) <https://www.nabii.impactinvestorsfoundation.org//about-us/impact-investing> accessed 28 June 2024.

44 *Ibid*.

45 African Venture Capital Association, 'Venture Capital in Africa Report 2023 (AVCA, 2024) https://www.avca.africa/media/o5makqy5/avca234-19-vc-report_4.pdf accessed 29 June 2024

46 *Ibid*.

47 Channels Television, 'AfDB to Boost Food Production in Nigeria with $134m' (Channels Television, 4 March 2024) <https://www.channelstv.com/2024/03/04/afdb-to-boost-food-production-in-nigeria-with-134m/> accessed 29 June 2024

Local institutional participants include the Tony Elumelu Foundation, which set up an Impact Economy Innovation Fund to support smallholder farmers and the Impact Investors Foundation (IIF), which recently launched a Sustainable Systems for Research and Innovation Financing Project48. The Nigerian government has also shown active support for impact investing, evident from the endorsement of the Nigerian Wholesale Impact Investment Fund (WIIF) in May 2023, accompanied by a commitment to provide 50% seed capital. The WIIF was created through collaboration of the National Advisory Board on Impact Investments (NABII), Impact Investors' Foundation (IIF), Ford Foundation, and Nigeria Competitiveness Project.49

Although still at a nascent stage, the impact investment market in Nigeria is fast growing. The relatively slow progression of this trend can be linked to several challenges including a limited number of enterprises with appropriate track record demonstrating potential, macroeconomic uncertainties like foreign exchange risks and difficulties in capital repatriation. High operational costs and restricted exit strategies further complicate the landscape.

As Nigeria continues to mature in its impact investment journey, addressing these barriers will be crucial for harnessing the full potential of this innovative financing model, and ultimately driving sustainable development across the nation.

Emerging Investment Trends in Digital Transformation

Digital transformation is changing the tides across many sectors through various means including private equity. PE and VC firms are fast embracing digital transformation in investing and management of their portfolios. A recent report by Ernst & Young projected that in 2024, more PE and VC firms will use digital tools for operations, noting a quick shift from automating back-office functions to automating enterprise-scale platforms.50 PE and VC firms are embracing technological tools on account of ease, efficiency and growth enabled by such tools. Further, the use cybersecurity tools to access data rooms or host data makes for safety in the use of virtual data rooms for due diligence. Some key drivers in the widespread embrace of digital transformation include operational efficiency. enhanced customer experiences,51 increased agility, 52 and innovative imperative.53

In addition, the trend is that companies that have embraced digitally transformation or whose focus is creating digital transformation tools are more attractive to PE and VC investment. According to the AVCA's 2023 Venture Capital Activity in Africa, the information technology sector was the second-most active sector in terms of volume with 107 deals concluded in 2023.54 The annual deal volume of tech-enabled startups in Africa has evolved over the years from 103 deals in 2018 to over 442 deals in 2024 as the digital transformation of traditional and new industries has been driving efficiency and creating opportunities for investments.55

We note certain sectors which are currently attracting significant investments by leveraging technology to drive

48 Nigerian Observer, 'IIF Launches SSRF II Project, ESO Collaborative to Deepen Investment in Nigeria' (Nigerian Observer, 2024) <https://nigerianobservernews.com/2024/07/iif-launches-ssrf-ii-project-eso-collaborative-to-deepen-investment-in-nigeria/> accessed 29 June 2024

49 Nigerian Tribune, June 5 2023 available https://tribuneonlineng.com/fg-commits-50-seed-capital-to-nigerian-wholesale-impact-investment-fund/ accessed on 05 July 2024

50 Timothy Tracy, Ivan Lehon " Top five equity Trends for 2024", available at https://www.ey.com/en_us/insights/private-equity/five-key-trends-for-private-equity-firms-in-2024 - :~:text=Summary,improve%20strategic%20and%20operational%20efficiency accessed on 12 July 2024.

51 *Ibid.*

52 E.g., Netflix's transformation of the entertainment industry by offering streaming services that eliminated video rental services contributed to its valuation of $149 billion.

53 Digital transformation fosters an environment conducive to innovation, driving the development of new products and services.

54 Venture Capital in Africa Report, 2023 available at https://www.avca.africa/data-intelligence/research-publications/2023-venture-capital-in-africa-report/ accessed on 04 July 2024

55 Ibid.

innovation, improve efficiency, and capture new market opportunities. These sectors include the financial technology (fintech) sector which remains a major investment hub with solutions focusing on digital payment platforms, blockchain technology, cryptocurrencies, innovations in insurance operations (InsurTech), education (edtech) and health technology (healthtech). E-commerce and retail technology is a tech sector which has attracted investments in online marketplaces, omnichannel retail solutions, and personalized shopping experiences. Companies like Amazon are pioneering technologies that improve supply chain visibility, enhance inventory management, and optimize last-mile delivery efficiency.56

Artificial Intelligence (AI) has also become a major frontier in PE and VC investing as it is reshaping traditional industries, driving efficiency, and creating new investment opportunities. AI (which encompasses automation, machine learning, and robotics) raised nearly US$50 billion in investments globally in 2023. Between 2022 and 2023, companies leveraging AI were responsible for the year's most substantial and talked about venture capital fundraisers with African startups employing AI-related technologies raising US$641mn across 103 deals.57 In 2024, it is projected that PE firms will expand their use of artificial intelligence, expanding the use of the technology for due diligence, LP requests and reporting, setting the stage for large-scale transformation that will affect the entire enterprise.58 It is also envisaged that generative AI (GenAI) will also be deployed as a value driver in portfolio companies, accelerating traditional levers like cost takeout, top-line transformation and revenue growth.59

Conclusion

As Nigeria tackles economic challenges such as currency devaluation and inflation, the role of PE and VC in fostering sustainable development has never been more critical. Emerging trends in digital transformation, ESG, and impact investing present unique opportunities for investors to contribute to Nigeria's development while achieving financial returns. The increase in investments in digital technology highlights the country's potential to pioneer these innovative fields. Additionally, the use of digital technology by PE and VC firms would make for increased efficiency in portfolio management, better investor engagement and impact reportage. As Nigeria continues to attract significant capital, the emphasis on sustainability, diversity, and digital advancement will be crucial in shaping a defiant future for Nigeria and her economy.

56 Venture Capital in Africa Report, March 2024. available at https://www.avca.africa/data-intelligence/research-publications/q1-2024-venture-capital-activity-in-africa/ accessed on 5 July 2024.

57 Business Day , "VCs invest $641 million in AI-enabled African startups" available at https://businessday.ng/technology/article/vcs-invest-641-million-in-ai-enabled-african-startups/ accessed on 12 July 2024.

58 Timothy Tracy, Ivan Lehon " Top five equity Trends for 2024", available at https://www.ey.com/en_us/insights/private-equity/five-key-trends-for-private-equity-firms-in-2024 - :~:text=Summary,improve%20strategic%20and%20operational%20efficiency accessed on 12 July 2024

59 *Ibid*

G. ELIAS

THE LEGAL AND REGULATORY FRAMEWORKS FOR VENTURE CAPITAL AND PRIVATE EQUITY FUNDING IN NIGERIA


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1. Introduction

Nigeria's rapidly growing economy, bolstered by its vibrant and entrepreneur enthusiastic working-age population, presents numerous opportunities for investments. According to a report by Disrupt Africa in 2022, of the $3.3 billion investments made into startups in Africa, Nigeria attracted the largest percentage (about 30% of total investments in Africa) totaling around $976 million.60

Over the past decade, Nigeria has emerged as a significant hub for VC and PE funding in Africa. While traditional investment mediums in Nigeria have been integral to funding (including bonds, equity, mutual funds, exchange-traded funds) VC and PE funding have gained prominence, with VC funding predominantly supporting startups looking to scale their businesses and PE funding focusing on established businesses.

Investing in the Nigerian market involves navigating through various legal and regulatory framework from inception of investment to exit stage. In this article, we explore the key components of Nigeria's legal and regulatory environment for PE and VC investments.

2. Entry and Initial Investment

Where a foreign VC or PE firm chooses to engage in foreign portfolio investment, incorporation in Nigeria is generally unnecessary as such PE or VC firm can invest directly in the target company. However, if the firm seeks to establish an investment arm or entity in Nigeria through which investments can be made in investee companies, it is required to be incorporated as a Nigerian company. CAMA, s. 78.

To inflow capital into Nigeria through the official market for VC or PE investments (equity or debt), an electronic certificate of capital importation ("**e-CCI**") must be issued to the foreign investor by an authorised dealer (*i. e.*, a licensed commercial bank). The e-CCI is issued within 24 hours of the importation of capital (foreign currency) into Nigeria. In the absence of the e-CCI, the investor will be unable to repatriate the proceeds of the investment capital and dividend/interest out of Nigeria through the official market.

It is pertinent for foreign PE or VC firms intending to invest in Nigeria to undertake legal and financial due diligence investigations on investee companies before investing in such companies to ensure that any potential risks to the investment are duly identified and mitigated or managed.

3. Regulatory Compliance

1. <u>National Office for Technology Acquisition and Promotion ("**NOTAP**") and Nigerian Investment Promotion Commission ("**NIPC**"):</u> Where a foreign PE or VC firm intends to transfer technology into a Nigerian company, the contract evidencing that transfer must be registered with the NOTAP within 60 days of execution (NOTAP Act, s. 5). Failure to register the agreement will lead to the foreign firm being unable to repatriate its capital at the official foreign exchange market. NOTAP Act, s. 7.

2. <u>Nigerian Investment Promotion Commission ("**NIPC**")</u>: Equity investment by a foreign VC or PE firm in a Nigerian entity will trigger a registration with the NIPC within 3 months of financial close of the investment. NIPC Act, s. 20 as amended by the Business Facilitation (Miscellaneous Provisions) Act 2022, s. 54 of the Schedule.

3. <u>Federal Competition and Consumer Protection Commission ("**FCCPC**")</u>: Generally, Nigeria's anti-trust regulator, the FCCPC's clearance will be required for any PE investment transactions where (a) the PE firm will acquire control of the investee company, and (b) in the financial year preceding the transaction, where the combined annual turnover of the acquirer/investor and the target equals or exceeds 1 billion Naira or the annual turnover of the target

60 Disrupt Africa, 'The African Tech Startups Funding Report' (DisruptAfrica.com, February 2023) <https://old.disruptafrica.com/wp-content/uploads/2023/02/The-African-Tech-Startups-Funding-Report-2022.pdf> accessed 24 June, 2024.

equals or exceeds 500 million Naira. FCCP Act, 2018, Notice of Threshold, 2019, s. 1.

4. Securities and Exchange Commission ("**SEC**"): The SEC regulates Nigerian public companies (quoted or unquoted). Investment in a public company will require the approval of the SEC. SEC's approval is also required where the investment by the PE or VC firm is by acquisition of shares held by a public company which constitute a significant property of that public company. SEC's approval will, however, not be required where the shares to be divested/sold is less than 15% of the total assets of the public company or does not constitute a business line of the company. (SEC Amendments to the Rule on Mergers, Take-overs and Acquisitions, 2021, Rule 3 & 4). Where the PE firm acquires more than 30% of the share capital of a public company, a tender offer is triggered, and the parties would be required to tender a mandatory offer. Investments and Securities Act, 2007 (as Amended), s. 131.

5. Securities Exchanges: Any PE or VC firm intending to acquire interest in a listed company, the rules and guidelines of the relevant exchanges will be complied with. For instance, the Nigerian Stock Exchange Rulebook, 2015 ("**NGX Rulebook**") (applicable to listed companies on the Nigerian Exchange Group Plc ("**NGX**")), a company listed on the NGX will notify the NGX of (a) an acquisition resulting in at least 5% ownership (NGX Rulebook, r. 15.32), or (b) any price sensitive event (NGX Rulebook, r. 17.3).

6. Other sector-specific regulatory requirements will be determined by the industry in which the target operates in.

7. Available Incentives for Investments

1. The Venture Capital (Incentives) Act, 2004 (the "**VCA**") contains available incentives to VC firms which meet the requirement set out in the VCA. To qualify for these incentives, the VC firm must invest at least 25% of the capital required for a venture project which is certified by the Federal Inland Revenue Service to have satisfied or be able to satisfy the objective(s) of the VCA which broadly involve industrial development and technology advancement. VCA, ss. 2 and 3.

Available tax incentives under section 4 of the VCA includes:

1. Capital Allowance on Equity Investment: VC firms are entitled to a capital allowance on their equity investment in a venture project company. This allowance is deductible from the assessable profit before calculating taxable profit and is available for the first five years of investment as follows: (i) 30% tax deduction in the first and second year; (ii) 20% tax deduction in the third year; and (iii) 10% tax deduction in the fourth and fifth years.

2. Exemption from Capital Gains Tax: VC firms are exempt from paying capital gains tax on profits from the disposal of equity interest in a venture project. The exemption percentage varies depending on the year the VC firm exits, provided the exit occurs within 15 years of investment.

3. Reduced Withholding Tax on Dividends: The withholding tax on dividends declared by a venture project company within the first 5 years and paid to a VC firm is reduced by 50%.

4. Additional incentives: Venture project companies are also eligible for incentives under the Industrial Development (Income Tax Relief) Act, Cap 17, Laws of the Federation of Nigeria, 2004 ("**Income Tax Relief Act**") and the Export (Incentives and Miscellaneous Provisions) Act, Cap E19, Laws of the Federation of Nigeria, 2004 (the "**Export Act**").

The Income Tax Relief Act contains extensive provisions on the grant of pioneer status (tax reliefs) to qualified companies operating in a pioneer industry for a period of 3 years, extendable by 2years. Notably, dividends declared by pioneer companies during this tax holiday are also exempt from withholding tax (Income Tax Relief Act, s.10).

However, since venture project companies eligible to benefit from this incentive must have their respective industry/product listed as a pioneer industry/product in the Gazette published by the President (Income Tax Relief Act, s. 1), until the President amends this list to include venture project companies' activities, venture project companies whose products/industry do not fall under the list may be unable to enjoy the reliefs as provided under the Income Tax Relief Act.

On the other hand, by the Export Act, Nigerian companies engaged in the manufacturing of goods for export, subject to meeting the requirements under the Export Act, enjoy, among other available incentives, the retention of all their export proceeds in foreign currency in their bank accounts in Nigeria (Export Act, s. 1). This retention takes effect as soon as the foreign exchange from the export sales is received in Nigeria. Consequently, VC firms with investment in exporting companies can immediately access returns on investment from foreign currency earnings.

5. In addition, by the Nigeria Startup Act, 2022 (the "**Startup Act**"), VC and PE firms enjoy certain incentives, such as investment tax credit equivalent to 30% of their investment in the labelled startup to be deductible from the companies' income tax which is payable on dividends received by the VC or PE firm and a waiver of capital gains tax on profits accruing from the disposal of shares held by a VC or PE firm in a labelled startup for at least a period of 2 years. (Startup Act, s. 29). Moreso, VC firms or PE firms duly registered as incubator and accelerator in Nigeria are entitled to grants from the Federal Government of Nigeria. Startup Act, s. 39.

6. Tax Considerations

PE firms registered in Nigeria will be subject to applicable taxes. Among other taxes payable, a PE firm (not being a small company), with an annual turnover of 100 million Naira and above is subject to 30% companies' income tax of its taxable profits and 20% where its annual turnover is more than 25 million Naira but less than 100 million Naira (Companies Income Tax Act, 1977 (as amended) ("**CITA**"), ss. 9 and 40). Education tax at the rate of 3% is also payable on the assessable profit of the investee company. Tertiary Education Trust Fund (Establishment Etc.) Act, 2011 (as Amended), s. 1(2).

Generally, and subject to the provision of the VCA as stated in para. 4(A)(II) above, 10% capital gains tax ("**CGT**") is also payable on gains made from the disposal of any shares held by the PE firm in a Nigerian company subject to these exceptions: (a) if the proceeds from the disposal are reinvested within the same year of assessment in the acquisition of shares in the Nigerian company, and where all proceeds are not reinvested, the exemption will apply to the portion of the proceeds reinvested; or (b) if the proceeds of the disposal is less than ₦100,000,000 (One Hundred Million Naira) in any 12 consecutive months. (Capital Gains Tax Act, Cap. C1, Laws of the Federation of Nigeria, 2004 (as amended), s. 30). Additionally, withholding tax at the rate of 10% (subject to applicable taxation treaties) would apply where dividends are paid to the PE or CV firm (where companies income tax has not been paid on the profit declared). CITA, s. 80.

7. Challenges to PE and VC Funding in Nigeria

Investment in some sectors requires a multi-layered regulatory approval process. This approval process may be time consuming for investors and result in investors expending additional costs in obtaining the requisite regulatory approvals. In addition, the severe foreign exchange liquidity squeeze in Nigeria makes it increasingly difficult for investors to access foreign currency when returns accrue. Besides, non-compliance with regulations can jeopardize the validity and enforceability of these investment transactions.

8. Recommendation for Potential Venture Capital and Private Equity investors in Nigeria

Despite the regulatory and general structural challenges, VC and PE investors can successfully invest in Nigeria by implementing strategic measures. This involves (a) undergoing comprehensive due diligence to understand the market, industry-specific regulatory environment, and potential risks associated with the investments, and (b) engaging local legal and financial advisors who are more knowledgeable of the Nigerian market, and leveraging the incentives provided by law to ease the investment process and maximizing returns.

Further, to address the foreign exchange challenges, VC and PE firms can explore various hedging structures, such as currency swaps, forward contracts, and options, to mitigate the risks associated with currency fluctuations.

9. Conclusion

Nigerian Legal and regulatory frameworks keep developing as the market continues to expand and creates a growing need for investments. As our laws evolve and improve, the future looks promising for VC and PE funding in Nigeria.

NIGERIA BANKING RECAPITALISATION: RESPONSE PATHWAY FOR OPERATORS

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The Central Bank of Nigeria (CBN) on 28 March 2024 released a recapitalisation circular stating the new minimum required capital for commercial, merchant, and non-interest banks in Nigeria. Premised on economic rebound and the revitalisation of economic activities to support the government's USD1trillion GDP target by 2030, the regulatory recapitalisation effort is broadly aimed at bolstering financial stability, attracting Foreign Direct Investments (FDIs), improving international credibility, and repositioning the banks to provide the required capital base for accelerated real economic growth and development in Nigeria.

Depending on the operating licence held by each of the operators, this new requirement implies that minimum capital will have to be increased by 2x to 10x multiples as depicted below:

Source: CBN

To this end, Access Bank, FCMB, Fidelity and GTbank have kicked-off the process of raising capital to meet up with the regulatory capital requirement ahead of the deadline and have all launched their Public Offers and/or Rights Issues. They are all in the market appealing to shareholders, customers, and the public to take advantage of the regulation and to buy into their equity story. Relatedly, the CBN recently approved the application of Unity Bank and Providus Bank to merge with a N700bn support for Unity Bank. We expect others to join the fray soon. As the race to recapitalisation gets more intense, we have highlighted below some of the intricacies relating to raising capital and/or the complexities that must be considered within the context of macroeconomic realities in Nigeria today.

Investor sentiments and valuation

Investors are interested in returns on their investment, as such, they will most likely be looking at valuation multiples for these banks. Despite extreme macroeconomic realities in Nigeria, the top banks have certainly demonstrated resilience. However, share prices of many banks rose dramatically in the last 12 months amid currency depreciation and major policy adjustments.

So, one question to ask will be if the current valuation will excite investors. Relatedly, how can the banks attract foreign capital given the posture of foreign investors which has been largely mild in recent years. Again, the government recently proposed a windfall tax on the realised gains on all foreign exchange transactions of banks in the 2023 financial year. Clearly, this will impact the equity story of banks and their ability to raise capital as investors assess the uncertainties created by this windfall tax as it relates to the profitability of banks in

2024 or the probability that any exceptional return in the future may be taxed in a similar manner.

Regulatory considerations

Regulatory compliance is another complex issue to consider. Many banks have recently opted for the Holdco structure to enhance regulatory compliance on one hand, and to enable the parent entity take advantage of emerging opportunities that abound across the financial services value chain on the other hand. Accordingly, the question of how to navigate the regulatory complexity in the local and foreign jurisdictions must be answered in view of meeting the latest regulatory capital requirement. Beyond the above, tax and capital market requirements are other regulatory areas for which many banks will also need to put into consideration.

Customer confidence

Customer “Flight to Safety” is a major concern for banks. Depositors will typically run to safety if they get a hint that all is not well, or something may impact on banks’ ability to meet their obligations when the need arises. Accordingly, managing depositors’ confidence and avoiding potential panic triggers is a critical consideration for banks amid efforts to chart a pathway for capital raise.

Strategic focus

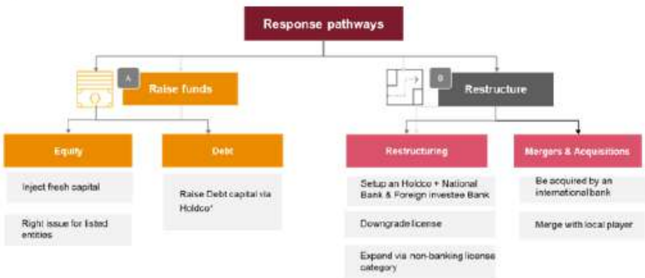
Beyond the immediate requirement to meet regulatory capital requirement, banks will also be considering how all these fit into their growth ambitions as well as medium to long term strategic priorities, or put differently, how their growth plans and strategic priorities can be realigned or reassessed to accommodate the recapitalisation requirement. Critical considerations will therefore include assessing how meeting the capital requirement will affect customer footprints and preferences, reassessing licensing categorisation, balance sheet resilience, the overall return profile, and competitive positioning.

Response pathways for banks

As mentioned above, while the race among banks is already on, with four to six banks out in the market to raise capital by way of public offer/right issues or have approached the CBN for a merger, we take a look at the response pathways for banks to meet the new minimum capital requirements in the coming months below.

Broadly speaking the pathway is categorised into two:

1. Capital raise, the preferable option for most banks, and
2. Corporate restructuring/business combination, the less desirable option but the most likely pathway for many.



Capital raise:

This pathway is clearly the preferred option for many operators, especially the listed banks, many of whom have approached the public with offers. As such, we expect more banks to seek fresh equity capital injection from the capital market as a pathway to meet the CBN regulation via Initial Public Offers (IPOs), Public Offers (POs), and Rights Issues. Alternatively, banks that have adapted the Holdco structure may have the option of getting capital injection via their parent company, who may raise the capital via other acceptable means.

Corporate restructuring/business combination

Apart from direct capital injection via capital raise, the second pathway for banks is corporate restructuring/business combination. This pathway may include any of the following: an application to downgrade current licence to one with lower capital requirement, the divestment of foreign subsidiaries, Mergers and

Acquisitions (M&A), among other possible scenarios. To buttress this point, Unity Bank and Providus Bank have already gotten approval from the CBN to merge. We expect other banks to make announcements soon.

Which response pathway guarantees success?

As noted above, while a good number of the banks have already announced their public offers or obtained the CBN's approval to merge, we expect other banks to come out with their plans for the capital raise exercise soon. More listed banks will announce their public offers while others will opt for a restructuring. It must, however, be noted that given the current macroeconomic realities in Nigeria vis-à-vis the strict definition of paid-up capital by the CBN, this recapitalisation exercise may be challenging for some banks.

To this end, it must be said that not all public offers or right issues (i.e. option A) will be successful. Again, engaging issuing houses as underwriters to the transaction, may also not guarantee success. Observably, M&A is not being prioritised by many banks (judging by the number of banks that have announced their Public Offers compared to the merger announcements in the news) at the moment, as such, a lot of banks may be forced into poorly planned, last-minute M&A processes, as they race to meet the CBN's deadlines. It must therefore be said that the M&A process takes time and those that start early stands to reap significant benefits. Thus, our view is that banks with limited options for capital raise via the capital market need to begin the process of meeting the regulatory capital requirement via M&A early, to avoid the rush that greeted numerous unsuccessful mergers in the mid-2000s.

From our M&A experience, a thorough counterparty assessment in an M&A process before a merger or acquisition is an essential ingredient for success. This will significantly reduce the risk of banks racing into a merger or a last-minute business combination exercise that may not make sense and may ultimately result in corporate failure.

To succeed, our recommendation is for operators to be strategic and engage well-experienced advisers that can handhold them through the process. This will involve critical assessment of the response pathways with a fallback plan that can be deployed very early to ensure overall success at the end of the day.

Role of PE firms in the process

Certainly, this recapitalisation exercise presents an opportunity for financial services focused Private Equity (PE) firms to buy into Nigerian banks considering the amount of capital PE firms can deploy. Although available fund size and investment appetite may differ, PE firms can play a pivotal role in the success of the recapitalisation exercise. They can provide equity injection to target banks invest through private placements, but for this to happen, interested PE Firms must swiftly identify their target banks and proactively negotiate and agree valuation as it may be difficult to deal at a value that is lower than public offer prices, if the offer is launched before the private placement

NAVIGATING THE ESG AND CLIMATE CHANGE LANDSCAPE: HOW ESG IS CHANGING BUSINESS STRATEGY

Dr Raylene Watson

https://www.ey.com

In the contemporary business world, the triad of Environmental, Social, and Governance (ESG) criteria has emerged as a pivotal benchmark for evaluating corporate behaviour and guiding investment decisions. ESG represents a set of standards for a company's operations that socially conscious investors use to screen potential investments. Environmental criteria consider how a company performs as a steward of nature. Social criteria examine how it manages relationships with employees, suppliers, customers, and the communities where it operates. Governance deals with a company's leadership, executive pay, audits, internal controls, and shareholder rights. In today's globally interconnected world, a company must create value for and be valued by its full range of stakeholders in order to deliver long-term value for its shareholders.

The importance of ESG has been magnified by the escalating concerns over climate change, which poses significant risks to economies and businesses worldwide. As climate change continues to impact natural resources, supply chains, and the viability of various industries, it necessitates a strategic response from businesses. In response, there has been a surge in legal and regulatory developments aimed at mitigating climate change and promoting sustainability. These range from international agreements to local regulations that enforce stringent environmental standards, mandating companies to adopt more sustainable practices.

In Nigeria, the evolving ESG and climate change legal landscape presents both challenges and opportunities for private equity (PE) and venture capital (VC) firms looking to grow their portfolios and remain competitive.

Evolving ESG and Climate Change Legal Framework

Nigeria's legal framework for ESG and climate change is in a state of dynamic evolution, reflecting the global urgency to address environmental challenges and sustainable development. The Federal Government of Nigeria has taken proactive steps by ratifying international agreements such as the Paris Agreement and adopting the National Policy on Climate Change, which aims to mainstream climate change responses and actions into government functions. Additionally, the Nigerian Stock Exchange has introduced the Sustainability Disclosure Guidelines, encouraging listed companies to report on ESG metrics, thereby fostering transparency and accountability.

Evolving ESG and Climate Change Legal Framework continued

Despite these advancements, the ESG regulatory environment in Nigeria remains nascent, with enforcement mechanisms and investor awareness still developing. PE and VC firms operating in Nigeria face the challenge of aligning their investment strategies with ESG criteria amidst a landscape of evolving regulations and standards. These funds must navigate the complexities of local environmental laws, social impact considerations, and governance issues that can vary significantly across different sectors and regions within the country.

However, these challenges are accompanied by significant opportunities. ESG-compliant investments are increasingly attracting attention from international investors who are committed to sustainable practices. PE and VC firms that successfully integrate ESG principles stand to benefit from enhanced reputation, risk management, and access to capital. Moreover, there is a growing recognition that sustainable investments can yield long-term financial returns while contributing to societal and environmental objectives.

EY, with its understanding of this ESG landscape informing both LP and PE deployment of capital and its implications for businesses, is well-equipped to guide PE and VC firms through this dynamic and evolving terrain. EYs expertise spans across critical sectors in the Nigerian economy including oil and gas, energy, manufacturing, agriculture, real estate, health care and education. The firm can provide invaluable advice on compliance with existing ESG regulations. Key challenges currently being faced include climate change (including the application of tax incentive and carbon credits), derisking supply chains, human resource management, community engagement, as well as the assessment of the long term financial and commercial viability of investee companies.

By leveraging EY's knowledge base, PE and VC firms can develop robust ESG frameworks that not only comply with current regulations but also anticipate future developments. EY can assist in conducting due diligence, structuring investments, and advising on corporate governance practices that meet both local and international ESG guidelines. This guidance is crucial for funds and investee companies aiming to mitigate risks, capitalise on new opportunities, and position themselves as leaders in the sustainable investment space in Nigeria.

Global ESG and Climate Change Trends

The global landscape of ESG and climate change is characterised by a rapid proliferation of regulations and standards, as governments and international bodies strive to address the pressing issues of sustainability and environmental stewardship. These global trends are shaping the way businesses operate, with a marked shift towards green finance, renewable energy investments, and corporate accountability for social and environmental impacts. One of the most significant global trends is the increasing regulatory emphasis on climate risk and social linked disclosure. The EUs Sustainable Financial Disclosure Regulations (SFDR) and the associated EU and Social Taxonomy has set out recommendations for financial institutions to report on ESG risk factors including climate-related risks and opportunities. Although Nigerian domiciled funds are not captured by this legislation, their LPs may well be, meaning reporting on these metrics will be required in some form going forward. This push aims to drive transparency in reporting through the provision of templates and tools to guide funds on how to invest responsibly. These criteria are now no longer limited to pure impact funds. All GPs are required to report on a set of principle adverse indicators defined under the SFDR.

Global ESG and Climate Change Trends continue

Even if alignment is not required to the SFDR, the Nigerian Government is a signatory to the Paris Agreement, which aims to limit global warming to well below 2 degrees Celsius. Nigeria, as a signatory, has thus committed to national contributions that require the private sector's involvement in reducing greenhouse gas emissions and the promotion of sustainable practices.

Additionally, the Nigerian Government has made commitment under the United Nations Sustainable Development Goals (SDGs), a framework for addressing a range of global challenges, including those related to poverty, inequality, climate change, and environmental degradation. Nigerian PE and VC firms are thus encouraged to align their investments to defined objectives set by government under each of the 17 goals. International funding is also being ring fenced to facilitate this alignment by Funds.

An instrument specifically geared towards assisting PE and VC funds with measuring their performance with respect to ESG governance and accountability is the UN Principles for Responsible Investment (PRI). Voluntary disclosures under this body encourages investors to incorporate ESG factors into their investment decision making processes and ownership practices. This also allows a fund to become benchmarked against their peers. Gaps identified in disclosures guides a fund in determining continuous improvement initiatives required to facilitate a funds ultimate alignment to global best practice in investment.

Sustainable Finance Solutions

In the realm of sustainable finance, Nigeria has made notable strides with the issuance of green bonds. These bonds are fixed- income instruments designed to support specific climate-related or environmental projects. With guidance has been provided by Nigerian Ministry of Environment in 2020 on the issuance of Green Bonds in the Nigerian market, this reflects a long-term commitment to expenditure linked to projects with environmental or climate related benefits. These bonds issued in Nigeria have been successful in attracting investment for renewable energy, afforestation, and transportation initiatives. The success of Nigeria's green bonds highlights the potential for PE and VC firms to integrate ESG considerations into the investment strategies of their investee companies to mitigate risks and capitalise on new opportunities for growth.

EYs services extend to facilitating the structuring of green investments, such as those related to green bonds. By leveraging EYs guidance, PE and VC firms can enhance their appeal to environmentally conscious investors and tap into the growing market for sustainable investments to raise capital and dispose of assets at higher multiples due to the implementation of sound ESG practices.

PEVCA collaborates with international bodies and local stakeholders to promote the adoption of ESG standards within the Nigerian PE and VC community. By fostering a culture of sustainability, PEVCA helps its members to not only meet investor expectations but also to contribute positively to broader societal and environmental objectives.

The collaboration between EY and PEVCA provides a comprehensive support system for PE and VC firms looking to develop and implement ESG strategies. We remain committed to capacity building and advocacy for the PE and VC sector, and to ensure they are well-equipped to navigate this ESG landscape.

Leveraging ESG for Business Growth and Investor Attraction

Strong ESG practices have become a linchpin for business growth and an attractive lure for international investors. In an increasingly conscientious global market, investors are seeking more than just financial returns; they are looking for assurance that their capital is contributing to sustainable development and ethical practices. Firms that exhibit robust ESG credentials are often rewarded with a lower cost of capital, enhanced brand reputation, and access to a broader investor base that includes socially responsible investment funds who are building green portfolios.

In Nigeria, the implementation of ESG practices by PE and VC firms is not just a response to global trends but a strategic move to position themselves as frontrunners in a competitive market. Globally and in Nigeria, ESG-focused investments have shown resilience and a tendency to outperform their non-ESG counterparts, particularly in times of economic stress. The success of Nigeria's green bonds, which have been oversubscribed, underscores the appetite for investments that support environmental sustainability. Internationally, funds utilising ESG to assess investment risk have continued to attract inflows, even during market downturns, as investors increasingly prioritize sustainability alongside financial performance.

Conclusion

In summary, ESG practices are not just ethical imperatives but strategic imperatives for business growth and investor attraction. With the support of EY and PEVCA, Nigerian PE and VC firms can leverage ESG to unlock new opportunities, attract international capital, and drive sustainable economic development.

In conclusion, the integration of ESG considerations into business operations is no longer a peripheral concern but a central strategy for PE and VC firms seeking growth and resilience within their portfolios, in the face of global challenges. The evolving ESG and climate change legal framework in Nigeria, influenced by international trends and agreements, presents both challenges and opportunities for funds.

Looking ahead, the future of ESG in Nigeria is poised for growth. As global investors increasingly prioritise sustainability, Nigerian firms that proactively develop and implement ESG strategies will stand at the forefront of attracting capital and driving innovation. The continued role of PEVCA will be crucial in ensuring that Nigerian PE and VC firms not only navigate the complexities of ESG compliance but also lead the charge in sustainable economic development.

AN EXAMINATION OF THE REGULATORY LANDSCAPE FOR FINTECH STARTUPS IN NIGERIA AND ITS IMPACT ON INVESTMENT ATTRACTIVENESS

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Introduction

Nigeria's fintech sector has witnessed exponential growth over the past decade, driven by a burgeoning young population, increased smartphone integration, and a growing appetite for digital financial services. The Central Bank of Nigeria's cashless policy, introduced in 2012 has significantly enhanced financial accessibility by promoting electronic transactions. In 2019, the Ministry of Communications rebranded to include Digital Economy, enhancing fintech development. Despite progress, the sector faces challenges from stringent regulations. Understanding the regulatory environment is crucial for maintaining investment attractiveness, influenced by clarity, ease of doing business, and potential returns. This article examines Nigeria's regulatory framework for fintech startups and its impact on investment.

Regulatory Framework for Fintechs in Nigeria – The multi-layered approach

Nigeria's fintech ecosystem is governed not by a single regulation but by various regulatory bodies overseeing different aspects of the sector. This is because fintech activities often span multiple types of transactions, each regulated by different government institutions. Key regulators include the Central Bank of Nigeria (CBN), Nigerian Deposit Insurance Corporation (NDIC), Securities and Exchange Commission (SEC), Nigerian Communications Commission (NCC), Federal Inland Revenue Service (FIRS), Federal Competition and Consumer Protection Commission (FCCPC), and Corporate Affairs Commission (CAC). Each regulator provides oversight based on the specific transactions or services offered by fintech companies.

The **Central Bank of Nigeria** serves as the primary regulator for financial services under the Banks and Other Financial Institutions Act, 2020 (BOFIA). Fintech companies offering financial services must obtain licences from the CBN and adhere to its guidelines. Meanwhile, the **Securities and Exchange Commission** regulates capital markets activities, including fundraising by fintechs. In May 2022, the SEC issued the Rules on Issuance, Offering Platforms, and Custody of Digital Assets, covering crypto assets and other digital representations of value.

Other regulatory bodies include the **Corporate Affairs Commission,** responsible for company incorporation in Nigeria. Fintech must register with the CAC before applying for licenses from other regulatory bodies.

The **Federal Inland Revenue Service** oversees tax obligations for fintech companies, including income tax, withholding tax, value-added tax, and stamp duties. Pay-as-you-earn taxes are remitted to state internal revenue services based on employee work locations. The National Data Protection Commission acts as Nigeria's data privacy regulator under the Nigeria Data Protection Act, 2023 (NDPA). Fintech companies handling, processing, storing, or transferring data of individuals within Nigeria must comply with NDPA provisions and subsequent NDPA regulations.
Technology transfer agreements involving Nigerian fintechs and foreign businesses must be registered with the **National Office for Technology and Promotion**, facilitating fee repatriation through official channels.

In recent years, Nigeria has seen significant regulatory developments impacting fintech activities across various sectors. The Central Bank of Nigeria (CBN) launched the Regulatory Sandbox Operations in 2022 to provide eligible fintech operations with a controlled environment to test products and services without immediate CBN licensing requirements. This initiative aims to foster innovation by allowing startups to refine their offerings and gather valuable user data before facing full regulatory scrutiny. The Sandbox has been pivotal in demonstrating regulators' willingness to understand and adapt regulations to support fintech innovation in Nigeria. Additionally, in 2023, the CBN lifted the ban on cryptocurrency, reversing previous restrictions to address money laundering and terrorism financing risks.
In January 2021, the Securities and Exchange Commission (SEC) implemented rules governing crowdfunding businesses to protect investors and promote innovation in public fundraising. Fintechs operating investment crowdfunding portals or digital commodities investment platforms must comply with registration requirements outlined in the rules to avoid illegal categorization and regulatory sanctions.

The Nigeria Startup Act, 2022 ("the Act"), signed into law on October 19, 2022, provides the legal and institutional framework for the development and operation of startups in Nigeria. It positions the Nigerian startup ecosystem as the leading digital hub in Africa and fosters the development of technology-related talent in the country. The Act establishes the National Council for Digital Innovation and a Start-up Support and Engagement Portal. This initiative streamlines registration processes across ministries, supporting Nigeria's aspirations as a digital innovation hub.

Furthermore, in June 2021, the FIRS modernised tax administration through the Tax-Pro Max Portal, enhancing tax registration, filing, and payment processes for fintech companies. In March 2024, the FIRS introduced a self-registration module on the Tax-Pro Max platform as part of reforms towards improving the ease of doing business and a customer-centric approach.61 Therefore, fintechs can now complete their registration with the FIRS by following the prompt for self-registration.

These regulatory measures underscore Nigeria's commitment to fostering fintech innovation while ensuring robust consumer protection, regulatory compliance, and financial stability in its digital economy landscape.

Tax and Fiscal Incentives

The Nigerian government and regulatory bodies have implemented several initiatives aimed at supporting fintech startups, although specific incentives tailored exclusively for fintech investments are currently absent. However, various general incentives applicable to companies in Nigeria are relevant to tech and fintech sectors.

Small companies with an annual turnover of NGN 25 million or less are exempt from Companies Income Tax, Value Added Tax, and Tertiary Education Tax. Intermediate companies, with turnover between NGN 25 million and NGN 100 million, benefit from a reduced Companies Income Tax rate of 20%, compared to the standard 30%.

Companies engaged in pioneer industries or producing pioneer products, such as software and e-commerce firms, can apply for Pioneer Status. This status grants corporate tax relief for an initial three-year period, extendable based on national development and employment generation criteria. Benefits include exemption from Companies Income Tax and Tertiary Education Tax, as well as no withholding tax on dividend payments.

Under the Nigerian Startup Act of 2022, Fintechs classified as startups enjoy specific tax incentives. These include a 100% deduction on expenses for research and development conducted within Nigeria, exemption from contributions to the Industrial Training Fund during the startup phase, and a reduced withholding tax rate of 5% on income from technical, consulting, professional, or management services provided by non-resident companies. Angel investors, venture capitalists, and private equity funds investing in Fintechs can receive a 30% investment tax credit on gains subject to tax, along with exemption from capital gains tax on disposals after holding assets in Nigeria for at least 24 months.

Venture capital companies investing in venture projects benefit from accelerated capital allowance, reduced withholding tax on dividends, export incentives exemption from capital gains tax on disposals, and potentially exemption from Companies Income Tax for up to five years under the Venture Capital (Incentives) Act 2024.

Overall, these incentives reflect Nigeria's efforts to stimulate innovation and economic growth in the fintech sector, providing a supportive environment for startups to thrive and contribute to the country's digital transformation agenda.

Economic Impact and Challenges in the Fintech Space

Economic Impact

In recent years, Nigeria has experienced significant regulatory developments aimed at supporting fintech companies and ensuring customer and investor protection. These efforts are part of the Nigerian

61 FIRS Introduces Self-Registration Module on TaxPro-Max (kpmg.com)

government's broader commitment to promoting and funding startups, particularly in the fintech sector. According to a report by the CSL Stockbrokers Limited, the sector achieved record-high funding in 2023.62

A notable initiative is the successful raising of a $618 million fund to support the tech and creative sectors for young investors, driving innovation across the continent. This initiative, launched under the Investment in Digital and Creative Enterprises (iDICE), garnered substantial support from various sources; the African Development Bank Group, the largest funder with $170 million; the French government through the Agence Française de Développement contributing €100 million (US$116 million); and pending board approval, the Islamic Development Bank is expected to provide $70 million. 63

Fintech has made significant contributions to the country's economy. In 2022, the transaction value of instant payments reached an all-time high of NGN 387 trillion, marking a 42% increase from 2021, according to the Nigerian Inter-Bank Settlement System (NIBSS). This growth was fueled by innovative products and substantial investments. Noteworthy funding rounds in Q1 2024 included Moove, a mobility fintech giant, which secured $110 million in fresh funding to expand its mobility services 64 . In 2022, the company also raised $76 million65 and $105 million is a Series A2 round to scale its revenue-based financing model globally.66

Additionally, the Nigerian Startup Act mandates an annual allocation of at least ₦10 billion to the Startup Investment Seed Fund, managed by the National Council for Digital Innovation and Entrepreneurship. This fund supports research and development initiatives, facilitates startup expansion, fosters innovation, and generates employment opportunities.

The National Bureau of Statistics' (NBS) Q3 Labour Force Survey report indicates that 87.3% of employed Nigerians are primarily self-employed, while the remaining 12.7% are employed by others.67 The passage of the Startup Act in 2022 is expected to significantly enhance the ease of doing business and thereafter continue to increase job opportunities.

Furthermore, NGX introduced the Technology Board in 2022 to aid fintech companies in raising capital and attracting investments. It offers two segments: the Big Tech Segment for firms valued between $100 million and $1 billion, and the Startup Tech Segment for those between $1 million and $100 million. This initiative aims to encourage Nigerian Tech companies to list locally, easing the requirements for profitability under NGX Rulebook, which can be challenging for startups focused on growth.

Challenges

Nigeria's fintech sector, while achieving milestones, grapples with challenges like foreign exchange issues and high inflation. The depreciation of the Nigerian Naira against major currencies escalates operating costs for fintech firms, impacting expenses on software, subscriptions and cloud services from international providers.

The situation is further exacerbated by Nigeria's high inflation rate, which reached 33.69& by the end of Q1 2024, marking its highest level in almost two decades68. This combination of high inflation and Naira depreciation creates a challenging environment for fintech startups and businesses seeking investments. Investors may be hesitant to invest in a market where the currency is rapidly losing value, thereby reducing funding opportunities and limiting growth prospects for these companies.

62 Nigeria fintech to gain as funding rise in 2023 – Businessday NG

63 ibid

64 Nigerian mobility startup, Moove, secures $110 Million in Q1 2024 | TechPression (techpressionmedia.com)

65 Moove Raises Investment From Mubadala and Blackrock and Announces $76M in Total New Funds to Fuel Further Global Expansion (yahoo.com)

66 World's First Mobility Fintech Moove Raises $105m in Series A2 Round to Scale Its Revenue-based Financing Model Globally | Business Wire

67 Reports | National Bureau of Statistics (nigerianstat.gov.ng)

68 National Bureau of Statistics – National Gross Domestic Product Q1 2024

Several factors contribute to this inflation, including reduced oil revenues and broader macroeconomic instability. These macroeconomic challenges stem from certain policy directions taken by the government. Despite efforts such as the CBN's 2023 forex market unification to enhance stability, the Naira remains devalued.

Fintech companies rely only on foreign exchange markets for essential resources, payments, and partnerships. The Naira's depreciation increases operational costs, impacting profitability. Rising costs for software, subscriptions, and cloud services burden Nigerian fintech firms. International partnerships involve foreign currency payments, resulting in increased costs when converted to Naira. For instance, NGN 400 million, once USD 1 million, now equals less than USD 500,000 – a more than 100% reduction in value in dollar terms affecting foreign investments in fintech.

Notwithstanding, this situation presents an opportunity as investments have become more affordable. USD-denominated investments now hold greater value in Naira terms. The challenge, however, lies in determining their worth upon repatriation. To sustain viability, businesses must achieve growth rates exceeding the inflation rate to ensure meaningful returns.

To mitigate FX challenges, fintech companies can use financial strategies such as futures, options, and forward contracts to hedge against foreign exchange risks. These instruments stabilize cash flows and shield businesses from currency fluctuations. Additionally, firms can diversify revenue streams, by entering new markets, and expanding service offerings.

Conclusion

Nigeria's fintech sector has emerged as a vibrant hub of innovation, driven by progressive regulatory frameworks and strategic initiatives aimed at fostering growth and attracting investment. Notwithstanding, challenges like foreign exchange volatility and high inflation persist, impacting operational costs and investor confidence. However, the sector's resilience is evident in record-high funding levels and substantial transaction volumes, underscoring its potential and attractiveness to investors.

As the fintech sector expands, there are ongoing dialogues between regulators, start-ups, and investors to essentially strike a balance between fostering innovation and regulation. Ultimately, this balance is key to unlocking the sector's full potential.

In Conversation With Mojisola Fashola

MANAGING DIRECTOR AND GENERAL COUNSEL, KURAMO CAPITAL (NEW YORK)

In this interview, Mojisola Fashola, Chief Executive Officer and General Counsel at Kuramo Capital (New York Office) shares her insights on the evolving legal and regulatory landscape in Nigeria and its impact on investment strategies.

She shares insights on Nigeria's evolving legal and regulatory landscape and its impact on investment strategies. Drawing from her extensive experience in Nigeria, as well as at Schwartz LLC in New York and Watson, Farley & Williams LLP in London, Fashola discusses the effects of recent legal reforms, including the Business Facilitation Act and new co-investment frameworks, on private equity and venture capital.

She addresses regulatory compliance challenges, the significance of ESG factors, and the role of industry associations like PEVCA. Additionally, Moji shares her perspective on future regulatory developments and their potential influence on Nigeria's investment climate.

PEVCA LR: How has the current legal and regulatory landscape in Nigeria impacted your firm's investment strategies and decision-making processes?

MOJISOLA: The Nigerian government is actively working to attract investments and foster a business-friendly environment.

The introduction of deemed approval under the Business Facilitation (Miscellaneous Provision) Act of 2023 significantly enhances our investment strategy through predictable timelines for regulatory approvals.

This allows us to plan the expansion of our portfolio companies into regulated sectors with greater certainty.

Additionally, we anticipate that the Operational Framework for Co-Investment by Pension Fund Administrators, issued by the National Pension Commission, will unlock additional capital for private equity investments.

In our local fundraising efforts, we target pension funds as potential investors and have adapted our investment strategy to include co-investments with pension funds.

PEVCA LR: What are the primary legal and compliance challenges your firm addresses when executing deals in Nigeria and how do you manage these risks?

MOJISOLA: The regulatory approval process in Nigeria is continually evolving as regulators refine their processes to accommodate various transaction structures and market nuances.

To stay ahead, we initiate regulatory engagement very early to ensure that regulators fully understand the transaction and can guide us on the relevant information or documentation beyond statutory requirements.
Some transactions require approval from multiple regulators, which can potentially delay closing. Working with advisers to identify all required regulatory approvals and understand timelines for each approval is essential.

With this knowledge, we can optimise the transaction work plan to accelerate due diligence and transaction documentation, ensuring ample time for approval.

PEVCA LR: In what ways have recent regulatory changes in Nigeria affected your ability to raise capital from both local and international investors?

MOJISOLA: Recent regulatory changes in Nigeria have impacted our ability to raise capital.

One notable development is the introduction of the co-investment framework for pension funds, which is expected to lead to increased allocations to private equity.

This framework provides new opportunities for collaboration with pension funds, potentially expanding our pool of local investors.

Also, the recent currency floatation has stabilized the exchange rate, which has boosted investor confidence and attracted increased interest from international investors. This stability reduces currency risk and makes Nigeria a more attractive investment destination.

These regulatory shifts create a more favorable fund-raising environment, enhance local and international investor interest, and contribute to a more robust investment landscape in Nigeria.

PEVCA LR: How effectively are you able to conduct legal due diligence in the Nigerian market and what specific legal factors do you prioritize when evaluating potential investments given market and jurisdictional peculiarities?

MOJISOLA: Our deep understanding of Nigeria's regulatory environment and market intricacies, combined with the expertise of legal advisers with sector-specific knowledge, empowers us to perform thorough legal due diligence on potential transactions.

We prioritise regulatory compliance and corporate governance in our due diligence process. These areas present the most significant risks to business sustainability and reputation and can potentially lead to sanctions locally and in the United States, where we are also licensed.

Given the dynamic nature of Nigeria's legal landscape, we continuously monitor changes in legislation and regulatory policies to ensure our due diligence processes remain effective and up to-date. This comprehensive approach allows us to mitigate risks and make informed investment decisions.

PEVCA LR: How do you navigate the complexities of Nigeria's regulatory environment in the private equity and venture capital sectors? What specific regulations have the most significant impact on your work?

MOJISOLA: Navigating Nigeria's regulatory environment demands a vigilant, strategic, and well-informed approach.

We stay updated on regulatory developments by maintaining close relationships with regulatory bodies and industry associations like PEVCA and conducting weekly reviews of the legislature and regulators' websites for new or proposed legislation. Legislations, such as the Investment and Securities Act 2007, the Rules and Regulations of the Securities and Exchange Commission 2013 (as amended), the Companies and Allied Matters Act 2020 (as amended), the Federal Competition and Consumer Protection Commission Merger Review Regulations 2020, and the Finance Act 2023, significantly impact our operations.

PEVCA LR: How does your firm navigate relationships with regulatory bodies and government agencies in Nigeria and what advice would you give to new entrants in the market?

MOJISOLA: Building and maintaining relationships with regulators begins with proactive compliance. At Kuramo, we prioritize understanding regulators' expectations and ensuring adherence to relevant laws and regulations.

Additionally, by actively participating in industry associations, we maintain an ongoing dialogue with regulatory bodies. This enables us to stay informed about regulatory changes and to provide feedback on policy developments.

For new entrants in the market, it is crucial to thoroughly understand applicable regulations and seek guidance from regulators and advisors when necessary.

Establishing strong relationships with regulatory bodies through transparency and consistent communication can facilitate navigating the regulatory landscape. Participating in industry associations can also provide valuable insights and networking opportunities to stay ahead of regulatory changes.

PEVCA LR: How would you assess the current investment climate in Nigeria for private equity and venture capital and what legal factors are most influential in this assessment?

MOJISOLA: The floating of the Naira in 2023 has strengthened the currency and renewed investor confidence in Nigeria as a prime investment destination in Africa. According to the Nigeria Bureau of Statistics, total capital importation into Nigeria in Q1 2024 stood at US$3,376.01 million, a significant increase from US$1,132.65 million in Q1 2023, reflecting a 198% rise. Capital importation surged 210% compared to the preceding quarter from US$1,088.48 million in Q4 2023.

The Nigerian government supports private equity and venture capital investments as drivers for economic growth and development. Initiatives such as the Nigerian Wholesale Impact Investment Fund, which Kuramo has been appointed to manage, and the Investment in Digital and Creative Enterprises Program demonstrate the Federal Government's commitment to collaborate with private equity and venture capital players to mobilize capital for investment in micro, small, and medium-sized enterprises.

The most influential legal factors in this assessment include regulatory stability, transparency in government policies, and the enforcement of contracts. The Companies and Allied Matters Act 2020 (as amended) and recent legislative reforms to improve the ease of doing business are critical in creating a favorable environment for investors. Compliance with these legal frameworks helps mitigate risks and enhances investor confidence in the Nigerian market.

PEVCA LR: What are the primary legal challenges you face in cross-border transactions and how do you ensure compliance with both local and international laws?

MOJISOLA: Regulation across sub-Saharan Africa is diverse and constantly evolving. For multi-jurisdictional transactions, we collaborate with various external advisers to ensure regulatory compliance in each jurisdiction.

Our investments and exits are occasionally delayed due to pending regulatory approvals from key jurisdictions. In East Africa, the Common Market for Eastern and Southern Africa (COMESA) Competition Commission has streamlined the approval process for cross-border transactions in the region.

However, in West Africa, the absence of a unified regulator means that cross-border transactions require approval from multiple national regulators.

We anticipate that the implementation of the African Continental Free Trade Agreement will harmonise regulatory approvals for cross-border transactions across Africa.

Additionally, foreign exchange control rules in each jurisdiction require careful consideration in cross- border transactions to ensure that investment returns and exit proceeds can be repatriated to the fund's domicile for distribution to investors.

We balance this with transaction structures that mitigate foreign exchange risks to preserve capital and achieve target returns.

PEVCA LR: When structuring private equity and venture capital deals in Nigeria, what key legal considerations do you prioritize?

MOJISOLA: When structuring a private equity or venture capital deal in Nigeria or any other jurisdiction where we invest, we prioritize anti-money laundering checks on the deal sponsors and co-investors. This ensures we do not engage with sanctioned individuals or entities.

Regulatory compliance is another critical consideration. We ensure that the target company holds the necessary licenses and that any required regulatory approvals are included in the transaction work plan.

Our due diligence process includes a thorough governance review to assess the state of governance within the target company. We collaborate with the counterparty to incorporate terms in transaction documents to strengthen governance within the business.

PEVCA LR: How important are environmental, social, and governance (ESG) factors in your legal strategy and how do you incorporate them into your advisory role?

MOJISOLA: ESG factors are integral to our investment strategy, particularly as a licensed fund manager in the US, where there is increasing scrutiny on ESG reporting. Our Environmental and Social Management Manual and compliance policies and procedures guide us. Before investing, we conduct ESG due diligence to understand the ESG risks and opportunities associated with the potential investment. These risks, opportunities, and mitigants are presented to our investment committee as part of our pre-approval process. If the deal is approved, we collaborate with the counterparty to incorporate ESG obligations into the transaction documents.

Additionally, we develop an action plan to address ESG risks and report on ESG performance in the portfolio. Our investment monitoring process includes ongoing reviews of ESG factors and periodic site visits to ensure compliance with the ESG obligations outlined in the legal documents.

Kuramo representatives on the boards of portfolio companies also support the integration of ESG factors into these companies' operations.

PEVCA LR: Can you briefly share your journey to becoming the general counsel for one of Africa's pioneer fund managers? What have been some of the key milestones and challenges along the way? [As a female general counsel in a predominantly male industry, what unique perspectives and challenges do you bring to your role?] Any advice for young lawyers aspiring to reach

leadership positions in the private equity and venture capital industry in Nigeria?

MOJISOLA: My journey to becoming the General Counsel at Kuramo Capital has been both challenging and rewarding. Before joining Kuramo, I worked at Templars in Lagos, Nigeria, and had a stint at Watson, Farley & Williams LLP in London. I undertook a Master of Laws degree at Harvard Law School, after which I worked at Schwartz LLC in New York.

One of the major highlights of my career has been successfully advising Kuramo on its fundraising efforts and subsequent fund deployment activities across sub-Saharan Africa, including Nigeria. This role has allowed me to work as a lawyer and a business strategist with commercial acumen, earning me a seat on Kuramo's investment committee. My journey has been marked by grit, diligence, and consistency.

Although the private equity and venture capital industry strives to improve diversity, especially at leadership levels, I have had to hold myself to higher standards, work harder, and achieve more compared to my male counterparts. Young lawyers must recognize that general counsel in private equity are not just lawyers.

They are strategic business advisors with an entrepreneurial mindset and strong interpersonal skills. These non-legal capabilities are essential for success in modern business. I advise young lawyers to continuously seek knowledge, build strong networks, and remain resilient in the face of challenges.

PEVCA LR: What are your expectations for future regulatory developments in Nigeria and how do you anticipate these changes will impact the private equity and venture capital industry?

MOJISOLA: President Bola Tinubu's commitment to implementing the Stephen Oronsaye report, which aims to merge Federal Government agencies, will lead to a harmonized regulatory environment. This should result in a more efficient and streamlined regulatory process and improve overall governance.

Artificial Intelligence (AI) is also transforming industries and opening new investment opportunities. The confidence of private equity and venture capital firms in the continent's AI capabilities is also increasing, and they are capitalizing on these opportunities. Policy leaders must intentionally craft investor-friendly regulations while promoting cyber and national security.
I also anticipate developments in regulations concerning environmental, social, and governance (ESG) standards.

As global trends shift towards greater accountability and sustainability, Nigerian regulators may likely introduce ESG requirements, necessitating private equity and venture capital firms to integrate ESG considerations more deeply into their investment strategies.

Overall, these regulatory developments are expected to create a more favorable investment climate by enhancing transparency, reducing bureaucratic hurdles, and aligning local practices with international standards. This will ultimately attract more foreign investment and stimulate growth in the industry.

PEVCA LR: How does your involvement with the Private Equity and Venture Capital Association (PEVCA) contribute to your role as general counsel, and what value does PEVCA bring to the industry in Nigeria?

MOJISOLA: Industry associations like PEVCA play a crucial role in helping private equity and venture capital firms build their networks within the ecosystem and establish lines of communication with regulators such as the Securities and Exchange Commission.

PEVCA provides a platform for meaningful dialogue and collaboration among industry stakeholders and advocates for policies that promote the growth of Nigeria's private equity and venture capital industry. PEVCA's role in advancing regulatory and policy frameworks also helps to create a more transparent and predictable investment environment.

As General Counsel, my involvement with PEVCA keeps me informed about industry trends, regulatory changes, and best practices and allows me to contribute to shaping industry standards and advocating for a more favorable investment climate. This engagement enhances my ability to advise Kuramo more effectively on its activities in Nigeria.

GC SPOTLIGHT

In Conversation With "Dipo Okuribido

SENIOR VICE PRESIDENT AND GENERAL COUNSEL,
VEROD CAPITAL

In this interview, Dipo Okuribido, who leads Commercial Legal efforts at Verod, shares insights on how Nigeria's complex regulatory environment impacts investment strategies.

With deep experience in M&A across various sectors, Dipo discusses the challenges of navigating evolving regulations, particularly within family-owned businesses, and the difficulties in capital raising.

He also highlights the impact of recent legal changes, including capital gains tax and foreign exchange regulations, and offers practical advice for new entrants navigating Nigeria's regulatory landscape.

In addition, Dipo underscores the importance of maintaining strong relationships with regulators and the role of PEVCA in shaping industry regulations and standards.

PEVCA LR: How has the current legal and regulatory landscape in Nigeria impacted your firm's investment strategies and decision-making processes?

'DIPO: Despite all the claims to the contrary and all of the apparent efforts to increase the ease of doing business in Nigeria, the country remains a complex place to do business with regulators continually maintaining interesting interpretations of existing laws and regulations.
This context means that the legal framework around fund operation and deal execution can seldom be taken for granted. It is critical to nurture relationships with regulators and foster a culture of regular consultation in relation to complex decisions. As a firm, we strive to maintain good relationships with our key regulatory stakeholders so that we have a good understanding, not just of what the law says, but how its likely to be viewed by regulators.

PEVCA LR: What are the primary legal and compliance challenges your firm encounters when executing deals in Nigeria and how do you manage these risks?

'DIPO: The mid-cap segment of the private equity industry in Africa tends to be dominated by close-knit, family-owned businesses. It is rare to find a very high level of regulatory compliance within these businesses so in due diligence we have to take a pragmatic lens to the issues raised by our external counsel, determining which rise to the level of dealbreakers and which can be dealt with as part of post-completion value creation.

PEVCA LR: In what ways have recent regulatory changes in Nigeria affected your ability to raise capital from both local and international investors?

'DIPO: Aside from the macro challenges, and focusing specifically on legal issues, two areas of concern are around the rules for registration of new fund managers and the relatively vague capital control rules. The process of registering a new fund manager currently takes too long and adds to the already many challenges of courting local institutional investors. On the other hand, since managers often look to combine local and foreign investors for a particular fund, the restrictions around sourcing for foreign exchange and the deviations from the old, broad, approach to "*eligible transactions*" necessitate a tedious and complex separation of local and international funds.

PEVCA LR: How effectively are you able to conduct legal due diligence in the Nigerian market and what specific legal factors do you prioritize when evaluating potential investments given market and jurisdictional peculiarities?

'DIPO: Reliability of information from the Corporate Affairs Commission and other public registries continues to be a challenge but working with strong external counsel, we have generally been able to effectively piece together the legal view of our target companies. In legal due diligence, we tend to prioritize the extent of compliance with relevant industry regulations and whether or not there are ongoing investigations and/or sanctions from industry-specific regulatory agencies.

PEVCA LR: How do you navigate the complexities of Nigeria's regulatory environment in the private equity and venture capital sectors? What specific regulations have the most significant impact on your work?

'DIPO: The newly introduced capital gains tax on sales of shares and continually evolving foreign exchange regulatory framework have a significant effect across all of our investments, frequently shaping the structure of the investing instruments and vehicles that we employ. These two and the merger control regulations, which require that virtually all private equity transactions require regulatory review, are the ones with most significant impact on our work.

PEVCA LR: How does your firm navigate relationships with regulatory bodies and government agencies in Nigeria and what advice would you give to new entrants in the market?

'DIPO: We strive to own and nurture our own direct relationships with our key regulators, frequently conducting courtesy visits and engaging on a routine basis, even when we are not seeking any specific approvals or dealing with any concerns. This direct relationship ensures that we are frequently consulted about emerging legislation and that we can also learn, in advance, how regulators might view a certain transaction structure. In terms of advice to new entrants, its critical to develop these relationships and not just rely on external counsel in this regard.

PEVCA LR: How does your involvement with the Private Equity and Venture Capital Association (PEVCA) contribute to your role as general counsel, and what value does PEVCA bring to the industry in Nigeria?

'DIPO: PEVCA affords the opportunity for a stronger voice in engagements with regulatory authorities on new and emerging legislation. The Securities and Exchange Commission, in particular, clearly recognises PEVCA as a key stakeholder and frequently seeks its input on proposed regulation for the industry. Through PEVCA, we are able to contribute to shaping such new regulation and to steering the authorities in the right direction.

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