



THE STATUS OF MERGERS AND ACQUISITIONS IN TANZANIA

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M&A outlook-Tanzania 2018, 2019, 2020-2021.

Mergers and Acquisitions in Tanzania have been on the rise despite the global covid pandemic. The industry with the largest M&A activity in terms of transaction value has been the financial sector – representing approximately 46% of all deals. We have seen increase in acquisition especially in the banking sector for the past two years evidenced by a recent one this year. This is perhaps attributed by the thriving economy, good environment for business grown, having achieved the middle economy and having no lockdown during covid. Tanzania qualified for the status of lower middle-income after its GNI per capita increased to \$1,080 in 2019 up from \$1,020 in 2018, according to the list updated in July, 2020.

M&As in Tanzania are regulated by the Fair Competition Act 2003 ('the Competition Act') through its implementing body the Fair Competition Commission (FCC). The FCC acts as the regulatory body but also as a first tier quasi-tribunal forum for competition and antitrust disputes, grievances out of which, are taken to the Fair Competition Tribunal, also formed under the same law.

The FCC is mandated to control mergers and acquisitions that have the effects of significantly preventing, restraining and distorting competition in relevant markets. This guarantees that markets in different sectors of the economy stay competitive. Once there is an impact in Tanzania of a business/asset as a result of a merger, then notification of the FCC is required, provided it meets the threshold, which shall be discussed in more detail below. The FCC automatically acquires jurisdiction of any slight change above the specific threshold met.

For purposes of scope of mergers in Tanzania The Competition Act defines a 'merger' as an acquisition of shares, a business or other asset, whether inside or outside Tanzania, resulting in the change of control of a business, part of a business or an asset of a business in Tanzania. Therefore, a merger means an acquisition of shares resulting in a change of control of a business, part of a business or an asset of a business in Tanzania. In most occasions, a merger can be regarded as a takeover since, by definition, a merger usually results in a change of control in any part of a business. An acquisition, in relation to shares or assets, consists of either the acquisition of legal (assets) or equitable (shares) interest. This definition is not as broad as merger and does not include acquisition by way of charge only.

The main sectors driving M&A activity in Tanzania during 2018-2019 were mining, agriculture, energy; banking, insurance, telecoms and healthcare. We witnessed for example



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the merging of Twigabankcorp, Tanzania women bank and TPB bank in August 2018. In 2019 we witnessed the merging of Tanzania Bank and Bank M Limited. Exim bank in the same year November 2019 announced to acquire assets of UBL bank. Equity bank, NIC bank and CBA bank were also involved in similar deals of that year.

In the year 2019-20 in the private deals we further witnessed the acquisition by Jehangir Kermali Bhaloo of shares in Mwananchi Communications; the acquisition of additional shares by East African Breweries in Serengeti Breweries; and the sale of Kuku Foods to Dough Works.

GW Security Holding Cayman Limited trading as Garda World (The Acquiring Firm) a private company incorporated under the laws of Cayman Islands, in 2019 acquired Ultimate Security Tanzania Limited (the Target Firm) a company incorporated under the laws of Tanzania. It had acquired KK Security in 2016. In 2019 GardaWorld rebranded to operate as a stand-alone brand in Tanzania. With more than 3,700 clients and over 8,500 security staff, GardaWorld is now the largest security company in Tanzania. On 25 July 2019, GardaWorld hosted a cocktail event at the Serena Hotel in Dar es Salaam, in celebration of the launch of the GardaWorld brand in Tanzania.

We also saw the acquisition by Barrick Gold of Acacia Mining Plc; the acquisition of Nyanza Mining Company by Orecorp Tanzania.

In the year 2020, the major announcement was that of TPB Bank Plc's ("TPB") merger with TIB Corporate Bank Limited ("TIB") which was loudly applauded by many. This was finalized June this year making TPB one of the top banks in Tanzania in terms of assets value in the market.

There are 3 types of mergers practiced in Tanzania and they are classified as horizontal mergers, vertical mergers and conglomerate mergers. Horizontal mergers occur between companies in the same line of business or selling and offering similar goods or services, Vertical mergers happen between firms operating at different stages of production and Conglomerate mergers occur between two firms in unrelated businesses.

Procedural steps for Mergers establishment:

Notification of a Merger:

The FCC must be notified of any merger or acquisition in which there is a turnover of assets in excess of TZS 3,500,000,000 (about USD 1,500,000) as per the Fair Competition (Threshold for Notification of a Merger) (Amendment) Order 2017 which increased threshold for notification of a merger from the previous TZS 800,000,000 (about USD



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360,000). The notification must include basic corporate information and a merger/acquisition plan. The requirement for notification is provided for under Rule 33(1) of the FCC Procedure Rules, 2013 stating that the acquiring firm is obliged to notify the FCC as to the request of a merger. The calculation however, of the said threshold is to be based on the combined market value of the assets or turnover of the merging firms.

After notification the FCC has 14 days to request more information and to determine whether the proposed merger or acquisition should be examined in more detail, absence of which the transaction is deemed approved. If the FCC decides to further examine the transaction, the acquisition will be prohibited for 90 days and can be extended for an additional 30 days. During this period the FCC will determine whether the merger or acquisition creates or strengthens a position of dominance in the market.

Regulation of M&A activity falls within the jurisdiction of the competition regulator and the sector-specific regulator of the target company, e.g., the Bank of Tanzania (BoT) regulates the financial sector, and the for example Tanzania Insurance Regulatory Authority (TIRA) regulates the insurance sector. If the target company has a business activity falling within the scope of the BoT's or the TIRA's regulatory mandate, the acquisition of a shareholding interest or a change of control may be subject to the BoT or the TIRA's or Energy and Water Utilities Authority (EWURA) prior approval. The Fair Competition Commission (FCC) controls M&As that meet the specified thresholds.

The legal framework for M&As in Tanzania includes:

Major statutes

- i. the Fair Competition Act 2003,
- ii. the Companies Act 2002,
- iii. the Capital Markets and Securities (Substantial Acquisitions, Takeovers and Mergers) Regulations 2006,

Sectorial statutes

- iv. the Energy and Water Utilities Authority Act 2001,
- v. the Tanzania Communications Authority Act 2003

General statutes of application



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vi. the Income Tax Act 2004 and

vii. the Employment and Labour Relations Act 2004.

A position of dominance:

Under the Competition Act a merger is prohibited where it creates or strengthens “a position of dominance” in a market. The Act defines a position of dominance as where a person acting

Alone, can profitably and materially restrain or reduce competition in that market for a significant period of time; and the person’s share of the relevant market exceeds 35 percent.

If the FCC determines that the merger or acquisition does create or strengthens a position of dominance in the market, it may either prohibit the merger or acquisition entirely or suggest changes

So that the proposed transaction does not contravene the Competition Act.

Penalties and compliance issues:

The financial penalties imposed on a person or company in violation of the Act is severe.

Under the Act, failure to notify a merger or acquisition is an offence which is punishable by;-

A fine of between 5 and 10 percent of the annual income of the company that fails to notify the Commission.

In addition, every director, manager or officer of the company at the time the offence was committed may be charged jointly in the same proceedings and may be deemed to be jointly guilty

Unless he/she proves that the offence was committed without his/her knowledge or that he/she exercised all due diligence to prevent the commission of the offence.

Expected deals:

With the current president Hon. Dr John Pombe Magufuli being re elected this October, 2020 with a sweeping 84% victory and him being ambitious in putting Tanzania in roadmap to become one of the top economies in Africa, we see more rises in other sectors in as far as mergers and acquisitions are concerned. We anticipate increase in the Technology, media and telecoms

The technology, media and telecoms (TMT) sector is anticipated to become particularly fruitful area for M&A activity in 2020/21. With big tech companies such as NALA, PESAKIT



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and with some of the largest deals ever recorded in this industry. We anticipate that the TMT sector will grow by at least 4 per cent. The acquisition of for example telcos such as merging of the sister companies Zanzibar Telecom Public Limited Company (Zantel) by MIC Tanzania Public Limited Company (Tigo) has set pace for others in the run for market share increase.

In Africa post covid we have seen a rise of which is anticipated for Tanzania in 2020. On the 10th of July 2020, Helios Holdings Limited announced a merger with Fairfax Africa Holdings Corporation to form Helios Fairfax Partners Corporation – a pan Africa focused alternative investment manager. On the same day, Eversend, an African fintech startup also announced over a \$1M raise through crowdfunding. Prior to that Helios announced a \$100M investment from the Commonwealth Development Corporation (CDC) into their fund.

Tanzania supportive economy

The medium-term outlook is so far positive, with growth projected at 6 percent in 2020/21, which is supported by large infrastructure spending as per WB projections. Domestic credit growth has slowed to 6.9% in January-June 2020 from 8.9% in the first half of 2019. The country's broad vision of its development goals as a middle-income country in 2025 are set out in the Tanzania Development Vision 2025, characterized by high-quality livelihoods; peace, stability, and unity; good governance; a well-educated and learning society; and a competitive economy capable of sustainable growth and shared benefits.

The latest statement of the Monetary Policy Committee (MPC) of the Bank of Tanzania (BoT) states that the Tanzanian economy will sustain the previously projected growth of 5.5% in 2020. The MPC further indicates that macroeconomic indicators have continued to remain stable and within agreed regional ranges. Tanzania's inflation has remained low, averaging 3.3% in July-August 2020, and is forecasted to range between 3-5% in 2020/21. The projection is underpinned by adequate domestic food supply, stable exchange rate, moderate oil prices, and prudent monetary and fiscal policies.

Tanzania is therefore on the right course and indeed setting a good environment for company's growth and most certainly more mergers and acquisitions consideration.