Why Due Diligence Can Make or Break a Share Acquisition in Nigeria

A Nigerian Legal Perspective on Company Share Acquisitions

This article broadly discusses legal due diligence in the context of a limited liability company share acquisition governed by Nigerian law. It reflects the general legal and regulatory framework as at 2026, including changes introduced by the Nigeria Tax Act 2025. Nigerian law — particularly around tax — has been changing quickly, and the specific provisions applicable to any transaction should always be verified with current legal and tax advice rather than relied on from a general article such as this one.

Every share acquisition begins with a promise: that the business a buyer is paying for is the business it appears to be. Due diligence is the process by which that promise is tested. It is not a formality to be rushed through on the way to signing — it is the mechanism that determines whether the deal is priced correctly, structured sensibly, and protected against the risks that only become visible once you look properly at the target company.

Acquiring shares in a Nigerian limited liability company is fundamentally different from buying its assets. On a share purchase, the buyer steps into the shoes of the existing shareholder(s) and takes the target company as it stands — with its history, contracts, liabilities, and regulatory record intact. There is no cherry-picking of assets and leaving problems behind. That single feature is what makes rigorous due diligence indispensable: liabilities that existed in the company before completion generally remain the company's — and therefore the buyer's — after completion.

What Due Diligence Is Really For

Legal due diligence on a Nigerian share acquisition typically serves four purposes:

1. Verification. It confirms that what the seller has represented about the target — its ownership, corporate standing, financial position, and contracts — is actually true, and that the seller genuinely has the right and capacity to sell the shares in question.

2. Risk identification. Every target company carries some combination of legal, financial, operational, and regulatory risk. In Nigeria, this often includes exposure to overlapping regulators, informal or undocumented arrangements, and possible gaps between what is on a company's statutory file at the Corporate Affairs Commission (CAC) and what has actually happened in practice. Diligence surfaces this before completion, when the buyer still has room to respond — through price adjustment, indemnities, conditions precedent, or walking away.

3. Valuation. A purchase price is only meaningful if it reflects the company actually being bought. Undisclosed debt, a pending regulatory investigation, a defective land title, or an unresolved tax liability can each materially change what the target is worth, and diligence findings routinely feed directly back into price negotiations.

4. Deal structuring and integration planning. What diligence uncovers also shapes how the transaction should be structured — including what regulatory approvals or consents must be obtained before completion — and what needs attention on day one afterward to keep the business running.

The Scope of a Thorough Investigation in a Nigerian Context

A properly run due diligence exercise on a Nigerian share purchase will typically cover:

- **Corporate standing and ownership.** A search at the CAC to confirm the target's registration status, directors, registered charges, and filing history under the Companies and Allied Matters Act 2020 (CAMA), together with an inspection of the target's statutory registers (register of members, register of directors, minute books) and its memorandum and articles of association for any restrictions on a transfer of shares or requirements for member consent.
- **Regulatory approvals and merger control.** Larger transactions may require prior notification to, and approval from, the Federal Competition and Consumer Protection Commission (FCCPC) under the Federal Competition and Consumer Protection Act 2018, where prescribed turnover or asset thresholds are met — implementing a notifiable merger without approval can render it void. Where the target operates in a regulated sector, additional sector-specific consents are usually needed: for example, the Central Bank of Nigeria for banks and other financial institutions, the National Insurance Commission for insurers, the Nigerian Communications Commission for telecoms operators, the Nigerian Upstream Petroleum Regulatory Commission for oil and gas assets, or the Nigerian Electricity Regulatory Commission for power sector entities (bearing in mind that the Electricity Act 2023 has also given some regulatory functions to individual states, so the position can vary by location).
- **Finance and security.** Facility agreements, guarantees, deeds in the case of issued corporate bonds and any charges the target has granted over its assets or shares — these should be checked against what is

actually registered at the CAC, since an unregistered or improperly perfected charge can affect priority and enforceability. Change-of-control clauses in financing documents deserve particular attention, as many are triggered by a share sale itself.

- **Real estate and the Land Use Act.** Under the Land Use Act, any transfer of an interest in land generally requires the consent of the relevant State Governor to be valid, and obtaining it can be a slow and bureaucratic process. One recognised advantage of a share deal in Nigeria is that, because the target company itself remains the registered holder of its land, a straightforward share transfer does not itself trigger a fresh requirement for Governor's Consent. However, this advantage is only as good as the target's existing title: if the company's own acquisition of its land was never properly consented to or perfected, that defect is inherited by the buyer along with the shares, so title should still be investigated carefully rather than assumed to be in order.

- **Tax.** Nigerian tax due diligence should cover the target's compliance history on companies income tax, VAT, and withholding tax — historically administered by the Federal Inland Revenue Service, now reorganised as the Nigeria Revenue Service under the same 2025 reform package described below — as well as any outstanding assessments or audits. Employee-related personal income tax (PAYE), which is administered at State level, is a separate strand worth checking in its own right. The tax treatment of the transaction itself also matters to the parties: the Nigeria Tax Act 2025, in force from January 2026, substantially changed the capital gains tax treatment of share disposals, including adjustments to exemption thresholds and new rules capturing certain indirect transfers of Nigerian companies. Because this area of law is new and still settling in practice, both buyer and seller should take current, transaction-specific tax advice rather than relying on the pre-2026 position.

- **Employment and pensions.** Terms of employment for key staff, compliance with the Labour Act, remittance of pension contributions under the Pension Reform Act 2014 to the employees' Pension Fund Administrators, compliance with the Employees' Compensation Act, and any outstanding claims or disputes. Change-of-control provisions in senior employment contracts are worth particular attention, as are any employee share or incentive arrangements.

- **Intellectual property.** Registered trademarks, patents, and designs held by the target (searchable at the Trademarks, Patents and Designs Registry), unregistered rights such as trade names and copyright, and the licensing position for any third-party IP or software the business depends on.

- **Data protection.** Compliance with the Nigeria Data Protection Act 2023, particularly where the target processes significant volumes of personal data or transfers data outside Nigeria, since this is a comparatively recent regime that many businesses are still working through.

- **Litigation and disputes.** Existing or threatened litigation, arbitration, and enforcement action, together with a search for registered judgments that could affect the target or its assets.

- **Anti-corruption and compliance.** The target's exposure under the Corrupt Practices and Other Related Offences Act, the EFCC Act, and Nigeria's money laundering legislation, particularly where the business deals with public officials or operates in a sector that has attracted regulatory scrutiny.

- **Foreign investment and exchange control.** Where the buyer is a foreign investor, or the target has foreign shareholders or foreign-currency borrowing, it is generally worth checking the target's Certificates of Capital Importation and its registration position with the Nigerian Investment Promotion Commission, as these are commonly relevant to the ability to repatriate dividends, loan repayments, or sale proceeds in foreign currency. As this is a specialist area with periodic regulatory updates, the current requirements should be confirmed directly with Nigerian foreign exchange counsel rather than assumed.

The relative weight given to each of these areas depends on the target's sector and risk profile — a fintech will warrant close attention to CBN and data protection compliance, while an oil and gas services company will draw more scrutiny to NUPRC compliance and environmental exposure — but the discipline of covering the ground systematically, across legal, regulatory, and tax workstreams, is what separates genuine due diligence from a box-ticking exercise.

Why Skipping or Rushing It Is a False Economy

Deal teams under commercial pressure sometimes treat due diligence as an obstacle to closing quickly. That instinct is understandable, but in the Nigerian context it is particularly risky:

- **Liabilities transfer with the shares.** As a general rule, a buyer of shares takes on the target company as a whole, including liabilities it did not know about. There is no mechanism to leave a liability behind the way an asset buyer can sometimes structure around a specific risk.

- **Regulatory penalties can be severe and personal.** Failing to notify a notifiable merger to the FCCPC, or overlooking a required sector consent, can expose the merged entity — and in some cases its directors — to penalties and, in the case of an unapproved notifiable merger, render the transaction void. These are risks that diligence and proper transaction planning are designed to catch before completion, not after.

- **Contractual protection has limits.** Warranties and indemnities in the share purchase agreement provide recourse in principle, but pursuing a claim after completion is slower, costlier, and less certain than identifying and pricing the risk beforehand — and the strength of any warranty claim generally depends on the adequacy of the disclosure made against it, which diligence is what actually tests.

- **Bureaucratic processes take time.** Governor's Consent applications, CAC filings, and sector regulatory approvals in Nigeria can take considerably longer than parties initially expect. Diligence that identifies these requirements early allows them to be built into the transaction timetable, rather than discovered as a bottleneck close to completion.
- **Integration suffers.** Problems that surface only after completion — an unregistered charge, a pension remittance shortfall, an improperly documented land title — disrupt the operational transition precisely when management attention should be focused on running the business, not firefighting.

Organising the Exercise Well

Good due diligence on a Nigerian transaction is a managed project, not an open-ended search. Before it begins, the buyer's team should be clear on who is responsible for each workstream (legal, financial, tax, and where relevant technical or environmental specialists), how findings will be reported, what form the final report will take, and how findings will feed into the negotiation of warranties, indemnities, and price. Where the target processes personal data, the Nigeria Data Protection Act 2023 should be considered from the outset of the exercise, not as an afterthought, particularly if data is to be shared with advisers or a foreign buyer.

The process should also be proportionate. A buyer acquiring a small, closely held trading company does not need the same scale of investigation as one acquiring a regulated financial institution or an oil and gas concession holder. Judgement about where to concentrate resource — and which Nigerian regulators genuinely need to be engaged with — is itself a core part of a lawyer's value on the transaction.

The Bottom Line

Due diligence is not a hurdle standing between a buyer and its deal — it is the process that tells the buyer whether the deal it thinks it is doing is the deal it is actually getting. A Nigerian share acquisition transfers a company wholesale, including its regulatory history, its tax position, and its land title as they actually stand rather than as they appear on paper. The only way to know where the problems are, and to decide who should bear the cost of them, is to look properly before signing rather than discovering them afterward. Diligence that is skipped or rushed does not remove the underlying risk — it simply defers the point at which the buyer finds out about it, typically at a moment when the options for addressing it are more limited and more expensive.

This article is intended as general commentary on the importance of legal due diligence in Nigerian limited liability company share acquisitions and does not constitute legal or tax advice. Given how recently several of the laws referenced above (including the Nigeria Tax Act 2025 and the Nigeria Data Protection Act 2023) have come into force, buyers and sellers should seek current, transaction-specific advice.

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