

# Client Update

## Africa Insurance M&A: Global Insurers' Next Frontier

### LONDON

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The insurance industry in general, and M&A opportunities in Africa, are still in their infancy, and this brings a range of opportunities for international insurers and investors. In contrast to more developed markets, most international insurers have little or no presence in Africa. This helps to explain the fact that Africa's global market share in the insurance sector is only 1.5%, and the continent's average insurance penetration rate is 2.9%, falling to 0.9% excluding South Africa.<sup>1</sup>

These figures stand in even greater contrast compared to the rest of the developed and developing world because according to some metrics, the economic and corporate governance climate appears to be generally favourable for the development of insurance products in Africa and for companies looking to invest there. GDP in sub-Saharan Africa is forecast to grow between 4.2% and 5% by 2017,<sup>2</sup> foreign direct investment has increased by 5% to \$50 billion over the past 15 years, and research suggests that a growing middle class is emerging who expect, and can afford, different categories of products from insurers as a consequence of a rising GDP per capita across Africa.<sup>3</sup> Cutting against these favourable trends, it is estimated that falling commodity prices will cut growth across sub-Saharan Africa by 1% to around 4%, the slowest rate since the late 1990s. For example, in Nigeria, oil still accounts for roughly 70% of the country's annual budget, leaving government spending highly dependent on global energy prices.

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<sup>1</sup> KPMG, *Insurance in Africa 2015*, 6/3/2015.

<sup>2</sup> World Bank, *Global Economic Forecast*, June 2015.

<sup>3</sup> PwC, *Insuring African Growth – Insurance Industry Analysis*, March 2015.

Meanwhile, the corporate governance, risk management and capital standards in many African countries are being strengthened, mirroring similar efforts being rolled out globally. For instance, European Solvency II-like regimes are being implemented in South Africa and Nigeria, bringing new capital and risk management requirements to insurers located there. Like elsewhere around the world, these new standards present opportunities to acquirers (for instance, if particular business lines are now suddenly more expensive for their current owners to hold), but difficulties for deal making as well, as acquirers need to understand the new requirements and their impact on valuation and operations.

This article provides an overview of recent M&A activity in the insurance sector in Africa, including commentary on some of the key themes that we have identified. We also summarise some of the main regulatory and compliance issues that an international investor may face when investing in Africa, as well as provide a more in-depth view on the insurance markets in Kenya, Nigeria and South Africa.

### RECENT M&A ACTIVITY AND OPPORTUNITIES IN THE INSURANCE SECTOR

Between 1 January 2014 and 31 May 2016, there were approximately 86 insurance M&A transactions involving targets based in Africa, from these we have identified four trends across these deals.

First, South African entities are the most common local acquirors (approximately 50%), which is unsurprising since it has, by some distance, the most developed insurance market on the continent with an insurance penetration rate of 14.1%.<sup>4</sup> In addition, over 90% of trade purchasers were headquartered in either South Africa, Nigeria, Kenya or the United Kingdom.

The reason for the lack of activity amongst non-African insurers can be linked to the second trend that we identified, namely, the deal values of insurance M&A in Africa are relatively low compared to insurance deals internationally. Only three deals that we analysed were in excess of \$100 million, with the highest in value being AXA SA's acquisition of Mansard Insurance plc in Nigeria for \$246 million in November 2014. By contrast, the total deal value for global insurance M&A in 2015 was \$146 billion.<sup>5</sup> It appears that, for the time being at least, many larger global insurance companies are waiting to see sustained growth in the sector before making significant acquisitions in Africa. Notwithstanding this overall

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<sup>4</sup> KPMG, *Insurance in Africa 2015*, 6/3/2015.

<sup>5</sup> Willis Towers Watson, *Insurance M&A on the Rise*, January 2016.

trend, however, some of the most prominent strategic and non-strategic investors such as AXA, Barclays, LeapFrog, Swiss Re and Prudential plc, have each acquired African insurers in this period in Nigeria or Kenya.

This leads on to the third trend that we identified: the majority of recent African insurance M&A has been limited to a handful of African jurisdictions. In approximately 60% of insurance M&A transactions between 1 January 2014 and 31 May 2016, the target company was based in Nigeria, Kenya or South Africa.<sup>6</sup> We make multiple references in this article to the potential opportunities for insurers in “Africa”, but for a multitude of reasons, Africa is not a homogenous continent that is suited to a “one size fits all” analysis. There is growing evidence that insurance M&A in the aforementioned jurisdictions has the potential for significant growth in the short-to-medium term. However, this should be evaluated alongside the fact that only a few countries in the continent (due to political, regulatory, economic or religious reasons) show positive signals that their insurance markets will develop significantly for the foreseeable future, especially considering the recent economic challenges facing most of the continent, such as falling commodity prices, weakening local currencies and higher borrowing costs due to central banks increasing their interest rates.

The fourth and final trend is that the majority of purchasers are insurance companies seeking either to consolidate their portfolios in existing markets, or to use the target vehicle as an entry-point into a new market in Africa. With a few exceptions, there is a notable absence of bank and private equity purchasers in the deals we reviewed. In the case of the former, we are seeing the growing use of bancassurance in more developed markets due to banks’ established infrastructure and existing client base. This, combined with the advancement of consumer facing technology, could provide banks in Africa with unique opportunities to engage new and existing customers that are not available to non-bank competitors. Regulations in certain African jurisdictions, however, may prohibit a bank from directly or indirectly owning an insurance company or participating in insurance-related activities. We have seen increasing use of a “financial services” model whereby both a bank and an insurer are held as subsidiaries, allowing the group to provide services to each other and share infrastructure.

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<sup>6</sup> Sources: Dealogic, Capital IQ.

## INVESTOR DIFFERENTIATION—STRATEGICS V. NON-STRATEGICS

One area of interest for market participants is how insurance firms compete with non-strategic investors for acquisitions and partnerships with local insurance companies.

Some advantages that insurance companies have over non-strategic investors include technology and systems expertise, as well as the ability to transfer products that they have developed in their home markets. Insurers are also more likely to be subject to more stringent regulatory requirements at home, so helping to facilitate the development of sound corporate governance in any local African target consolidated into their portfolio, as well as local regulatory approvals. Finally, local insurance operators may prefer to collaborate with global insurance firms as they are perceived to be longer-term investors, and operating synergies that arise as a result of an acquisition or partnership may give the purchaser flexibility to pay a higher price than a non-strategic investor for the local insurer.

We expect there will be increased interest amongst non-strategic investors for African insurance companies. Some of the advantages accessible to non-strategic investors include a greater access to capital (in 2014, private equity firms raised approximately \$4 billion to invest in Africa), and the ability to retain and incentivise management through attractive equity-based compensation. Overall, we expect that the private equity investments will initially take the form of minority and substantial majority investments (*i.e.*, not 100% transactions) in insurance companies. Because of the challenges involved in the integration of new acquisitions into a multinational group structure from a legal, compliance, governance, reporting and parent policy compliance, a private equity firm can add value to an African target by conforming a target's compliance policies and procedures to regulatory requirements that are applicable to the private equity investor. This is one of the main benefits of a strategic investing in a company in which a private equity investor had previously invested.

## LIFE INSURANCE V. NON-LIFE INSURANCE

The total value of Africa's insurance premiums was just below \$70 billion in 2013, meaning Africa's global share of the market was 1.5%. The value of the non-life insurance market is significantly higher than the life insurance market in Africa, with the latter accounting for just \$47.2 billion of total written insurance premiums in Africa in 2013, of which South Africa accounts for 88.6%. Excluding South Africa, life insurance premiums in Africa totalled a mere \$5.4 billion (0.2%

of the global market).<sup>7</sup> Life insurance remains particularly underdeveloped for various reasons, including limited awareness of life insurance products and low average earnings across the continent making life insurance an unaffordable option for large parts of the population. The absence of reliable independent data on mortality and longevity statistics in Africa due to the underdeveloped life insurance sector, may make it a less appealing area for investment.

As noted above, however, Africa has a growing middle class that can afford a broad range of insurance products, including life insurance services, so we would expect to see growth in this area as more international insurers enter high-growth opportunities in Africa. There are several markets where it may be impractical or unduly time-consuming for a strategic to obtain an insurance licence to operate from the local regulator. For some insurers, therefore, acquiring an existing life insurance company may be the most effective entry route into accessing an existing customer base in Africa, to which the insurer can then cross sell other insurance products in its existing portfolio.

#### ANTI-BRIBERY COMPLIANCE

Corruption in some jurisdictions in Africa raises the costs and risks of doing business, deters international investment, distorts prices and hinders economic growth. There is a constantly evolving legal landscape attempting to fight corruption, with increasingly aggressive international and local legislation, regulation and enforcement. For example, anti-bribery laws applicable to companies that do business in the United Kingdom and the United States have an extraterritorial reach, extending to affiliated companies and their representatives internationally. An insurer may also be penalised in its home jurisdiction for any breaches by an affiliated company. For example, there is a risk that criminal activities at or involving the target or entities that it controls could expose a US insurer's affiliates to being disqualified as a qualified professional asset manager ("QPAM") under ERISA, and such status as a QPAM is generally required to provide investment management services to ERISA-covered plans. Disciplinary infractions involving the target could disqualify the target and a U.S. insurer's affiliates from engaging in certain other activities under the U.S. securities laws.

A foreign buyer should strive to undertake rigorous pre-transaction diligence in order to maximise its strategic options, ensure that it receives an appropriate valuation of the target company and prevent bribery from continuing post-transaction. It is not always possible, however, to perform complete anti-

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<sup>7</sup> KPMG, *Insurance in Africa 2015*, 6/3/2015.

corruption diligence and there may be limitations as to the quality of information that an African seller is able to provide. To the extent that pre-transaction diligence is unable to be carried out, potential investors should ensure that they undertake post-transaction diligence to identify any anti-bribery risks as soon as possible.

The inclusion of contractual protections in a purchase agreement and shareholders' and investment agreements may mitigate the risk of anti-bribery liability. These could include appropriate representations and warranties from the seller that it has complied with all relevant anti-bribery legislation and full audit rights for the investor of the target between signing and closing of the transaction to undertake continued diligence. Strong termination rights and post-closing indemnities should be built into the acquisition agreement if the local partner is found to have breached any anti-bribery undertakings. Further, the investor could seek an adjustment of the purchase price upon the occurrence of such an event. A foreign investor buyer should also have comprehensive governance rights in the shareholders' agreement to ensure that its joint venture company complies with its regulatory obligations.

### ENFORCEMENT ISSUES

Local courts in Africa have a reputation for being weak, slow and inefficient, and local arbitration may be inadvisable. Therefore we expect global investors, where possible, to submit to the jurisdiction of a non-African court or decide to arbitrate in the event of a dispute with its local partner. There are, however, some matters that cannot be contracted out under the laws of certain African jurisdictions. Although most African jurisdictions are signatories to the New York Convention, which should, in theory, make the process of enforcing a foreign arbitral awards in a local court straightforward, there are some signatories to the Convention that have a poor record of enforcement.<sup>8</sup> This should be borne in mind when selecting the seat of arbitration.

Counterparty credit risk is another issue to consider, as local partners are unlikely to have the same access to capital as some of the larger multinational insurers. Foreign investors should therefore consider obtaining offshore collateral, third-party guarantees and, where applicable, representation and warranty insurance prior to entering into an investment or joint venture arrangement with a local partner.

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<sup>8</sup> *E.g., IPCO (Nigeria Limited) v. Nigerian National Petroleum Corporation.*

Bilateral investment treaties (BIT) may be available to protect investments against expropriation without adequate compensation. There are over 2,200 investment treaties in force and they can provide for international arbitration of treaty claims as an alternative to local courts. Depending on how a deal is structured it may be possible to benefit from more than one BIT.

## LOCAL MARKETS

As mentioned above, Kenya, Nigeria and, in particular, South Africa currently dominate the insurance market in Africa and account for the vast majority of recent M&A transactions. Below is a brief summary of the key features of each of these jurisdictions for those looking to move into the insurance space. Annex I contains a further summary of the insurance markets for these jurisdictions.

### Kenya and East Africa

Although there is no regulatory framework supporting a cross-border insurance regime in East Africa, there are ongoing discussions within the East Africa Community trading block and increased cooperation among the member states geared towards having similar legal frameworks and combined regulatory supervision for cross-border transactions. Some steps have already been taken towards achieving this. For example, in relation to local ownership, the law in Kenya prescribing a minimum local ownership requirement was expanded to include East African citizens rather than just Kenyans. It is noteworthy that some of the other East Africa Community members, in particular Rwanda and Uganda, do not have any local ownership requirements, and it is hoped that this will influence the other East African jurisdictions.

In Kenya, there is currently a significant focus on anti-money laundering and anti-bribery enforcement, which should make it easier for global insurers entering the market to institute and enforce their home nation AML requirements. The spotlight is also on merger control requirements, which are strict, and even seek to police mergers consummated offshore but with an effect in Kenya.

In many East African jurisdictions, bancassurance is key for distribution as banks already have the necessary infrastructure in place as well as local relationships and trust. The financial services model has also recently grown in popularity as a way of structuring bancassurance offerings, with both the bank and the insurers as subsidiaries of the same non-operating holding parent.

### Nigeria



Private equity firms are very active in the Nigerian market, joining European, North and West African entities, which are already active buyers. M&A is seen as the only realistic route to real growth for an insurer so there are many opportunities available. Local regulators have welcomed the presence of private equity investors into Nigeria, and we could begin to see insurers as secondary investors acquiring from PE firms once the PE investors have done the legwork, such as restructuring and implementing corporate governance arrangements.

Despite foreign direct investment in Nigeria reaching a record low of \$624.87 million in the second quarter of 2015, the insurance industry in Nigeria is generally perceived as one of the most welcoming jurisdictions for foreign investment in Africa. Nigerian law does not prohibit a foreign investor owning 100% of a local insurance company (although in practice, the Nigerian regulators would prefer a local company not to be wholly owned by foreign investors).

A key consideration when doing business in Nigeria is that regulation is often unclear, for instance regarding bancassurance, and enforcement of existing laws is relatively weak.

### **South Africa**

The new “Solvency II”-style solvency and capital regulation which is being introduced in South Africa will change the market considerably. We are already seeing some players looking to exit the market or redistribute their assets as it is unclear whether assets in other jurisdictions will be recognised for solvency purposes. The new legislation also introduces the question of an “insurance group” which is not clearly defined; it is thought that it will be for insurers themselves to determine who is within their group. Once the new regulation is brought into force and the market adjusts, South African insurers may attempt to enter the European market, and more European entities may begin looking to the South African market, although this could be some way off.

South Africa could be an attractive entry point from which to develop a broader African presence. However, it is important to bear in mind the Black Economic Empowerment codes which apply to all entities operating in South Africa. An entity not complying with the codes may face difficulties in doing business in South Africa.

### **CONCLUSIONS—WHAT NEXT FOR INDUSTRY PARTICIPANTS?**

South African insurers and other Pan-African consolidators are already actively making acquisitions in African developing markets. These deals combined with the lack of greenfield opportunities imply that global insurers looking to enter



the market will need to develop their African insurance strategy and weigh-up the risks involved.

We expect that investors will initially focus on non-life insurance in a handful of the most promising jurisdictions, including Kenya, Nigeria, South Africa and Ghana due to their fast growing economies and relatively stable legal and regulatory environments. In contrast, there are some jurisdictions in Africa where we do not envisage any significant developments in the insurance M&A sector due to unacceptable regulatory constraints, political and economic uncertainty, and a lack of potential customers.

There are certain parallels between Africa today and Asia and Latin America in the 1980s, including a growing middle class, a developing financial sector and increasing political stability. Asia's world premium of insurance volumes doubled in between 1977 and 1992,<sup>9</sup> and it would not be wholly surprising if a similar story emerges in respect of Africa today.

There are legitimate concerns over doing business in Africa due to political, economic and anti-bribery and corruption issues, although these risks should not be overplayed. Conducting satisfactory jurisdictional, operational and historical due diligence, adopting stringent governance policies and obtaining appropriate contractual protections from a local partner should, as a whole, mitigate such risks to an acceptable level for a global insurer seeking to enter or develop its presence in Africa. It's about time that global insurers become a part of Africa's success story.

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Please do not hesitate to contact us with any questions.

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<sup>9</sup> J. Francois Outreville, *Theory and Practice of Insurance*, 2012.

ANNEX I

Kenya, Nigeria, and South Africa—an Overview

The below table provides an overview of the insurance industry in each of Kenya, Nigeria and South Africa.<sup>10</sup>

Category	Kenya	Nigeria	South Africa
<b>Transparency International ranking</b>	139/168	136/168	61/168
<b>Population (millions)</b>	44.35m	173.6m	52.98m
<b>Life expectancy</b>	61.08 years	52.11 years	56.10 years
<b>GDP (\$bn)</b>	55.2bn	521.8bn	366.2bn
<b>Insurance Penetration Rate (Premiums as % of GDP)</b>	2.8%	0.3%	14.1%
<b>Total premiums—non-life insurance</b>	\$1.1bn	\$1.3bn	\$3.4bn
<b>Total premiums—life insurance</b>	\$632m	\$457m	<i>Information not publicly available.</i>
<b>Market share—non-life insurance</b>	Jubilee (10%) CIC General (9%) APA (8%) UAP (7%) ICEA LION General (5%) Others (44%)	Leadway (12%) Custodian & Allied (6%) AIICO (5%) Others (77%)	Mutual and Federal Limited (R12.2bn) Outsurance Holdings Limited (R11.6bn) Santam Limited (R22.7bn) Zurich Insurance Company South Africa (R3bn)
<b>Market Share—life insurance</b>	Jubilee (20%) Britam (18%) ICEA LION Life (12%) Pan Africa Life (10%) Liberty Life Assurance (8%) CIC Life (8%) UAP Life (5%) Kenindia (5%) Others (16%)	AIICO (18%) Niger Insurance (9%) Mutual Benefit Life (8%) Leadway (8%) Industrial & General (7%) Capital Express (6%) Others (44%)	<i>Information on market share of long-term insurers is not publicly available. However, below are the top five long-term (life insurers):</i> Discovery Liberty Holdings Limited MMI Holdings Limited Old Mutual Life Assurance Company South Africa Sanlam Limited
<b>Equality of treatment between domestic and foreign insurers</b>	Yes	Yes	Yes

<sup>10</sup> Sources include: World Bank, Transparency International, *PwC Insurance Industry Analysis* – March 2015, NAICOM, FSB, *Swiss Re World Insurance Report*, *BMI Q4 2015 Nigeria Report*, *BMI Q4 2015 Kenya Report*.

Category	Kenya	Nigeria	South Africa
<b>Restrictions on foreign ownership of an insurance company</b>	Yes—at least 1/3 must be owned by East African Citizens.	No, but in practice, the Nigerian regulator is unlikely to allow a foreign company to own 100% of a Nigerian insurance company.	Yes – any direct or indirect acquisition of more than 15% of the voting rights or 25% of the shares in an insurer requires prior approval by the registrar.
<b>Signatory to New York Convention</b>	Yes	Yes	Yes
<b>Offshore re-insurance requirements</b>	Offshore reinsurance is permitted subject to obtaining regulatory approval and satisfying the mandatory cessions requirement with the local insurers.	Insurers must satisfy the mandatory 5% cession to Africa Re before they seek coverage with other reinsurers. 100% of the life insurance business must be retained in the country.	<p>Insurance laws prohibit any person from carrying on insurance or reinsurance business in South Africa unless that person is licensed to do so. The only exception to the aforementioned requirements is Lloyd’s underwriters who do not have to obtain a license.</p> <p>Consequently, foreign insurers participate in the local market by either establishing a subsidiary in South Africa, or by way of the provision of cross-border reinsurance, provided that in the latter case the activities of the foreign reinsurer do not amount to “carrying on short-term insurance business in South Africa” requiring registration and licensing per the above.</p>