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CORPORATE GOVERNANCE AND STATUTORY MEASURES TO PREPARE GOVERNMENT-OWNED FOOTBALL CLUBS FOR DIVESTMENT OF GOVERNMENT INTEREST

Introduction

Government-owned football clubs currently dominate the Nigerian football league system at the highest levels, that is, the Nigeria Premier Football League (NPFL) and the Nigeria National League (NNL). Over the years, the idea of divestment by State governments and public institutions from ownership of football clubs has been mooted and attempted by the relevant league bodies and state governments without success. In this article, we have analysed some regulatory steps that the league bodies have sought to implement and suggested some corporate governance measures that government-owned clubs may implement to facilitate the privatisation of government-owned football clubs in Nigeria.

The current ownership structure of football clubs in the league pyramid

The Nigerian football league pyramid system is currently made up of the NPFL at the highest level, followed by the NNL, the Nationwide League One (NLO) division one, the NLO Under-19 (Youth League), and the football league in various States (State Leagues), in that order. Our independent research into the ownership structure of the participating football clubs in the Nigerian football league system for the 2022 to 2023 football season shows that privately-owned football clubs currently dominate the NLO division one, the Youth League, and the State Leagues. This article, therefore, focuses on the ownership structure in the NPFL and NNL.

In the 2022 to 2023 football league season in Nigeria, there were a total of twenty (20) football clubs in the NPFL, including eighteen (18) government-owned football clubs and two (2) privately-owned football clubs. In the NNL, there were a total of forty-four (44) football clubs, including twenty-two (22) privately-owned football clubs, and twenty-two (22) government-owned football clubs belonging to various state governments and four federal government institutions, namely, the Nigerian Army (Green Beret FC), the Nigerian Airforce (Nigerian Airforce FC), the Nigerian Police (Police Machine FC), and the Economic and Financial Crimes Commission (EFCC FC).

Unsuccessful interventions by the league bodies towards the privatisation of government-owned football clubs

The rules introduced since 2015 by the NPFL and the NNL to spur the divestment of some equity in government-owned clubs have not yielded the desired results. Rule 5.3.4 of the NPFL framework and rules in 2015, stipulated that as part of the conditions precedent for participation in the league, "where a club is owned by government and public institutions it shall provide to the League Management Company (LMC) an undertaken(sic) of its owners to commence a divestment process from 2015/2016 season of the league relinquishing 50% of the equity of the club." There is no known example of any successful divestment by a government-owned football club since 2015 despite this approach of securing an undertaking from government-owned football clubs to commence a divestment programme.

Although in 2016, the LMC signed a memorandum of understanding with NASD Plc, which provides a secondary market trading of securities of unquoted public companies in Nigeria, to allow government-owned football clubs that adopt good corporate governance practices to be listed on the NASD, none of the government-owned football clubs have made any progress in that regard. There have been no sanctions for the failure of government-owned clubs to commence their divestment programmes or any further demand by the league body requiring the government-owned football clubs in the NPFL to show proof of commencement of any divestment programme, proof of an ongoing divestment process, or an actual divestment since 2015.

The NNL has also adopted the approach of obtaining an undertaking from government-owned football clubs to divest some equity. Before the commencement of the recently concluded 2022 to 2023 football league season, the NNL issued Circular 224: Legal Condition for Participation in the 2022/2023 Nigerian National League Season (the "Circular"), which required government-owned football clubs in the NNL to "provide the NNL such undertaken(sic) of its owners to commence a divestment process relinquishing such equity of the club as may be stipulated from time to time," as part of the conditions precedents for participation in the league. Unlike the NPFL rules, which mandated government-owned clubs to commence 50% divestment from 2015, the Circular did not state the specific amount of equity to be divested and the time frame for achieving such divestment. There is, therefore, no clarity provided to enable the owning government institutions to plan for a divestment programme, and to guide potential investors in making decisions in the case of investments in the football clubs in the NNL.

A statutory approach requiring the amendment of the legal framework for privatisation of public enterprises at both federal and state levels to include government-owned football clubs as enterprises to be privatised, may be helpful. This approach will, however, have to be government-driven by both the executive and legislative arms of government at both the federal and state levels. The current approach to divestment adopted by the NPFL and the NNL will likely not yield the desired result due to the absence of sanctions and follow-up requirements in the case of the NPFL, and the lack of clarity as to the specific percentage equity to be divested, and the timeline for commencement of a divestment programme in the case of the NNL. The NPFL and NNL are not statutory bodies with statutory powers to compel state governments and federal agencies to embark on the privatisation of government-owned clubs, in a manner similar to the statutory approach that led to the privatisation and commercialisation of public enterprises under the Public Enterprises (Privatisation and Commercialisation) Act 1999 in the case of the federal government, and under the various public-private partnership laws of various state governments. It is also doubtful whether the NPFL and the NNL, whose respective governing boards are controlled to some extent by both the federal and state governments, can impose sanctions against the government-owned clubs through expulsion from the league for failure to embark on a privatisation programme.

Some corporate governance measures that government-owned football clubs can implement for a successful divestment programme

There are some corporate governance measures that government-owned football clubs can implement to be able to embark on a divestment programme with or without regulatory requirements by league bodies or statutory requirements under federal or state laws. We have suggested some measures below, which are not in any way exhaustive.

a. Incorporation as a limited liability company

Government-owned football clubs need to be incorporated as public limited liability companies under the Companies and Allied Matters Act 2020 as amended (CAMA). Incorporation as a limited liability company will subject the government-owned football clubs to corporate governance rules under the CAMA that regulate the activities of the directors and shareholders of the football clubs, filing of annual reports and financial statements, auditing of accounts, disclosures, and general transparency in the operations of the football clubs. This will enable potential investors to conduct an empirical assessment of the value of the football clubs. There is no known example of any government-owned football club that has made its financial records available to the public for scrutiny, and without corporate filings at the Corporate Affairs Commission ("CAC"), it is difficult for potential investors to conduct proper corporate, financial, and legal due diligence on the football clubs to make an investment decision.

b. Adopt proper contract policy for management and technical staff, footballers, vendors and partners

Government-owned football clubs need to guarantee certainty of contractual relationships and a culture of honouring contractual relationships to minimize disputes and instability in their operations. The football clubs will also need to make adequate provision for the transfer of contractual relationships with management and technical staff of the football club, footballers, vendors and partners to the newly incorporated entities.

c. Compliance with statutory obligations such as tax and pension remittances

The incorporated government-owned football clubs would need to comply with relevant statutory obligations such as payment of taxes where applicable, making tax filings, pension remittances for its pensionable staff and other regulatory obligations under Nigerian law to avoid potential liabilities.

d. Perfection and vesting of title to land assets and valuation of the football club

The various State governments may need to formally vest in the newly incorporated football clubs, the legal title to land properties where the stadium, training ground, administrative offices and residential accommodation of the government-owned football clubs are currently located. This will enable the various state governments and potential investors to determine the value of their football clubs pre-divestment. The valuation of the football club will also include other assets, such as the current footballers in the various teams, intellectual property rights, revenue streams and receivables outside of budgetary allocations, etc.

e. Comply with financial reporting standards

The incorporated government-owned football clubs will also need to implement global best practices in financial reporting, such as the International Financial Reporting Standards (IFRS) and the Nigerian Code of Corporate Governance issued by the Financial Reporting Council of Nigeria in 2018, and which commenced in 2019, to guarantee transparency and accountability in the operations of the football club.

Conclusion

We note that while the league bodies, government and public institutions continue to dither over the long-awaited divestment of equity in government-owned football clubs, private investors continue to build football club start-ups that provide examples that more private sector involvement in club football in Nigeria can be successful. Two recent examples are Remo Stars Sports Club and Sporting Lagos Football Club, which have progressed from the lower leagues to the NPFL.

We have suggested a non-exhaustive list of corporate governance measures that government-owned football clubs should adopt, such as:

- the incorporation of government-owned football clubs as limited liability companies;
- the adoption of proper contract policy for management and technical staff, footballers, vendors and partners;
- compliance with statutory obligations such as tax and pension remittances where applicable;
- the perfection and vesting of title to land assets and valuation of the football club; and
- the adoption of financial reporting standards and best practices.

We also recommend that the NPFL and NNL should adopt a well-thought-out divestment programme that stipulates clear milestones and timelines in their subsequent rules, after consultations with the government-owned clubs and other stakeholders. This approach will provide the clarity that the government institutions need to plan their divestment programmes, and that potential investors also need to make decisions. The NPFL and NNL need to demonstrate a serious will to enforce the requirement for government-owned football clubs to commence divestment programmes, by introducing and implementing sanctions for the failure of the football clubs to achieve the milestones and timelines agreed between the football clubs and the league governing bodies. The NPFL and NNL may also introduce a rule, requiring the government-owned football clubs to make annual progress reports on their divestment programmes before being registered for subsequent football seasons.

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