



Private Equity Investing in Emerging Markets: Key Considerations for Stakeholders



Introduction

Business and finance are inseparable. As much as founders, innovators, and business owners constantly search for funding to scale their company's operational objectives and expansion, investors are also looking for the next investment platform to deploy funds with minimal investment risks.

Globally, Private Equity (PE) has proven to be a veritable funding pipeline for many businesses with an increasing focus on emerging markets. In Africa, PE investments have been on a steady rise as it was reported that the year 2024 witnessed a remarkable surge. Notable examples include the Oak and Saffron acquisition of a sixty percent (60%) majority stake in Presco Plc¹ and Chapel Hill Denham's \$7.4 Million financing deal with d.light for off-grid solar projects in Nigeria.² The Nigerian market remains central to PE investments due to its high growth potential and returns premised on a large population, a high concentration of entrepreneurial activities, and an

evolving economy.

According to a BusinessDay analysis of the latest DealMakers Africa show, PE investments in Nigeria jumped by 321.8 percent in the first quarter of 2024.³ Sectors such as energy, technology, finance, agriculture, and fast-moving consumer goods continue to attract investors' attention as fertile ground for investment in Nigeria.

Notably, the government's active role in shaping policies and improving the business climate, particularly through tax incentives and regulatory reforms, has been pivotal in making Nigeria a more attractive destination for investors.

Although challenges like insecurity, corruption, political instability, foreign currency instability, high cost of energy, and access to funds still plague the Nigerian entrepreneurial sector, private equity investments have emerged as a powerful engine driving entrepreneurial activities, innovation, and economic growth in Nigeria.

¹ <https://nairametrics.com/2024/03/15/oak-and-saffron-limited-acquires-presco-plcs-owners-siat-group/>

² <https://nairametrics.com/2024/02/21/chapel-hill-denham-closes-7-4-million-secured-financing-for-off-grid-solar-projects-in-nigeria/>

³ <https://businessday.ng/news/article/nigerias-private-equity-investments-up-322-on-energy-edtech/>

Legal Considerations for Private Equity Investments in Nigeria

The PE market in Nigeria keeps evolving, with regular changes being made to existing laws, policies, and other legal checklists that must be ticked before investing PE funds. In Nigeria, laws currently guiding PE activities are spread across various legislative instruments. Hence, it is expedient that investors and other stakeholders are abreast of these evolving considerations.

1. Regulatory frameworks: Various laws regulate PE investments in Nigeria, and they include:

a. Companies and Allied Matters Act 2020 (CAMA):

CAMA generally regulates the registration and management of businesses and corporate entities in Nigeria. Consequently, its provisions apply to the activities of PE firms. The Corporate Affairs Commission (CAC) also released the Companies Regulations 2021 as a sequel to CAMA in regulating the affairs of corporate entities in Nigeria.

b. Investment and Securities Act (ISA):

The ISA empowers the Securities and Exchange Commission (SEC) to regulate the investment of PE funds and other securities in Nigeria. Under the Securities and Exchange Rules, 2013,⁴ PE funds established in Nigeria with a minimum commitment of N1,000,000,000 (One Billion Naira) investors' funds must be

registered with SEC.

Additionally, SEC issued Rule 249D, Rules on Private Equity Funds, mandating fund managers of a PE fund to have a minimum paid-up share capital of N20,000,000 (Twenty Million Naira) and not to solicit funds from the general public.⁵

c. Federal Competition and Consumer Protection Act 2018 (FCCPA):

The FCCPA applies to all undertakings and commercial activities within Nigeria or offshore commercial activities having effect in Nigeria, and consequently applies to PE activities. By implication, any conduct outside Nigeria by any person in relation to the acquisition of shares or other assets outside Nigeria, resulting in a change of control of a business, part of a business, or any asset of a business in Nigeria comes under the regulatory purview of the FCCPA.⁶

Other relevant laws that apply to PE activities in Nigeria include the Finance Act, the National Pension Commission Regulation on the Investment of Pensions Funds Assets 2019, the Venture Capital (Incentives) Act, and the National Office for Technology Acquisition and Promotion (NOTAP).

⁴ Rule 558 of the Securities and Exchange Rules 2013.

⁵ Rules 3 and 4 of Rule 249D, Rules on Private Equity Funds

⁶ Section 2(3)(d) of the Federal Competition and Consumer Protection Act 2018.

2. Corporate Structure: Until the CAMA amendment in 2020, PE activities majorly took the form of Limited Partnerships, many registered under the Partnership Law of Lagos State. With the advent of CAMA 2020, corporate structures for PE activities can now take the form of Limited Liability Partnerships (LLPs) and Limited Partnerships (LPs). Recent market practices have shown that LLPs and LPs are the preferred investment vehicles for PE activities particularly LLPs due to their tax-efficient nature and distinct corporate personality. Understanding the corporate structure for PE activities in Nigeria is crucial before making investment choices. For example, there can only be Twenty (20) Partners in a Limited Partnership as provided by CAMA but there are no such restrictions for LLPs.

3. Tax Implications: Susceptibility to tax depends largely on the kind of corporate structure a PE fund takes. PE registered as Limited Liability Companies are generally caught within the net of the Finance Act to pay Companies Income Tax. However, Companies categorised as small companies with an annual turnover of N25 million or less are exempted from paying Companies Income Tax. Likewise, notwithstanding that Companies' Income Tax does not apply to LPs and LLPs, Partners are liable to pay tax on their investment income.

4. Investment Process: This involves disclosures from the target and engagement of various professionals before, during, and after the

investment choice is made. It includes evaluating the target on various standards including financial strength, management structure, market relevance, long-term advantage, etc. Recent market practices have shown that investors are now particular about environmental, social, and governance (ESG) goals and implementations of the target. The due diligence process also includes verifying the target's level of compliance. This is necessary to mitigate risks and make informed decisions.

5. Foreign Exchange and Repatriation of Funds: Foreign PE firms must consider the possibility of repatriating whatever funds are made from the investment. Currency volatility and a strong forex reserve are key pointers to be considered. Under the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act 1995, foreign investors are allowed to repatriate capital, profits, and dividends through authorised channels- usually commercial banks, upon presentation of a Certificate of Capital Importation.

6. Exit Strategies: PE firms must also consider the exit options that best suit the circumstances surrounding the investment. This involves evaluating the legal and financial implications and requirements associated with each exit strategy. These options include IPOs, Management Buyouts, Schemes of Arrangement, Trade sales, etc.

Strategic Positioning for Private Equity Investment

Attracting private equity (PE) investment can be a game-changing move for businesses seeking capital to scale, expand operations, or enter new markets. PE firms are constantly looking for high-growth companies with strong potential to generate attractive returns on their investments. Companies seeking to attract more private equity investment may consider the following:

1. Establish Strong Corporate Governance:

Corporate governance is one of the first aspects private equity firms evaluate when assessing a potential investment. PE firms typically invest in companies with strong management teams and clear governance structures because these elements directly influence the long-term success of the business. Companies should particularly focus on having a strong board composition and internal control measures.

2. Demonstrate a Track Record of Growth and Profitability:

Private equity firms are attracted to companies with a proven track record of financial performance and growth. Companies must be able to show consistent revenue growth, profitability, and the ability to scale operations. This demonstrates that the business model is viable and can deliver strong returns on investment. Companies must show a healthy profit margin and a scalable business model.

3. Focus on a Clear Value

Proposition: A company's value proposition is the unique benefit it offers to its customers and the reason it stands out in the marketplace. Companies need to articulate their competitive advantage clearly and demonstrate how they solve customer problems better than competitors. Exhibiting a distinctive edge and less vulnerability to market saturation comes in handy in landing PE investments.

4. Implement Robust Financial Management Practices:

Sound financial management is critical to attracting PE firms. Investors want to see well-maintained financial records, transparency, and clarity in accounting practices. Companies that struggle with basic financial management will find it difficult to secure investment. Good financial management practices include keeping accurate and auditable financial records, maintaining a sound cashflow management system, and implementing well-thought-out financial projections.

5. Show a commitment to Sustainability and ESG Principles:

In recent times, ESG criteria have become increasingly important to private equity investors. Companies that integrate sustainability into their business models are more likely to attract investment from PE firms focused on responsible investing. Companies should adopt transparent and ethical governance practices, focus on social impact, and demonstrate a commitment to sustainability.

Key Considerations For Stakeholders

PE investment requires concerted efforts from stakeholders in various sectors. Thus, stakeholders that include, legal practitioners, investment banks, commercial banks, accountants, auditors, etc, must align their goals with those of potential investors thereby positioning the company for growth and sustainable success through the following:

1. **Understanding the Market:** Private equity investors must understand the local market dynamics, including consumer behaviour, political risks, and industry-specific opportunities. Fintech, healthcare, agriculture, and consumer goods offer significant growth potential in Nigeria's emerging market economy, understanding both the regulatory and consumer markets helps the PE or the investor to scale.
2. **Local Partnerships:** Building local partnerships is crucial for navigating

the Nigerian business environment. Local partners can help mitigate risks, provide market intelligence, and support in securing regulatory approvals.

3. **Risk Mitigation Strategies:** PE firms should employ a combination of risk mitigation strategies, such as using foreign exchange hedging instruments, diversifying investments across sectors, and implementing strong corporate governance frameworks in portfolio companies.

4. **Impact Investing:** Given Nigeria's socioeconomic challenges, impact investing (which targets financial returns alongside measurable social impact) has gained traction. Many international investors are increasingly looking at investments that promote job creation, infrastructure development, and environmental sustainability.

Conclusion

PE investment offers vast opportunities for both investors and companies seeking investments. Nigeria has proven to be a fertile land for private equity investments, however, understanding the legal landscape and engaging experts in the field is critical to achieving success. Securing private equity investment is not just about raising capital, it's about demonstrating the potential for long-term value creation and building a solid foundation for future growth. Hence, stakeholders must take a long-term, informed approach to investing,

prioritize due diligence, and build strong local partnerships to unlock value in Africa's most promising emerging markets. This is achieved by ensuring that the issues that might militate against the investment environment are tackled head-on.

Ultimately, PE firms are advised to seek appropriate commercial legal guidance and investment advisory tailored towards the peculiarities of the investment process before making financial commitments.

About Stren & Blan Partners

Stren & Blan Partners is an innovative and dynamic Law Firm with a compelling blend of experienced lawyers and energetic talents. We are focused on providing solutions to our client's business problems and adding value to their businesses and commercial endeavours. This underpins our ethos as everything we do flows from these underlying principles.

Stren & Blan Partners is a full-service commercial Law Firm that provides legal services to diverse local and multinational corporations. We have developed a clear vision for anticipating our client's business needs and surpassing their expectations, and we do this with an uncompromising commitment to Client service and legal excellence.

The Authors



**Noble
Obasi**

Team Lead

NobleObasi@strenandblan.com



**Ibitola
Akanbi**

Associate

IbitolaAkanbi@strenandblan.com



**Michael
Afuye**

Associate

MichaelAfuye@strenandblan.com

Stren & Blan Partners

+234 (0)702 558 0053
3 Theophilus Orji Street,
Off Fola Osibo Road, Lekki Phase 1,
Lagos, Nigeria

www.strenandblan.com
contact@strenandblan.com
[@strenandblan](https://www.instagram.com/strenandblan)

