

Uganda

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Practical aspects of M&A transactions

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Uganda has had an impressive business and investment drive in the last couple of years. The discovery of oil, the successful Commonwealth Heads of Government Meeting held last year and the stable economy have fuelled increased investor confidence and attracted more investment into the country. This has led to an unprecedented increase in M&A (most notably in the finance and banking sector) and in the level and quality of competition between banks for the provision of financial facilities and services to customers.

In 2007, the Central Bank licensed five new commercial banks, bringing the total number licensed to over 20, with several large banks opening in Uganda on their own account or through the acquisition of majority stakes and interests in existing banks, financial institutions and microfinance deposit-taking institutions.

The Companies Act

M&A among private companies is principally governed by the Companies Act. Cap 110 revised laws of Uganda and particular statutes or Acts governing specific areas of business. Examples of the latter include the Financial Institutions Act 2004 (which governs all aspects relating to banks and the banking industry) and the Insurance Act (which governs all insurance companies and brokers, and the insurance industry in general). The specific provisions and authorisations in the memorandum and articles of association or charter of the business entities merging are also taken into consideration.

Dissenting shareholders

Most significantly, as in any other jurisdiction, it deals with cases of dissenting shareholders. This is presently catered for in our laws and is possible in two instances: first, where the purchase of the shares of the assenting members has not been concluded; and second, where the purchase of the shares of the assenting members has been concluded.

The Companies Act provides that in the case of a contract involving the transfer of shares or any class of shares, where the offer to purchase and acquire shares has, within four months of making the said offer, been approved by the holders of at least 90% of the shares whose transfer is involved, then the acquiring company may, within two months of the expiry of the said four months, give notice in the prescribed manner to any dissenting shareholder, stating that the acquiring company wants to acquire his shares, unless the dissenting shareholder applies to court within one month and obtains an order prohibiting the acquisition.

The dissenting shareholder may apply to the court, challenging the terms of the proposed sale and will be required to demonstrate the unfairness of the proposed sale for the court to exercise its discretion in his favour. The courts place a high burden of proof on the dissenting shareholder, given that 90% or more of the shareholders will have already approved the offer in question. The test applied by the courts is whether the offer is obviously unfair, patently unfair, and/or unfair to the meanest intelligence. Unfairness is gauged relative to the general body of shareholders rather than the particular circumstances of the individual dissenting shareholder and generally the courts will only exercise their discretion in exceptional cases.

Where the dissenting shareholder does not obtain a court order or fails in his application for the said order, the acquiring company will be entitled and bound to acquire the shares on

the same terms agreed and provided to the assenting shareholders.

Upon expiry of the notice or the failure of the court action, the acquiring company is required to send a notice (of the expiry of the period of notice or the failure of the court action) to the target company and pay the consideration for the dissenting shareholder's shares. The acquiring company is also required to submit a signed share transfer form to the target company. The share transfer form is signed by an appointee of the acquiring company on behalf of the dissenting shareholder and by the acquiring company on its own behalf. The target company is then required to register the said transfer and hold the funds in trust for the dissenting shareholder.

In the second instance, where the shares of the dissenting shareholder are sought to be acquired after the completion of the transfer of shares or any class of them from the assenting shareholders to the acquiring company, the Act provides that where such a contract for the transfer of shares was approved by at least 90% of shareholders within four months of an offer being made and, pursuant to that contract, the shares have been transferred to the acquiring company, then, within one month of the transfer, the acquiring company may give notice of that fact to the dissenting shareholder.

Any such dissenting shareholder will, within three months of the date of such notice to him, require the acquiring company to acquire his shares. Where the shareholder gives such notice, the acquiring company will be bound to acquire the shares under the same terms as it did the shares already transferred to it.

Whereas the Act has provided a procedure for overcoming hurdles related to minority dissenting shareholders, it has, in the same vein, clearly posed problems for the expeditious closure of M&A transactions. The above provisions have the effect of stalling or delay-

ing the completion of any such transaction by no less than six months in either case at the very least. Worse still in the second instance, the Law is silent on the consequences when the dissenting shareholder does not respond within the three months: does the offer lapse, is he bound, or can he sit back and keep the acquiring company waiting indefinitely?

We can only hope that continuing Ugandan law reforms will adequately address this.

Financial and corporate

Recommended firms	
Tier 1	Katende Ssempebwa & Co MMAKS Shonubi Musoke & Co
Tier 2	Kateera & Kagumire Lex Uganda Sebalu & Lule
Tier 3	AF Mpanga Byenkya Kihika & Co JB Byamugisha
Tier 4	Barugahare & Co Kampala Associated Advocates Kasirye Byaruhanga Magezi Ibale & Co Semuyaba & Co

Project finance transactions are heating up in Uganda. Market commentators suggest the Kenya-Uganda oil pipeline extension will do much to generate work for lawyers operating in the country. The Bujagali dam is another appetising investment - the \$770 million power generation facility is expected to have a 250MW capacity by the time it is completed in 2011.

Announcements by two of east Africa's leading businesses - Crane Bank and Safaricom - of plans to list on the stock market are also creating a frenzy in the legal market as firms vie to take on the IPOs.

Property development is also very active. This year's Commonwealth Heads of Government Meeting in Kampala brought with it the construction of several hotels. Commentators suggest there is a huge surge of interest in this area as many private developers are investing in real estate and local banks are entering the mortgage market.

Elsewhere, the regional power crisis is creating much work for investors and legal practitioners in Uganda. Among the initiatives, the World Bank is developing a series of ther-

mal and hydropower projects to revitalise Uganda's power distribution system.

Katende Ssempebwa & Co

Katende Ssempebwa & Co, established in 1969, is recognised as one of the largest firms in Uganda's legal market. The firm boasts expertise in banking and corporate mandates and draws on the skills of some of the most highly trained lawyers in Uganda. Sim Katende, the firm's corporate and commercial head, is recognised for his invaluable contribution to the market.

In the past year Katende Ssempebwa & Co has been advising Warid Telecom on its plan to invest \$200 million in the telecoms sector in Uganda. The firm has also managed to secure mandates in the country's budding real-estate sector. In one highlight deal, the firm advised Kingdom Hotels International, an investor in luxury hotels and resorts, on its \$80 million hotel project.

In the capital markets, Commercial Bank of Rwanda sought the firm's counsel in relation to its first bond issuance in Rwanda. The firm's services have also been required by East African Development Bank; it recently assisted the bank in the structuring of a regional venture capital fund.

Leading lawyers

Sim Katende

MMAKS

MMAKS's cutting-edge banking practice has built the firm's unrivalled reputation as a specialist finance firm, which frequently works on Uganda's largest banking transactions. The firm's membership has also done much to bolster ties with other firms operating in the continent.

In one standout banking transaction, the firm advised Stanbic Bank on a \$25 million loan facility to a cement plant. The firm has also been advising on the MTN programme and an \$18.6 million notes listing on the Uganda Securities Exchange for a utilities company.

The telecoms sector is also providing fruitful mandates for the firm. In one highlight transaction, managing partner Phillip Karugaba advised Wilken Telecommunications on the \$2.5 million purchase of a majority share in a rival telecoms company.

Among the firm's other M&A transactions, Karugaba advised National Bank of Commerce on the \$7 million sale of a major stake in a commercial bank.

Leading lawyers

Phillip Karugaba

Timothy Masembe Kanyerezi

Shonubi Musoke & Co

Market commentators note that the departure of Ezekiel Tuma in March 2008 has not had a significant impact on Shonubi Musoke & Co's standing in the market. A number of the firm's other prominent lawyers, such as Alan Shonubi, remain at the practice.

Over the past year the firm advised Umeme, an electricity distribution company, on the \$14 million acquisition and installation of a new customer care and billing system.

In another notable transaction, the firm advised Standard Bank on a \$10 million loan facility to Invesco, a British asset-management company, for the purchase of shares in mobile services provider MTN Uganda.

In December 2007, Alan Shonubi, Noah Mwesigwa and Ezekiel Tuma advised joint lenders International Financial Corporation, Proparco and DEG on a \$40 million loan facility for the network upgrade of a mobile phone operator in Uganda.

Aga Khan Fund for Economic Development also sought the expertise of the firm in the \$2 million sale of a 20% stake in Tourism Promotion Services. Islamic finance transactions - a relatively new concept in east Africa - also feature strongly in the workload of Shonubi Musoke & Co.

"We are happy with the quality of work they provide and will continue to work with them in the future," says one client of the firm.

Leading lawyers

Alan Shonubi

Lex Uganda

Lex Uganda moves up a tier in the rankings this year after receiving recommendations from peers and clients. The firm is particularly commended for its banking and finance practice. "Over the years the firm has been able to become a serious contender in Uganda's legal market," says one lawyer.

In one notable bank lending transaction, the firm advised Celtel Uganda on a \$40 million syndicated loan transaction involving International Finance Corporation. The firm is also advising on a line of credit from the European Investment Bank to Development Finance Company of Uganda (DFCU).

The firm recently advised on the financing and development of luxury accommodation in Kampala. And in the energy sector, Lex

Uganda won a role advising on the Kenya-Uganda oil pipeline extension project.

Leading lawyers

Charles Odere

Sebalu & Lule

Sebalu & Lule, established in 1980, is one of the oldest firms in Uganda. It has a core practice in banking transactions but also provides legal advice on other corporate and commercial issues through its work in the energy and insurance sector.

In one notable energy project, the firm advised Aggreko International on a \$174 million thermal power plant deal with the Ugandan government. The firm is also advising the Uganda Electricity Generation Company on the establishment of hydropower plants. In bank lending, the firm is advising on the financing of the Bujagali project, which will establish a 250MW power-generating facility.

The telecoms sector is also providing fruitful mandates for the firm. In one notable deal, Nicholas Ecimú advised a Ugandan investment company in its bid to set up mobile telephone and data services in southern Sudan.

Leading lawyers

Barnabas Tumusingize

JB Byamugisha

“JB Byamugisha is attracting a lot of good work; we tend to seem them on the same panels,” says one competitor of the firm. Joseph Byamugisha is noted as a leading figure in the market, particularly following his counsel during Stanbic’s highly successful IPO in 2006.

The firm has featured some key transactions over the past year. In one, Byamugisha advised on the purchase of the majority of shares in a telecoms company in a deal worth \$2.5 million.

“It is always a pleasure to work with the firm, they are a competent team of lawyers,” says one rival. Another specifically praises Byamugisha: “He commands a lot of respect and attracts good work.”

Leading lawyers

Joseph Byamugisha