

OPENING REMARKS FOR THE VIRTUAL M&A SUMMIT

Role of M&A in Companies' recovery during and after COVID-19 disruption

In recent years, mergers and acquisitions (M&A) activities have become an important channel for investment in Africa for both global and local market players. M&A deals have allowed companies to consolidate their positions in African markets, contributing to better market access and competitiveness. Over the past decade, Africa was among the fastest growing regions in the world with an average GDP growth rate exceeding 5%. To take advantage of merger & acquisition opportunities in Africa, it is important to understand the local environment, as well as the requirements and restrictions that apply. This category covers these elements and also provides an overview of what constitutes private M&A locally, which transactions are the most common, and what the current trends are in structuring M&A transactions.

In light of the recent pandemic, I believe that our practitioners in M&A can be in position to respond, recover and thrive. As practitioners we can leverage these positions by advising our clients in the best possible practices to ensure they are protected. Strategies such as the **Defensive M&A** can be important in safeguarding the company's future. These can include; - Divestments and Separations, integration and Value creation services while investor activism and defense can help our clients in their respective businesses to be able to fortify their financial defenses against the effects of COVID-19. Another strategy is the **Offensive M&A** which can also accelerate business model transformation. These include; - Supply chain optimization for sectors with structural disruptions like manufacturing, M&A strategy for sectors that have faced irreversible changes like hospitality, healthcare etc..., Disruptive M&A for sectors that are more resilient like consumer products and financial services while sector convergence underpinned by alliances like media, banking is important.

The "new normal" is likely to accelerate sector convergence driven by new customer behaviors and spending patterns; companies need to pursue new partnerships as well as M&A; partnerships could include nimble players in the eco-system and traditional partners. So how can professionals benefit from this? As a legal professional I realize our role in this fight is pertinent in ensuring that businesses and investments are protected. The following points can offer a small glimpse of my point; -

- Considering the likely impact of the Covid-19 crisis on revenues and whether to re-open discussions on purchase price;

- Assess solvency and liquidity, especially where the target is in an affected industry, such as hospitality, travel, tourism or retail, and possible insolvency risks; and review target's implementation of crisis plans
- Review of key contracts to ascertain whether obligations under those contracts are still capable of being met in the current environment, and, in particular, the likely impact of Covid-19 on the ability of key suppliers of the target to perform;
- Check whether the target may lower its rent based on certain typical provisions under its lease agreement in case of lockdown;
- Review the contractual rights to suspend performance and termination rights, along with any force majeure provisions or hardship clauses to establish whether the current crisis has a triggering effect; and consider all implications of employees working remotely (if applicable);
- Review all insurance policies of the target to ascertain whether they specifically exclude/cover any effects of Covid-19 and whether any business interruption provisions apply, as well as evaluate whether there is a requirement to mitigate loss;
- Review Covid-19-specific laws and regulatory restrictions applicable to the target, and any change of laws or crisis severity in a particular geographic region or regions in which the target operates; Review biosecurity measures adopted by the target to protect employees; and
- Assess the target's IT systems to ensure remote/virtual contingencies are possible.

The above points open up **a potential for litigation on many aspects** which we can explore as legal professionals. Some buyers are considering the implications of Covid-19 under their transaction agreements, and in particular, whether the pandemic may be a contractual excuse. Litigation can be expected to result.

A focus on the shifting drafting trends can be noted. The pandemic has already affected parties' drafting of transaction agreements, particularly long term Contracts. The majority of Contract definitions (around 60 per cent), did not even address a pandemic or similar event with either explicit terms or generic terms such as 'act of God' or 'force majeure', which may be interpreted to cover pandemics. In the wake of Covid-19, that trend has accelerated dramatically. As always, these issues are heavily dependent on the language of the agreement and other transaction-specific factors.

Furthermore, **the prudence and optics becomes a focus** as we ensure that we advise our clients in the best possible foreseeable legal aspects

given the current situation. Such a sudden and severe drop in economic activity has not been seen in many years. The result has been shocking unemployment numbers, enormous drops in revenue for many businesses – especially those in retail, hospitality and travel – in addition to enhanced health risks. In such an environment, naturally, a trend toward more conservatively managed balance sheets, avoiding incremental risks and trying to avoid the appearance of voluntary staffing cuts will likely emerge which exposes entities to legal risk.

Longer and expanded diligence can also come in as a result. Parties should expect longer diligence processes with an increased focus on certain areas. While public health restrictions are in place, the pandemic is causing logistical challenges for the traditional M&A diligence process. Substantively, Covid-19 has sharpened parties' focus on a target's ability to weather not only the present crisis but also future pandemics and other crises, alongside its vulnerability to various forms of business disruption.

In the indispensable words of **President John F. Kennedy**, “**Leadership and learning are indispensable to each other.**” I trust that as we gather here to interact, learn and professionally network, we are faithfully executing our underlying duty to our clients, yet ensuring that we create pathways of availing ourselves to them through our services. Therefore, the steps we take today to learn new tactics not only proves our willingness to learn, but also shows our dedication to a better future.

Thank you.

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