

Due Diligence Requirements for Investments in Nigeria

It is important for investors to conduct due diligence on a target Nigerian company before investing in it whether by means of restructuring, mergers, acquisitions or takeovers. This is because the real state of the company may not be stated in the books of the target company or known to the investor until it takes full control of the company. The main reasons why due diligence is very important is to;

- (a) minimise the potential loss to the Investors' creditors and ensure fiduciary duties are performed diligently;
- (b) monitor the target company's financial position and ascertain its debts;
- (c) take specialist advice and, if there is a prospect of insolvency, refraining from incurring new liabilities;
- (d) if there is an indication of the company's insolvency, consider discontinuing business with the company; and
- (e) if there is a reasonable chance of saving the business, take appropriate action like negotiating new financing and working with creditors to save the company.

What due diligence is necessary for Investors of the target company?

Investors must undertake financial and legal due diligence before any scheme arrangement or investment in a target company. Financial due diligence is managed by the Investors' accountants and management team, and is expected to reveal the following;

- (a) the accounting and financial control system of the company;
- (b) the value of assets and liabilities to be acquired;
- (c) the product development and competitors; and
- (d) the company's ability to raise short and long-term capital and the cost of such capital in relation to general industrial indications.

Legal due diligence is conducted by the Investors' Solicitor and identifies the potential legal issues and problems that may impede transactions, such as IP and technological issues and those relating to transactional documents and agreements, business profiles or employees.

What information is available to Investors of the target company?

Generally, if an offer has the support of the target company, all of the relevant information will become available. This may not be the case if the directors are adverse to the offer. No rules or regulations oblige a company to make its information available to Investors.

What information can and cannot be disclosed to the Investors?

Investors can access all of the target's records which have been filed with the Corporate Affairs Commission and the Securities and Exchange Commission, in case of a public quoted company. Companies that are operating in regulated industries are required to make filings to the relevant regulator and these filings become public documents which are easily accessible to the Investor's Solicitor.

What information can be obtained by consumers, employees and competitors of the company?

In order to obtain first-hand information on the state of the company, the investor's Solicitor may conduct an interview of the consumers, employees and competitors of the target company to ascertain its operations and whether it is indeed a going concern.