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Corporate mergers, acquisitions & the role of company registries

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For almost 3 years now, businesses have faced challenges, first accelerated by the disruptions to supply chains due to COVID-19 containment measures imposed by countries which disrupted supply chains and left a lot of economic initiatives in limbo from the recurring lockdowns and down-turn in business fortunes.

The difficult economic challenges faced all across the world will take some time since the causation factors COVID-19 and resultant slowdown in socio-economic activity. Mindful of this, businesses will have to devise survival strategies. Among these are mergers and acquisitions.

Mergers commonly known as amalgamations is where two or more companies unite to form one single company. The new entity, known as the amalgamated company, by operation of the law, inherits the rights and liabilities of the former amalgamating companies, and the affairs, liabilities, share capital and pending obligations of all the amalgamating companies are all governed in a manner set out in a comprehensive amalgamation proposal.

The law on mergers & acquisitions

The Companies Act, 2012 particularly sections 237 to 245, and the Companies (General) Regulations 2012 contain the legal and procedural framework for amalgamations. It details the manner in which the interests of various stakeholders may be dealt with, it sets out the necessary approvals by the various company structures, the rights of external stakeholders and how they their interests may be protected, and sets out the functions and the powers of the Registrar of Companies.

Companies may amalgamate/merge for many reasons such as harnessing economies of scales by tapping into resources of a more economically stronger entity, to remove competition and rivalry gaining a better market advantage, to improve on brand performance under a more expanded entity with stronger brand, to combine technology and human resource for greater innovation and efficiency, to diversify productive capacity, for value addition, to gain tax advantage among others.

Related, but different from mergers, is the concept of acquisition also known as takeover. Acquisition is where one company purchases a portion of or all of another company's shares or assets to gain control over it. The acquiring company is usually of a stronger economic capacity and brand visibility. The reasons for acquisitions may include the following; entering a foreign market by purchasing an established company in that country, pursuit of growth and expansion by acquiring another company, reducing competition by acquiring a competitor, to gain new technology of the acquired entity.

The role of registrar of companies

The Registrar of companies as the regulator of companies, plays a critical role in facilitating both mergers and acquisitions. The registrar must register mergers and acquisitions' details and a record kept on the register of companies at the Uganda Registration Services Bureau (URSB) maintaining the historical record of the company.

In addition to its registration mandate, URSB cooperates with the Capital Markets Authority (CMA), which provides regulatory oversight over mergers and acquisitions (M&A) under the provisions of the Capital Markets (Takeovers and Mergers) Regulations, 2012. The regulatory oversight of CMA under the rules applies to only takeovers and mergers of listed companies.

The mandate of CMA under the rules complements the mandate of the registrar under the Companies Act, to ensure transparency and fairness in mergers and acquisition processes. In addition, the Mergers and Takeover rules contain disclosure requirements to safeguards against market abuse and ensure transparency of the stock exchange market—which is a key pillar of an efficient stock exchange market.

The existing legal and institutional framework is therefore elaborate to support these two legal processes for companies that may desire to undertake them to achieve the above stated objectives.

With the expansion of the East African Community evidenced by the recent admission of the Democratic Republic of Congo (DRC) into the bloc, mergers and acquisitions will increase to harness the opportunities that come with an expanded market and URSB will remain a key player to support businesses in this effort.

The writer is the Registrar General of Uganda Registration Services Bureau