Role of Solicitors in Capital Markets Transactions

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WHAT IS THE CAPITAL MARKET?

TYPES OF CAPITAL MARKETS TRANSACTIONS.

REGULATORS OF THE CAPITAL MARKET AND CAPITAL MARKET TRANSACTIONS.

THE ROLE OF SOLICITORS IN THE NIGERIAN CAPITAL MARKETS

THE SOLICITOR’S ROLE IN OTHER CAPITAL MARKETS

WAYS OF “ENHANCING” THE SOLICITOR’S ROLES

WHAT’S DESIRABLE FOR THE NIGERIAN MARKETS?

CONCLUSION
WHAT IS THE CAPITAL MARKET?

o The market typically utilized by companies/businesses for the acquisition of medium and long term funds through the issuance and trading of financial instruments.

o Primary market: for new issue of securities E.g. offer for subscriptions, rights issues, offer for sale, private placement etc.

o Secondary market: for trading in existing securities. This consists of exchanges and over the counter deals where securities are bought and sold after their issuance in the primary market.

o Aim to ultimately raise funds from the public.

o Capital market operators: persons (individual or corporate), duly registered by the Securities and Exchange Commission to perform specific functions in the capital market. E.g. securities exchanges, issuing houses, stockbrokers and dealers, solicitors, investment advisers and representatives, jobbers, portfolio managers, registrars, trustees, auditors, reporting accountants, receiving agents and receiving bankers.
Investments in the capital market can be done via:

- Initial Public Offer of a company’s shares, conducting a Rights’ offer, private placement;
- Issuing debt instruments such as bonds or note;
- Mergers and acquisitions (including takeovers) of public or listed companies.
- Collective Investment Schemes – this may take the form of a private equity fund, a unit trust, a mutual fund etc.
The Central Bank of Nigeria (CBN) is the apex regulatory authority of the Nigerian financial system.

The Federal Ministry of Finance: supervises the SEC in the discharge of its regulatory function of the capital market.

The Investment and Securities Act (ISA), 2007: enacted to establish the SEC as the apex regulatory authority for the Nigerian capital market as well as regulation of the market to ensure the protection of investors, maintain fair, efficient and transparent market and the reduction of systemic risk.

The Securities and Exchange Commission (SEC): the apex regulatory institution of the Nigerian capital market responsible for the overall regulation of the entire market. It is supervised by the Federal Ministry of Finance.
REGULATORS (2)

- SEC Rules: made pursuant to the Investments and Securities Act to enable the SEC effectively and efficiently carry out the objectives of securities regulation as embedded in the Investments and Securities Act.

- The Nigerian Stock Exchange (NSE): is the centre point of the capital market. It is privately owned and self-regulatory, but the SEC maintains surveillance over it with the mandate of ensuring orderly and equitable dealings in securities and protecting the market against insider trading.
In equity offerings:

Issuer’s counsel typically:
- Advises on the legal aspects of preparing for listing (including, if necessary, re-registering it as a public company, increase in authorized share capital and changes to the company’s constitutional documents and directors’ service contracts);
- Ensures all corporate approvals have been obtained;
- Reviews the main offering document and all other transaction documents, and confirms compliance and content;
- Negotiates all transaction documentation on behalf of the issuer.

Transaction counsel typically:
- Conducts legal due diligence on the issuer.
- Ensures due compliance with all legal and regulatory requirements and relevant corporate approvals.
ROLE OF SOLICITORS (2)

• Reviews the main offering document (typically prospectus or PPM) and drafts the relevant agreements vending, underwriting, financial services, etc.

If bonds or other debt issue:

• Trustee’s solicitor drafts the trust deed and ensures that it is properly drawn up to provide adequate protection for bondholders.
# THE SOLICITOR’S ROLES IN OTHER CAPITAL MARKETS

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<tr>
<th>Jurisdictions</th>
<th>Task/Role</th>
<th>Party with Primary Responsibility</th>
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<tbody>
<tr>
<td><strong>UK</strong></td>
<td>Preparation of the prospectus or listing particulars, subscription agreement between the issuer, the lead manager and the co-managers.</td>
<td>Lead manager’s lawyers</td>
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<td></td>
<td>Advising on the trust deed and obligations of the trustee</td>
<td>The issuer's lawyers advise on the legal aspects of preparing the offering and listing, and negotiate with the lead manager and trustee (if there is a trust arrangement). The domestic lawyers will advise on the capacity of the issuer to enter into the transaction.</td>
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<td>Arrange and manage the issue process, from the point at which it receives its mandate to the point at which the issuer receives the funds; advise the issuer on the structure, timing and pricing of the issue.</td>
<td>Trustee’s lawyers</td>
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<td>Lead manager</td>
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## OTHER JURISDICTIONS

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<td>USA</td>
<td>In a public offering, preparation of the draft registration statement, prepares the prospectus/ (offering circular/ offering memorandum in the case of an unregistered offering). Leading the due diligence process and verification of information in the prospectus Preparation of letters stating that, based on specific inquiries (and subject to exclusions for financial and other information provided by experts), they are unaware of anything that may indicate that the prospectus contains any material misstatement or omission <em>(Rule 10b-5, Exchange Act)</em>.</td>
<td>Issuer's lawyers</td>
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<td>Underwriter’s lawyers</td>
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<td>The underwriter’s and issuer’s lawyers</td>
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OTHER JURISDICTIONS (3)

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<td>CANADA</td>
<td>Largely lawyer driven Prospectus and other transaction documents largely drafted, coordinated and filed with the regulator by lawyer. Interface with regulator and exchange largely lawyer driven. Assisting with structuring the offering, preparing the prospectus (or offering memorandum) and other key documents, co-ordinate security eligibility matters, in the case of a prospectus offering, assist with the regulatory review process and listing applications. In the case of a prospectus offering constituting the issuer's initial public offering, prepare the issuer for its continuing obligations following the offering.</td>
<td>Issuer's legal counsel</td>
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### OTHER JURISDICTIONS

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<tr>
<td>CANADA</td>
<td>Conducting legal DD on the issuer, working with issuer’s counsel in preparing the prospectus (or offering memorandum) and other key documents and preparing the underwriting agreement.</td>
<td>Underwriters' legal counsel</td>
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## OTHER JURISDICTIONS (5)

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<tr>
<td>SOUTH AFRICA</td>
<td>Advising the company on the method of bringing its equity securities to a listing on the JSE (listing) and the size and terms of the offer of those equity securities (offer), co-coordinating the timing and pricing of the offer, co-coordinating the listing process, drafting the placing document and other listing documentation together with the company, the company’s legal advisors and the reporting accountant, Arranging the placing (where applicable) or the underwriting (where applicable) of the equity securities.</td>
<td>Corporate advisers</td>
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<td>Legal advisers</td>
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## OTHER JURISDICTIONS (6)

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<td><strong>SOUTH AFRICA</strong></td>
<td>Ensuring that the company complies with the applicable provisions of the Equity Listings Requirements, Drafting or reviewing the placing document and other listings documentation, Together with the sponsor, procuring the approval of the placing document with the JSE, Where required, procuring the registration of the placing document with CIPC. Increasingly, as they are required to &quot;hold the pen&quot; on circulars in major transactions (the &quot;hold the pen&quot; requirement is a relatively new requirement for law firms in South Africa), and as they are required to provide domestic and international customary opinions in line with international best practice, in domestic and international placings of South African equity securities, the top tier law firms are insisting upon a shift, in the roles and responsibilities, as between sponsors, corporate advisers and attorneys.</td>
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WAYS OF “ENHANCING” THE SOLICITOR’S ROLE

- Lessons from other Jurisdictions
- Mindset & Cultural Shifts – banks, issuers, regulator as well as lawyers.
- The Market needs to rethink itself. A “rethinking” will rid the Market of the lack of regard for the regulatory process.

AT ISSUER LEVEL

- Issuers need to understand their best interest to use lawyers.
- Early stage appointment and deal structuring role.
- Value Addition versus Tick Box and Cut & Paste Approach
- Develop and maintain trusted advisor relationship
WAYS OF “ENHANCING” THE SOLICITOR’S ROLE (2)

BANKS AND FINANCIAL ADVISORS

- Better appreciation of the Solicitor’s Role
- Develop and maintain trusted advisor relationship
- Early stage appointment and deal structuring role for lawyers
- Value Addition versus Tick Box and Cut & Paste Approach

SOLICITORS

- Addressing Quality and Turnaround Concerns
WAYS OF “ENHANCING” THE SOLICITOR’S ROLE (3)

- Raising Commercial Awareness among Lawyers
- Clear Understanding of Transaction Objectives
- Lawyers as Deal Enablers or Naysayers
- Some dose of assertiveness
• The persons responsible for any misstatement of fact in the full disclosure declaration required for issue of prospectus include the following:

• Under ISA, section 85(3):
  – Any director of the company at the time of the issue of the prospectus
  – Any person who consented to be named and is named in the prospectus as a director or as having agreed to become a director either immediately or an interval of time.
  – Any employee of the company who participated in or facilitated the production of the prospectus and
  – The issuing house and its principal officers.

• However, an expert whose consent is required for the issue of the prospectus shall not be liable merely for the reason of giving such consent.
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