

Nigeria

Aina Blankson LP

Private equity investments in Nigeria

In recent times, private equity investments in Nigeria have grown considerably. Notable investments within the country include Actis Capital's \$130 million investment in Diamond Bank Nigeria and Emerging Capital Partner's investment in Notore Chemical Industries, among a host of others. Most PE deals in the country are hinged on management buyouts and restructuring,

unlike in developed economies where they consist mainly of leveraged buyouts.

Usually conceived as closed-ended investments, investors in private equity funds (PEFs) typically commit at the outset and afterwards cannot redeem their interests. The funds

draw down the commitments from investors as necessary to make a considerable number of investments, and as investments are realised, the proceeds are received and distributed often without re-investment, thereby making the fund self-liquidating.

A big consideration in structuring PEFs is averting the additional stratum of taxation. Typically, the fund will be taxed when it realises an investment or receives income, and likewise the investor upon the realisation of investments in the fund or upon receiving income. For this reason most Nigerian-promoted PEFs are often set up in tax-haven jurisdictions such as the British Virgin Islands or Mauritius.

PEFs are mostly set up as incorporated entities under the provisions of the Nigerian Companies and Allied Matters Act. Such incorporated PEFs are liable to tax on company income tax. In Lagos state of Nigeria, however, most PEFs are set up as limited partnerships under the Partnership Law of Lagos State.

Under this structure, there is at least one general partner (usually the fund manager) whose liability for all the debts and

obligations of the fund is unlimited, and other limited partners who are investors in the fund, but are not liable for the debts and obligations of the fund beyond their respective contributions.

The 2011 Consolidated Rules and Regulations of the Securities and Exchange Commission (SEC) guide the operations of PEFs in Nigeria. These rules subject PEFs operating in the country to authorisation and registration requirements with the SEC. Where fund managers intend to invest the assets of a fund in unlisted securities, they are required to have a minimum paid-up capital of NGN500 million (\$3.12 million) unimpaired by losses or such amount as may be prescribed by SEC. In addition, the partners, principals and sponsored individuals must have been in the business of PE investment management for a minimum period of five years.

Investment in unlisted securities of a company is only permitted where the investee company has demonstrated compliance with the code of corporate governance; consistently produced audited accounts for the preceding five years; and has consistent history of profitability for at least the preceding five years. PEFs are only allowed to solicit funds from qualified investors alone, and cannot invest more than 30% of their funds in a single investment.

Investments by banks are strictly regulated by the Banks and other Financial Institutions Act, and those made by pension funds by the Regulation on Investment of Pension Fund Assets 2010. Under the Act, and in line with CBN regulations, banks can acquire shares in small and medium-scale industries, agricultural enterprises and venture capital companies subject to the condition that the aggregate value of the equity participation of the bank in those enterprises does not at any time exceed 20% of the bank's shareholders funds and not more than 40% of the paid up capital of the investee company.

Before pension fund assets can be invested in PEFs registered with SEC, such PEFs are required to have a well defined and publicised investment objectives and strategy, satisfactory pre-defined liquidity, and exit routes. Further, such PEFs must have a minimum of 75% investment in companies or projects in Nigeria. Key principals of the fund manager (CEO and CIO) are required to have at least 10 years' experience in PE investment.

No doubt the 2011 consolidated rules and regulations have assisted in providing some form of guidance on the operations of PEFs in Nigeria. Nevertheless, Nigeria's private equity sector is not yet as vibrant as those of advanced economies.

Nigerian authorities are, however, committed to developing the sector and there is no doubt that further economic reforms will continue to make the environment attractive to PEFs.

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