AN OVERVIEW OF SOME EXIST STRATEGIES AVAILABLE TO A PRIVATE EQUITY INVESTMENT IN NIGERIA

The global financial crisis, the Nigerian stock market meltdown and the Nigerian Banking crisis has forced many companies in Nigeria to think of alternative avenues for funding since the primary institutions that provide funding solutions for companies in Nigeria that is the banks and the stock exchange were affected by the crisis.

One of such funding solution is investment from private equity firms. Private Equity for the purpose of this paper is used loosely to include: Private Equity, Hedge Funds and High Net worth Individuals.

This paper seeks to carry out an overview of some of the exit strategies available to a private equity investor.

There are various exit strategies available to a private equity investor and these ranges from the agreement itself to the legal/regulatory regime applicable to the class of industry to which the company belongs to.

FIXED AND FLOATING DEBENTURE OVER PRESENT AND FUTURE ASSET OF THE COMPANY:

This is the most commonly used exit strategy. At the point of making the investment, the company is made to execute an all-asset debenture over its asset both floating and fixed that already exists or would be created after the investment. With the creation of this kind of charge on the asset of the company it affords the investor an opportunity to sell the charged asset or appoint a receiver/ manager over such charged asset.

WINDING UP

Winding up is often resorted to as a matter of last resort. Winding up as it is often referred to refer to the legal process whereby a company is wound up and its assets are sold off to pay its creditor.

Where an Investor is a secured creditor that is the investment of such investor is backed up by the assets of the company, the investor can apply to court as a creditor that the company be wound up owing to the fact that the company is unable to pay its debt and that the company be wound up. The interesting point about liquidation is that it need not be included in the investment agreement since it is a statutory right.

APPOINTMENT OF A RECEIVER/MANAGER:

This is a much milder approach when compared with winding up. In drafting investment agreements, a clause is inserted to the effect that the investor is empowered to appoint a receiver and / or a manager. A receiver manager unlike a liquidator is used where the company still has the potentials of carrying on business as a growing concern but needs proper guidance and management. The receiver is appointed to run the business until the investor realizes his investment. A Liquidator on the other hand is appointed to dispose of the assets of the company and pay off the investor.

ANTI-DILUTION CLAUSE
An anti-dilution clause could be inserted in the investment agreement to prevent the company from diluting the shares owned by the investor. This clause ensures that the investor's investment is protected in the sense that the company cannot create new or additional shares without first buying the shares of the Investor or allot new or allotting additional shares and ensuring that the percentage shareholding of the investor prior the creation is equal to the percentage shareholding after the creation of the new shares.

DRAG ALONG/TAG ALONG RIGHTS
Drag along/tag along rights could be inserted in the investment agreement. Drag along rights refers to a right created in the agreement whereby the other shareholders cannot sell shares with majority voting rights to another party without first selling the shares of the investor.

PUBLIC OFFER
A mandatory public offer clause could be inserted in the Investment Agreement and the proceeds of the public offer used to pay off the Investor.

AGREEMENT BY THE COMPANY TO REPURCHASE THE SHARES OF THE INVESTOR
The Investment agreement could also include a repo clause that empowers the company to repurchase the shares of the investor. When inserting this clause one must be weary of the provisions of the Companies and Allied Matters Act which provides the conditions when a company is allowed to buy back its shares.

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