International Comparative Legal Guides

Private Equity 2020

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Sixth Edition

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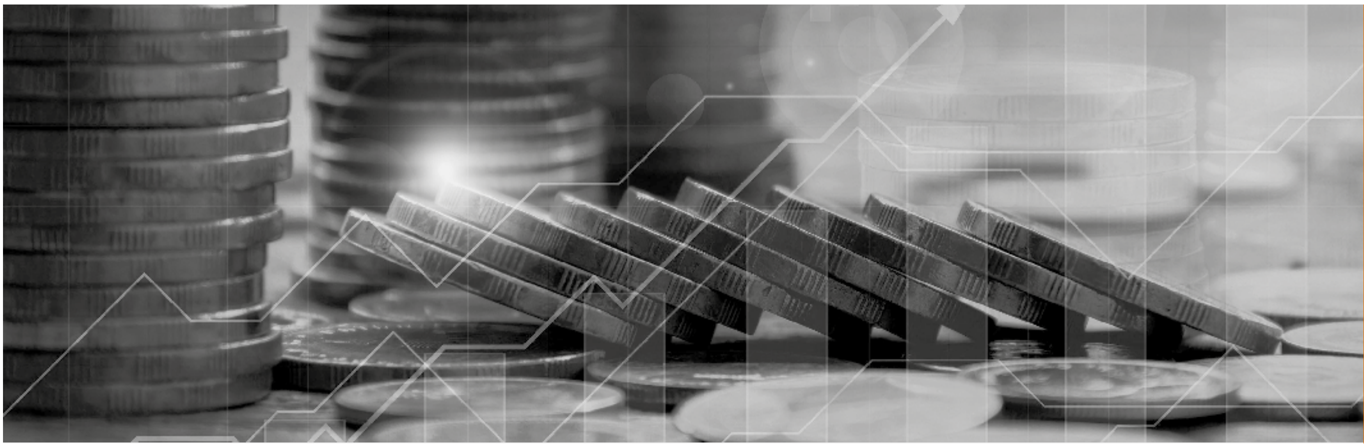

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Contributing Editors:

Christopher Field & Dr. Markus P. Bolsinger
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59 Tanner Street
London SE1 3PL
United Kingdom
+44 207 367 0720
info@glgroup.co.uk
www.iclg.com

Consulting Group Publisher
Rory Smith

Sub Editor
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Nigeria

Folake Elias-Adebowale

Christine Sijuwade

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1 Overview

1.1 What are the most common types of private equity transactions in your jurisdiction? What is the current state of the market for these transactions?

The most common types of private equity (PE) transactions in Nigeria are the acquisition of shares (via subscription or transfer), quasi-equity instruments, and debt.

As the understanding of the wider effects of the COVID-19 pandemic on the economy, businesses, markets, and targets in Nigeria continues to evolve, uncertainty may delay the negotiation of deal terms and transaction completion. The market, however, remains relatively resilient despite the pandemic and other macroeconomic factors including the decline in global oil prices. Deal activity has increased in key frontline sectors such as healthcare, biotech, and fast-moving consumer goods (FMCGs) due to emerging opportunities following the pandemic, with sustained investor appetite in technology, FinTech, financial services, media, utilities, agribusiness and the education sectors.

1.2 What are the most significant factors currently encouraging or inhibiting private equity transactions in your jurisdiction?

Population size, young consumer demographics, a cheap and relatively educated labour force, sectoral restructuring, and evolving policies aimed at enabling business in Nigeria are helping to boost PE activity and Nigeria's ease of doing business rankings. Although fundraising from institutional and strategic investors has slowed down due to the pandemic, development financial institutions (DFIs) remain committed to supporting businesses, thereby encouraging investments. Repatriation of proceeds from investments in Nigeria remains a relatively straightforward process.

The impact of the pandemic on asset valuation, challenges with navigating the existing legal and regulatory framework (many of which are not PE-specific), currency depreciation, FX availability, infrastructure deficit and local content requirements, among other reasons, are identified as PE-activity inhibitors. Cyclical macroeconomic challenges do not appear to permanently inhibit PE transaction activity in Nigeria in the medium to long term, as investors remain willing to take advantage of developing opportunities.

1.3 What are going to be the long-term effects for private equity in your jurisdiction as a result of the COVID-19 pandemic?

The long-term effects of the pandemic are largely uncertain as the pandemic presents several unforeseen challenges and implications. The use of virtual data rooms and online conferencing facilities is likely to increase to preserve due diligence feasibility and continuity, and to help mitigate the risk of disruptions to transaction timelines. The scope of due diligence reviews will likely become wider and more exhaustive to reduce buyer exposure especially in relation to financing, tax, regulatory, and contractual matters.

Agreements executed pre-pandemic may need to be renegotiated if they do not contain provisions that enable targets to adopt urgent measures to preserve business continuity and cash flow. The parameters for determining *force majeure* events, material adverse change (MAC) triggers, covenants and other key provisions in transaction agreements may need to be redefined, while closing conditions, representations and warranties will become more robust to address buyer concerns. Parties may also seek to change their investment strategies, restructure debt, and hedge investments due to foreign exchange fluctuations and economic uncertainty.

1.4 Are you seeing any types of investors other than traditional private equity firms executing private equity-style transactions in your jurisdiction? If so, please explain which investors, and briefly identify any significant points of difference between the deal terms offered, or approach taken, by this type of investor and that of traditional private equity firms.

DFIs and high-net-worth individuals (HNIs) are executing PE-style transactions due to emerging opportunities created by the pandemic. One key divergence in deal structuring is the ability of HNIs to take long-term positions in targets, unlike PE investors who are typically restricted to a five- to seven-year investment period.

2 Structuring Matters

2.1 What are the most common acquisition structures adopted for private equity transactions in your jurisdiction?

Bilateral majority acquisitions and minority acquisitions of shares in Nigerian target companies remain the most common, often implemented by investor-controlled, offshore-registered special purpose vehicles (SPVs). Debt, convertible instruments and alternative capital structures are, however, expected to continue evolving.

2.2 What are the main drivers for these acquisition structures?

Control and direct influence are the main drivers for such acquisition structures. Majority acquisition structures confer these attributes under applicable legislation, while acquirers of minority stakes seek contractual and similar protections such as key executive appointments to provide insight into financials and business operations. Other drivers include risk mitigation, flexibility, exit considerations, maximisation of returns and tax efficiency (share transfers are exempt from capital gains tax (CGT)).

2.3 How is the equity commonly structured in private equity transactions in your jurisdiction (including institutional, management and carried interests)?

A target's equity structure will usually reflect capital contributions. Shareholders and management may participate through an investment company, with management interest in the region of 5%. Carried interest is typically structured through a separate vehicle: an offshore limited partnership with equity in an offshore holding company (BuyCo) subject to agreed percentage splits.

2.4 If a private equity investor is taking a minority position, are there different structuring considerations?

Minority protection mechanisms will aim to facilitate and support voting arrangements, information and access rights, governance, board and board committee participation and nomination rights in relation to key executives and board members, including board chairpersons, with the ultimate objective of attaining control and influence. Minority investors may require such strategies to be entrenched contractually and in constitutional documents as closing conditions.

2.5 In relation to management equity, what is the typical range of equity allocated to the management, and what are the typical vesting and compulsory acquisition provisions?

This is typically 5%–10%. Transaction documents may include "good leaver" and "bad leaver" provisions that determine compulsory acquisition/pricing for employee-held shares. Vesting provisions may determine equity allocations, conditional upon length of service and achievement of performance milestones.

2.6 For what reasons is a management equity holder usually treated as a good leaver or a bad leaver in your jurisdiction?

Transaction documents typically envisage "good leavers" (e.g. management employees whose employment is terminated by retirement, death or disability) and "bad leavers" (e.g. management employees terminated for fraud).

3 Governance Matters

3.1 What are the typical governance arrangements for private equity portfolio companies? Are such arrangements required to be made publicly available in your jurisdiction?

Governance arrangements typically confer protection or augment investor control and may involve quorum prescriptions, reserved matters, board and board committee participation, consultation and participation in executive recruitments, voting agreements and veto rights, organisational and operational structures and related issues entrenched in target company constitutional documents and/or shareholder agreements. Shareholder agreements are generally confidential but may be replicated in target constitutional documents that must be publicly filed at the Corporate Affairs Commission (CAC). In listed targets, information that could materially affect a target's share price (including shareholders' agreement signed by the target) may be required to be publicly disclosed.

3.2 Do private equity investors and/or their director nominees typically enjoy veto rights over major corporate actions (such as acquisitions and disposals, business plans, related party transactions, etc.)? If a private equity investor takes a minority position, what veto rights would they typically enjoy?

The Companies and Allied Matters Act (CAMA) prescribes minimum thresholds for specified decisions as ordinary resolutions (50%+1 vote) and for special resolutions (75%), and board decisions via majority. Investors acquiring minority stakes typically negotiate supermajority and veto rights for specified "reserved matters" such as acquisitions, restructurings, disposals, business plans, significant expenditures, related party transactions, debt arrangements, executive appointments, share capital changes, board composition, amendments to constitutional documents, winding-up, and other matters subject to CAMA mandatory prescriptions.

3.3 Are there any limitations on the effectiveness of veto arrangements: (i) at the shareholder level; and (ii) at the director nominee level? If so, how are these typically addressed?

Mandatory provisions of the CAMA, such as voting thresholds for the removal of a director, will override any conflicting arrangements in shareholder contracts and constitutional documents, rendering such arrangements unenforceable. Director nominees have fiduciary obligations and may not fetter their discretion to vote in any manner.

3.4 Are there any duties owed by a private equity investor to minority shareholders such as management shareholders (or *vice versa*)? If so, how are these typically addressed?

PE investors are bound by mandatory provisions of laws such as the CAMA, the Investment and Securities Act (ISA) (as well as regulations issued by the Securities and Exchange Commission pursuant to the ISA (SEC Rules)) and constitutional documents protecting minority shareholders. For instance, the ISA and SEC Rules require investors in public companies (or private companies recently converted from public companies in the preceding 12 months) above the 30% threshold to make a tender offer to minorities where the 30% interest (a) is proposed to be acquired in the course of a single transaction, or (b) has been acquired in a series of transactions over a period of time, except where exemptions apply.

3.5 Are there any limitations or restrictions on the contents or enforceability of shareholder agreements (including (i) governing law and jurisdiction, and (ii) non-compete and non-solicit provisions)?

Shareholders' agreements are subject to mandatory provisions of the law including the CAMA, and to a target's constitutional documents.

Nigerian courts will generally uphold a choice of foreign law. The Supreme Court has affirmed that a "real, genuine, *bona fide* and reasonable" choice of law (other than Nigerian law) that has "some relationship to and [is] … connected with the realities of the contract considered as a whole" will generally be upheld, subject to limited exceptions. Non-compete clauses and non-solicitation clauses are subject to negotiation but must be reasonable in order to be enforced. Non-compete provisions will also be subject to the Federal Competition and Consumer Act (FCCPA) which prohibits agreements in restraint of competition and agreements with undertakings containing exclusionary provisions.

3.6 Are there any legal restrictions or other requirements that a private equity investor should be aware of in appointing its nominees to boards of portfolio companies? What are the key potential risks and liabilities for (i) directors nominated by private equity investors to portfolio company boards, and (ii) private equity investors that nominate directors to boards of portfolio companies?

Director nominees have fiduciary obligations and may not fetter their discretion to vote in any manner. The CAMA imposes director qualifications and restrictions, including that they must not be fraudulent, bankrupt, mentally unsound, or convicted by a High Court of any offence connected with the promotion, formation or management of a company. The Nigerian Code of Corporate Governance 2018 (NCCG Code) prohibits the simultaneous appointment of an individual as the Chairman and the Managing Director or Chief Executive Officer of an entity. Sectoral qualifications may also apply (for instance, the Central Bank of Nigeria (CBN) prescribes specific qualifications for bank directors). Directors may incur personal liability, e.g. for loss or damage sustained by a third party as a result of untrue statements or misstatements in a public company prospectus, under the ISA. The termination of employment of an executive director does not result in his automatic removal from the board; involuntary removals of directors must follow a prescribed statutory process. Disclosure of unpublished, price-sensitive information by nominee directors may breach insider dealing provisions under the ISA and the SEC Rules.

3.7 How do directors nominated by private equity investors deal with actual and potential conflicts of interest arising from (i) their relationship with the party nominating them, and (ii) positions as directors of other portfolio companies?

The CAMA requires that the personal interest of a director must not conflict with his duties as a director. A director may not, in the course of managing the affairs of the company, misuse corporate information in order to derive a benefit, and is accountable to the company for any benefit so derived, even after he resigns from the company. Sitting on the board of more than one company concurrently (discouraged under the NCCG Code in order to avoid conflicts of interest) does not excuse a director from such fiduciary duties to both, including a duty not to (mis)use property, opportunity or information. Actual or potential conflicts of interest are required to be disclosed to the target's board for consideration. Subject to this, nominee directors may opt to recuse themselves from participation in certain decisions at board meetings, although this may not be mandatory.

4 Transaction Terms: General

4.1 What are the major issues impacting the timetable for transactions in your jurisdiction, including antitrust, foreign direct investment and other regulatory approval requirements, disclosure obligations and financing issues?

Transactions can be completed fairly quickly if they are not complex, involve experienced parties and advisers, and require no regulatory approvals. Delays may, however, arise in capital raising, during due diligence (including external due diligence regulatory verifications where reviews are manual), in procuring regulatory approvals from, e.g. the FCCPC, the SEC and other sector-specific regulators, e.g. the CBN, the National Insurance Commission, and the Nigerian Stock Exchange (NSE), as applicable.

4.2 Have there been any discernible trends in transaction terms over recent years?

Parties are becoming increasingly creative in structuring equity, debt and alternative capital deal terms to diversify and mitigate risk exposure in response to foreign currency volatility, macroeconomic and other challenges. As these challenges become more apparent in the current global pandemic, it is expected that the key contractual provisions identified above will be carefully considered and negotiated.

Although PE investors continue to structure offshore transactions to provide flexibility from a governance and fiscal perspective, there is an increasing focus on deferred consideration and escrow structures, all geared toward protecting investments from the negative impacts of the pandemic. Certain investors, in a bid to reduce exposure, seek to include cancellation and early termination terms, which are usually rigorously negotiated.

5 Transaction Terms: Public Acquisitions

5.1 What particular features and/or challenges apply to private equity investors involved in public-to-private transactions (and their financing) and how are these commonly dealt with?

The ISA, SEC Rules, NSE Rulebook (for listed targets), and the Code of Corporate Governance for Public Companies in Nigeria 2011 apply to transactions involving public companies and impose disclosure and reporting requirements where such transactions exceed prescribed thresholds or, in listed companies, involve changes that could affect the target's share price. FCCPC approval and sector-specific reporting obligations may apply. PE investors and targets usually retain skilled professional advisers to ensure compliance with applicable requirements.

5.2 What deal protections are available to private equity investors in your jurisdiction in relation to public acquisitions?

Deal protection mechanisms adopted include structures that isolate identified liabilities following detailed due diligence, representations and warranties, indemnities, insurance, the use of escrow structures, the adoption of governance arrangements along the lines outlined above, and where negotiated, break fees (although this is not common).

6 Transaction Terms: Private Acquisitions

6.1 What consideration structures are typically preferred by private equity investors (i) on the sell-side, and (ii) on the buy-side, in your jurisdiction?

Cash structures are typically preferred, although there have been a number of share swaps and structures incorporating earn-out arrangements.

6.2 What is the typical package of warranties / indemnities offered by (i) a private equity seller, and (ii) the management team to a buyer?

This is subject to negotiation. Exiting PE sellers will typically seek to give minimal warranties (restricted to title and capacity). Where a PE investor and the target's founder(s) exit at the same time, comprehensive warranties and indemnities may be required by the buyer.

6.3 What is the typical scope of other covenants, undertakings and indemnities provided by a private equity seller and its management team to a buyer?

This is subject to negotiation; however, PE sellers do not typically offer a comprehensive suite of undertakings beyond those indicated at question 6.2 and will typically resist restrictions on their activities post-exit.

6.4 To what extent is representation & warranty insurance used in your jurisdiction? If so, what are the typical (i) excesses / policy limits, and (ii) carve-outs / exclusions from such insurance policies, and what is the typical cost of such insurance?

This is increasingly popular. Investors may resist requirements to mandatorily procure such insurance to reduce or exclude counterparty(ies) liability. The cost of such insurance may depend on risk appetite and the extent of the perceived exposure.

6.5 What limitations will typically apply to the liability of a private equity seller and management team under warranties, covenants, indemnities and undertakings?

This is subject to negotiation. There is no standard practice other than as may be mandatorily prescribed by statutory and common law limitations on liability.

6.6 Do (i) private equity sellers provide security (e.g. escrow accounts) for any warranties / liabilities, and (ii) private equity buyers insist on any security for warranties / liabilities (including any obtained from the management team)?

This is subject to negotiation and may be subject to the expiration of the fund/SPV in an exit scenario. Escrow arrangements for up to two years are not unusual. Consideration may be disbursed in tranches subject to investor-prescribed performance milestones.

6.7 How do private equity buyers typically provide comfort as to the availability of (i) debt finance, and (ii) equity finance? What rights of enforcement do sellers typically obtain in the absence of compliance by the buyer (e.g. equity underwrite of debt funding, right to specific performance of obligations under an equity commitment letter, damages, etc.)?

Evidence of funding in the PE investor's designated account, and of acquisition funds held in an escrow account and concomitant arrangements for disbursement, subject to specific conditions being met, are means via which such comfort may be provided. Such evidence may not be required where the buyer is reputable, in which case an equity commitment letter addressed to both the target and the seller may suffice, backed by an appropriate financial capacity warranty. Seller enforcement terms are subject to negation and may confer remedies of specific performance and damages for buyer non-compliance.

6.8 Are reverse break fees prevalent in private equity transactions to limit private equity buyers' exposure? If so, what terms are typical?

Reverse break fees are not prevalent but may be negotiated on a case-by-case basis.

7 Transaction Terms: IPOs

7.1 What particular features and/or challenges should a private equity seller be aware of in considering an IPO exit?

A PE seller should be aware of the regulatory requirement and costs of effecting the IPO, the value of the seller's shares following changes in share capital, and the underwriting of shares not taken up by/issued to third parties. Valuations in certain sectors and exit timelines may be affected by the pandemic. Material agreements with a potential impact on share price may have to be disclosed.

7.2 What customary lock-ups would be imposed on private equity sellers on an IPO exit?

This is subject to negotiation and there may be a restriction for a prescribed minimum of years post-investment. PE sellers will usually seek to avoid or minimise such requirements.

7.3 Do private equity sellers generally pursue a dual-track exit process? If so, (i) how late in the process are private equity sellers continuing to run the dual-track, and (ii) were more dual-track deals ultimately realised through a sale or IPO?

It is not uncommon for PE sellers to pursue multi-track exit strategies. The macroeconomic environment, capital market illiquidity, dearth of trade buyers, share valuation on exit, political and foreign exchange risks, timing, and regulated process challenges may require flexibility in the path to exit. Exit to trade buyers and private sales remained more prevalent when compared with the number of IPOs implemented as exit mechanisms.

8 Financing

8.1 Please outline the most common sources of debt finance used to fund private equity transactions in your jurisdiction and provide an overview of the current state of the finance market in your jurisdiction for such debt (particularly the market for high yield bonds).

Convertible and non-convertible loans and alternative debt structures, credit support instruments, and investments in relatively high-yield instruments including treasury bills and bonds, are not uncommon.

8.2 Are there any relevant legal requirements or restrictions impacting the nature or structure of the debt financing (or any particular type of debt financing) of private equity transactions?

Nigerian law guarantees free remissibility of dividends, profits, capital on divestment, and repayments of principal and interest on foreign loans utilising the official FX market, subject only to a certificate of capital importation having been obtained from a CBN-authorised dealer bank when the original investment or loan capital was inflowed into Nigeria. Investors also have access to the interbank market for such eligible transactions, meaning that PE and other investors can convert capital brought into Nigeria for investments into Naira at a (mostly) market-determined exchange rate, as applicable rates are no longer fixed by the CBN.

Financial assistance by Nigerian targets is generally prohibited where there would be a resulting impact on the net asset transfer of the target above prescribed thresholds.

Tax-deductible interest earned on loans granted by foreign connected parties to Nigerian companies is restricted to 30% of EBITDA per accounting period. Expenses incurred by related parties within or outside Nigeria will be tax-deductible only if the transaction is consistent with transfer pricing restrictions, which must be at arm's length.

8.3 What recent trends have there been in the debt financing market in your jurisdiction?

There has been a continued increase in debt financing through DFIs and syndicated loans in which DFIs invest in Nigerian sub-nationals to boost growth in emerging companies.

The CBN has recently introduced a NGN50 billion Targeted Credit Facility (TCF) with favourable interest rates, as a stimulus package to support households and micro, small and medium enterprises affected by the pandemic. A NGN100 billion loan to the health sector, and a NGN1 trillion loan to the manufacturing sector, have also been announced.

Existing loan facilities are being renegotiated and restructured. Moratoriums have been granted on all federal government-funded loans.

9 Tax Matters

9.1 What are the key tax considerations for private equity investors and transactions in your jurisdiction? Are off-shore structures common?

Key tax considerations for PE investors and transactions in Nigeria include:

(a) an analysis of the nature of the investment and the vehicle through which the investment will be made;

(b) applicable taxes at the time of making the investment and on exit (including stamp duty and filing fees on transaction and security documents where applicable);

(c) applicable taxes on income derived from the investment (e.g. withholding tax on dividends, interest on loan and management fees, etc.);

(d) applicable rate of corporate tax and other related taxes;

(e) applicable transfer pricing regulations (for shareholder loans/related party transactions); and

(f) tax incentives (e.g. 2.5% deduction on withholding tax on dividends, interest and royalties for investors resident in countries with which Nigeria has a double tax agreement (DTA)), and exemptions (0%–70% depending on the tenor of the loan and grace period (including moratorium)). It is common for BuyCo's residents in countries with which Nigeria has DTAs to be utilised for Nigerian PE investments and debt transactions. Nigeria currently has effective DTAs with Belgium, Canada, China, the Czech Republic, France, the Netherlands, Pakistan, the Philippines, Romania, Slovakia, South Africa, Spain and the United Kingdom.

9.2 What are the key tax-efficient arrangements that are typically considered by management teams in private equity acquisitions (such as growth shares, incentive shares, deferred / vesting arrangements)?

The following arrangements are typically considered:'

- utilisation of SPVs incorporated in jurisdictions with which Nigeria has DTAs to reduce withholding tax on dividends;
- granting of long tenured loans of up to seven years and above to achieve 70% withholding tax on interest; and
- use of share sale structures that are CGT-exempt.

9.3 What are the key tax considerations for management teams that are selling and/or rolling-over part of their investment into a new acquisition structure?

Share sales are CGT-exempt even where the proceeds from one sale are rolled over into a new share acquisition. Gains realised from asset disposals (chargeable at 10%) are not so exempt, however, where the buyer is not related to the seller. Proceeds from asset sales used to acquire other assets for the same business are entitled to roll-over relief, i.e. no CGT.

For reorganisations or similar transactions involving related entities, the recently enacted Finance Act 2019 has introduced a 365-day pre- and post-business reorganisation rule for related party business reorganisation transactions, in order for the assets transferred to be entitled to the applicable tax benefits, such as exemption from CGT, value-added tax, transfer of assets at tax written-down value, etc.

9.4 Have there been any significant changes in tax legislation or the practices of tax authorities (including in relation to tax rulings or clearances) impacting private equity investors, management teams or private equity transactions and are any anticipated?

The Finance Act 2019 has amended key provisions of various tax laws relevant to PE transactions. Key amendments include:

(i) the classification of companies into three categories for tax purposes: (a) small companies (i.e. those with an annual gross turnover of NGN25 million and below); (b) medium-sized companies (i.e. those with an annual gross turnover above NGN25 million, but less than NGN100 million); and (c) large companies (i.e. those with an annual gross turnover above NGN100 million). Although small companies are exempted from paying companies income tax, they are still required to register with the Federal Inland Revenue Service;

(ii) an increase in the rate of value-added tax from 5%–7.5%;

(iii) taxation of digital companies using the "significant economic presence" test;

(iv) the introduction of an interest deductibility cap at no more than 30% EBITDA on loans issued to Nigerian companies by foreign connected persons;

(v) the introduction of a 365-day pre- and post-business reorganisation rule for related party business reorganisation transactions. See question 9.4;

(vi) the introduction of withholding tax at the rate of 10% on the dividend of investors in upstream oil and gas companies;

(vii) Nigerian companies with at least 25% foreign equity investment which has no taxable profit, or with taxable profits less than the minimum tax, will now be liable to pay a minimum tax of 0.5% of gross turnover;

(viii) insurance companies will be permitted to carry forward tax losses indefinitely; and

(ix) documents relating to electronic transactions are now liable to stamp duties.

10 Legal and Regulatory Matters

10.1 Have there been any significant legal and/or regulatory developments over recent years impacting private equity investors or transactions and are any anticipated?

In November 2019, the FCCPC issued guidelines titled "Guidelines on Simplified Process for Foreign-to-Foreign Mergers with Nigerian Component" to regulate offshore acquisitions of shares or other assets resulting in the change of control of a business, part of a business, or any asset of a business, in Nigeria. The guidelines prescribe an expedited review process of 15 days subject to the submission of a complete application and the payment of an expedited review fee. The FCCPC is also expected to issue Merger Guidelines and Regulations governing merger control.

Nigeria recently signed the African Continental Free Trade Agreement, aimed at creating a single continental market for goods and services, with free movement of businesses, persons and investments. The Agreement, however, will not become effective in Nigeria until it is ratified by the National Assembly.

Please also see question 9.4.

10.2 Are private equity investors or particular transactions subject to enhanced regulatory scrutiny in your jurisdiction (e.g. on national security grounds)?

Nigerian law permits 100% foreign ownership of Nigerian businesses other than in certain sectors such as shipping, broadcasting, advertising, private security, aviation, and oil and gas. Nigerians and foreign nationals cannot invest in the production of: arms and ammunition; narcotic drugs and psychotropic substances; or military and paramilitary wear and accoutrements.

10.3 How detailed is the legal due diligence (including compliance) conducted by private equity investors prior to any acquisitions (e.g. typical timeframes, materiality, scope, etc.)?

This is subject to negotiation and investors' objectives, budgets and timelines. The scope of the inquiry, materiality and timelines may be subject to counterparty negotiation. Typically, legal due diligence will cover the corporate structure, regulatory compliance, employee-related liabilities, material contracts and debt portfolio, intellectual property and the litigation profile of the target. It is expected that the scope of due diligence will become more detailed in certain areas such as a target's supply chain dependency, review of material contracts for termination provisions and *force majeure* clauses, due to COVID-19.

The timeframe for a detailed review, typically four to six weeks, has, however, been extended because searches, which are largely manual, cannot be conducted in public registries or courts due to government restrictions.

10.4 Has anti-bribery or anti-corruption legislation impacted private equity investment and/or investors' approach to private equity transactions (e.g. diligence, contractual protection, etc.)?

Anti-bribery and corruption, and anti-money laundering requirements under legislation and international treaties and agreements, are generally prevalent in PE funds, fund structuring, fund management and transaction arrangements in Nigeria.

10.5 Are there any circumstances in which: (i) a private equity investor may be held liable for the liabilities of the underlying portfolio companies (including due to breach of applicable laws by the portfolio companies); and (ii) one portfolio company may be held liable for the liabilities of another portfolio company?

Shareholder liability is generally limited to the amount (if any) unpaid in respect of any shares held by the investor in a Nigerian limited liability company.

11 Other Useful Facts

11.1 What other factors commonly give rise to concerns for private equity investors in your jurisdiction or should such investors otherwise be aware of in considering an investment in your jurisdiction?

Key factors include the strategic importance of choosing partners aligned with the PE investor's outlook and objectives of: compliance and environmental, social and governance arrangements; having a pragmatic and realistic approach to regulatory interactions and timelines; and working with experienced local advisers.

PE investors will also need to consider adopting different strategies in the coming months to preserve investment. Timelines will need to be realistically considered and adjusted due to the pandemic.

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Folake Elias-Adebowale is a partner in the firm's private equity, corporate/M&A and oil and gas teams. Her specialisations include cross-border and domestic equity and asset acquisitions, disposals, joint ventures, strategic alliances, restructuring, investments, financing for energy, manufacturing and industrial projects and employment matters. She headed the legal and regulatory sub-committee of the Federal Minister for Industry Trade and Investment's Nigerian Private Equity and Venture Capital Development project, established to make recommendations for boosting private equity and venture capital activity in Nigeria. She represents the firm on the legal and regulatory councils and committees of the EMPEA, the African Venture Capital Association and the Private Equity and Venture Capital Association, Nigeria.

Udo Udoma & Belo-Osagie
St Nicholas House, 10th, 12th & 13th Floors
Catholic Mission Street
Lagos
Nigeria

Tel: +234 1277 4920
Email: folake.adebowale@uubo.org
URL: www.uubo.org

Christine Sijuwade is a partner in the firm's private equity and corporate advisory teams. She is a core member of the team that advises several local and international private equity firms in connection with the structuring and establishment of their funds as well as their equity investments in various Nigerian companies including companies in the telecommunications, financial services, food and beverage, healthcare, and manufacturing sectors. She has also advised on international lending transactions including syndicated loans and has been involved in a diverse range of financial and capital markets transactions including private placements and, as part of her Asset Management and Collective Investment practice, the establishment of mutual funds. She also advises on issues relating to the Nigerian bond market. As part of her corporate advisory practice, Christine supervises due diligence reviews, in the course of which she evaluates regulatory compliance practices and credit portfolios to assess the viability of targeted businesses for merger, investment and financing transactions. Christine is the Secretary to the Nigerian Bar Association-Section on Business Law Committee on Competition and Consumer Protection.

Udo Udoma & Belo-Osagie
St Nicholas House, 10th, 12th & 13th Floors
Catholic Mission Street
Lagos
Nigeria

Tel: +234 1277 4920
Email: christine.sijuwade@uubo.org
URL: www.uubo.org

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Corporate Tax
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Project Finance
Public Investment Funds
Public Procurement
Real Estate
Renewable Energy
Restructuring & Insolvency
Sanctions
Securitisation
Shipping Law
Telecoms, Media & Internet
Trade Marks
Vertical Agreements and Dominant Firms

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