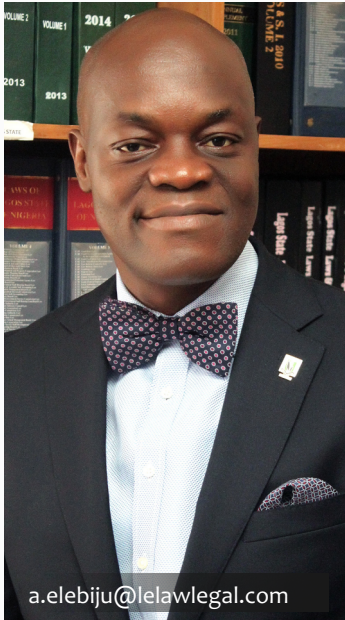




THOUGHT  
LEADERSHIP  
INSIGHTS

# TRANSFORMATIONS:

IMPACT INVESTMENT POTENTIALS FOR PRIVATE  
EQUITY IN NIGERIA'S HEALTHCARE INDUSTRY



a.elebiju@lelawlegal.com



g.fatokunbo@lelawlegal.com

AFOLABI ELEBIJU & GABRIEL FATOKUNBO | OCTOBER 2018

**T**he *Investment Thesis*: Nigeria's grundnorm - the *Constitution of the Federal Republic of Nigeria 1999 (as amended)* made public healthcare provision non-justiciable under *Chapter II - Fundamental Objectives and Directive Principles of State Policy*. Thus, citizens lack the legal capacity to compel any of the three tiers of Nigeria's government: Federal, State and Local - to live up to constitutional commitments in *sections 14(2)(b), and 17(3)(c)(d) 1999 Constitution*. These provisions obligates the government to safeguard citizens' security and welfare, and ensure that there are *adequate medical and health facilities for all persons*. Due to their aforementioned non-justiciability, any enforcement action must be founded on another constitutional provision, which gives right to remedy, such as breach of fundamental human rights under *Chapter IV*.<sup>1</sup>

These 'unimpressive' constitutional

provisions, has negatively impacted Nigeria's healthcare delivery status as low levels of public investment in health infrastructure reflected government's weak commitment to the Healthcare Industry (HI). Outdated, malfunctioning equipment, etc. dot the landscape not to talk of total lack of, or inadequate, medical supplies and consumables.<sup>2</sup> Morale is at an all-time low, patient medical tourist numbers are on the rise, whilst unprecedented emigration of skilled medical personnel in search of greener pastures is another fallout of the poor state of affairs. It has been estimated that Nigeria loses over US\$1 billion annually to capital flight on medical tourism.<sup>3</sup>

Infrastructural and technological deficits for hospitals and diagnostic centres has contributed to high maternal and child mortality rates, coupled with skilled workers deficit – at 1:2000 and 1:20,000 doctor and nurse patients ratios respectively. This had resulted in Nigeria's consistent regressive position in

‘  
NIGERIA LOSES  
OVER  
\$1 BILLION  
(USD) ANNUALLY  
TO CAPITAL FLIGHT  
ON MEDICAL  
TOURISM.  
’

<sup>1</sup> See *Archbishop Anthony Olubunmi Okogie & Ors v. Attorney-General of Lagos State [1981] 1 NCLR 105*, and *Adewole & Ors v. Jakande & Ors [1981] 1 NCLR, 262* where the Court of Appeal exercised jurisdiction on the basis that the 'non-implementation' of *Chapter II 1999 Constitution* inexorably results in the violation of *Chapter IV* constitutional provisions on fundamental human rights. These decisions practically render *Chapter II* justiciable in fundamental human rights cases. Similar conclusion was reached in *Adamu v. A.G. Borno State [1996] 8 NWLR (Pt.465), 203 CA*.

<sup>2</sup> See 'At 56, Nigeria Still Lacks Functioning Radiotherapy Machines', *ThisDay*, September 6, 2016: <https://www.thisdaylive.com/index.php/2016/09/29/at-56-nigeria-still-lacks-functioning-radiotherapy-machines/> accessed on 8/8/2018. Nigeria has seven (7) radiotherapy machines (equivalent of one cancer machine to over 30 million people). Unfortunately, only the Ibadan and Abuja centres are working across the federation due to machine breakdown thereby leaving the cancer patients at the mercy of the disease. See Sade Oguntola, 'No Hospital Offer Comprehensive Cancer Treatment in Nigeria' *Nigerian Tribune*, August 8, 2018: <http://www.tribuneonline.ng.com/135671/> last accessed 8/8/2018.

<sup>3</sup> Abubakar M., et al, 'Medical Tourism in Nigeria: Challenges and Remedies to Health Care System Development', *International Journal of Development and Management Review* Vol.13 No.1 June, 2018 p.223: <https://www.ajol.info/index.php/ijdmr/article/viewFile/172290/161689> last accessed 9/8/2018.

global health rankings. In 2000, Nigeria was ranked at 187 out of 191 countries in the World Health Organisation (WHO)'s **World Health Systems**. However, in March 2018 (eighteen years later!), Bill Gates said (at Aso Rock Villa) in Abuja: “Nigeria is one of the most dangerous places in the world to give birth, with the fourth worst maternal mortality rate in the world,...one in three Nigerian children is chronically malnourished...the government need to give priority to health and education.”<sup>5</sup>

The 2018 Federal Government (FG)'s HI budgetary allocation is ₦308 billion or 4.13%, compared to South Africa (SA)'s US\$14 billion or 12%.<sup>6</sup> This is thrown into stark reality given the huge difference in their respective populations: 200 million vs. 57 million, and the WHO's recommended 5% of GDP minimum spend on health. The WHO's **Global Health Expenditure Database, 2015** reveals that the annual *per capita* health spend by Nigerian public and private sectors is US\$97 whilst SA spends about five times more, at US\$471 annually. This is a far cry from the April 2001 **Abuja Declaration** recommendation of 15% budgetary allocation to health, which Nigeria has followed more in breach than compliance.<sup>7</sup> The **WHO** data further revealed that 70.3% of health expenses in Nigeria are made out-of-pocket, compared to SA's 7.7%, reflective that medical insurance in Nigeria is still at a very basic level.

Following the public sector's virtual abdication of leadership for HI sustenance and growth, the HI has witnessed a lot of sharp practices by private operators, one incidence of which is risk of being treated by quack health personnel. Because awareness is low, victims of medical



THE MAIN ENTRANCE TO LUTH, (LAGOS UNIVERSITY TEACHING HOSPITAL)

malpractice rarely get relief and often the perpetrators are not even sanctioned. To arrest this trend, Vice President, Osinbajo on July 31 2018 launched the **Patient's Bill of Rights (PBoRs)** developed by the Consumer Protection Council (a FG agency) in collaboration with the Federal Ministry of Health.<sup>8</sup>

These gaps and challenges actually signal investment opportunities for the private sector, and no category of investors are better placed to leverage such opportunities than private equity (PE) firms. Such investment would tick the boxes of most PE firms' investment criteria: opportunity to step in and contribute to rescuing an ailing sector, achieving dramatic socio-economic impact, generating good and stable returns, and exiting optimally, etc in furtherance of improving Nigeria's development indices. In other words, Nigeria's HI presents PE firms a unique platform to actualize the maxim of “*realising value whilst doing good.*” Clearly, Nigerian HI affords PE firms the opportunity to leave positive investment footprint in the sector.

This article attempts to review the lay of the land regarding HI potential investments by PE firms, highlighting allied transaction structuring and other landscape issues.

4 Wikipedia, 'World Health Organisation Ranking of Health System in 2000', [https://en.wikipedia.org/wiki/World\\_Health\\_Organization\\_ranking\\_of\\_health\\_systems\\_in\\_2000](https://en.wikipedia.org/wiki/World_Health_Organization_ranking_of_health_systems_in_2000) last assessed 8/29/2018.

5 Premium Times, 'For the Records: Bill Gates' Speech that Rattled the Nigerian Government' March 27, 2018: <https://www.premiumtimesng.com/news/top-news/263194-for-the-records-bill-gates-speech-that-rattled-nigerian-govt-full-text.html> last accessed August 8 2018.

6 Countries with lower population like Rwanda, Botswana and Malawi have higher HI budgetary allocation: 18%, 17.8% and 17.1% respectively.

7 WHO, 'The Abuja Declaration: Ten Years On', Abuja Report, 2011: [http://www.who.int/healthsystems/publications/abuja\\_report\\_aug\\_2011.pdf?ua=1](http://www.who.int/healthsystems/publications/abuja_report_aug_2011.pdf?ua=1) last accessed August 8 2018.

8 Leon Usigbe, 'Osinbajo Launches Patient Bill of Rights', Tribune, August 1 2018: <https://www.tribuneonlineng.com/157778/>, last accessed 9/3/2018.

## The Regulatory Landscape & Entry Structuring Issues

Nigeria's HI regulatory framework is disclosed in various primary and subsidiary legislation enacted by the three tiers of government – Federal, State and Local - and which are under the oversight of their respective regulatory agencies. The **1999 Constitution** apart from its HI relevant provisions, is also the plank on which other legislation rests (**section 1(3)**).<sup>9</sup>

Under Nigeria's regulatory framework, only health professionals can own and operate requisite health facilities like hospitals (doctors), pharmacies (pharmacists), medical laboratories and diagnostic centers (medical personnel and lab scientists), etc.<sup>10</sup>

THE 2018 FG'S  
HEALTHCARE  
INDUSTRY  
BUDGETARY  
ALLOCATION IS  
₦308B  
OR  
4.13%

Of course, there are no restrictions on foreign investments in Nigerian HI, as most sectors are also unrestricted, pursuant to the **NIPC Act**.

Such facilities are also required to

be licensed, and subjected to periodic reviews/monitoring in order to enforce prescribed operating standards.<sup>11</sup> These provisions are meant to help in weeding out mushroom healthcare delivery.<sup>12</sup> Although **HEFAMAA** has helped in this regard, the requirements/procedure for license approval need to be streamlined by reducing all forms of bureaucracy. Technology can be called in aid to reduce interface with health officials who may demand kickbacks during onsite inspections as part of the approval process.

Another mode of PE investment could be through a variety of debt instruments, either in addition to, or as alternative to, equity stakes.

<sup>9</sup> Nigerian governments have in furtherance of their constitutional duties, enacted various HI legislation, ostensibly in the public interest. At the Federal level, such legislation include - *National Health Act (NHA) 2014*; *National Health Insurance Scheme (NHIS) Act Cap. N42, LFN 2004*; *National Primary Healthcare Development Agency Act Cap. N69, LFN 2004*; *National Agency for Food and Drugs Administration and Control (NAFDAC) Act Cap. N1, LFN 2004*; *National Drug Formulary and Essential Drug List Act Cap. N29, LFN 2004*; *National Drug Law Enforcement Agency Act Cap. N30, LFN 2004*; *Medical and Dental Practitioners (MDPA) Act Cap. M8, LFN 2004*; *Anatomy Act Cap. A16, LFN 2004*; *Nigerian Investment and Promotion Commission Act Cap. N117, LFN 2004*; *National Hospital for Women and Children, Abuja (Establishment, etc.) Act N44, LFN 2004*; *National Primary Healthcare Development Agency Act N69, LFN 2004*; *National Eye Centre Act Cap. N38, LFN 2004*; *Medical Rehabilitation Therapists (Registration, etc.) Act Cap. M9, LFN 2004*; *Medical Laboratory Science Council of Nigeria Act Cap. M25, LFN 2004*, and *Nuclear Safety and Radiation Protection Act Cap. N142, LFN 2004*. States have legislations such as Lagos State's *Health Sector Reform Law 2016*, *Private Health Facilities Inspection Law Cap. P14, Laws of Lagos State of Nigeria 2003*, whilst LGs also pass HI impacting Bye-Laws. Nigeria has also assumed minimum obligations by acceding to the *Universal Declaration of Human Rights 1948*, *African Charter on Human & Peoples' Right (ACHPR) 1981*, *International Convention on Economic, Social and Cultural Rights (ICESCR) 1966* etc. For instance, the *NHA* established the National Health and Information System (NH&IS) and Basic Healthcare Provision Fund (BHPF). In the 2018 budget, ₦57.15 billion was allocated to the BHPF established by **section 11** and **Part IV NHA** and financed by FG's consolidated revenue fund of not less than 1%; international donors and other sources - Azimazi Momoh Jimoh, 'Senate Explains ₦56.15billion Vote for Basic Healthcare in 2018 Budget', *The Guardian*, 18 May 2018: <https://guardian.ng/news/senate-explains-n57-15b-vote-for-basic-healthcare-in-2018-budget/> last accessed 8/20/2018. *Health Sector Reform Program (2004-2007)*; *National Strategic Development Plan Framework (2009-2015)*; *North East Nigeria Health Sector Response Strategy 2017/2018*.

<sup>10</sup> One way for non-medical personnel to participate is by taking equity stake in companies that own and/or operate these facilities (such companies having been required to show that relevant professional(s) is amongst their subscribers before incorporation). See for example, **sections 1(a)** and **10 Pharmacists Council of Nigeria Act Cap. P17, LFN 2004** which requires certificate of proficiency from any pharmacists who intends to practice. Similar requirement applies under **sections 1(2)(a)** and **8 MDPA** in respect of medical practitioners and dental surgeons. Recently, the CAC has removed the criteria of providing proficiency certificate to ensure ease of doing business, CAC website- <http://new.cac.gov.ng/home/public-notice-removal-requirement-proficiency-certificate/> last accessed 8/10/2018. However, it is impossible for an unlicensed person who is not in the medical field to own a hospital/pharmacy except in partnership with a registered professional in the medical field.

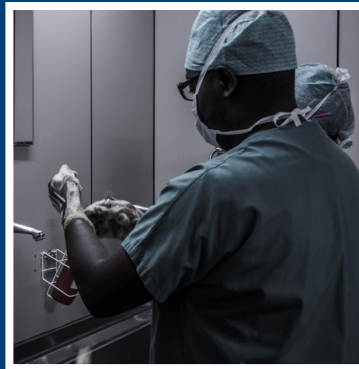
<sup>11</sup> **Section 60 Lagos State Health Sector Reform Law (HSRL) 2016** provides that "... no person shall establish, carry on or run a health facility in the State in any premises not registered with the Agency under the provisions of this Law, and also to review licenses already issued and inspect their facilities." Thus, private hospitals, mobile clinics including diagnostic centres etc. must obtain license from the **Health Facility Monitoring and Accreditation Agency (HEFAMAA)** before commencing operations and such license must be renewed every twelve (12) months pursuant to **section 65(1)**.

<sup>12</sup> Failure to comply with **HSRL**, attracts ₦250,000 penalty or imprisonment not exceeding three (3) years or both (for individuals), whilst a penalty of ₦500,000 for corporate body and each Directors shall be liable to three (3) years imprisonment and fine (**section 74**)

Shareholder loans for example may be subordinated to third party debts. Of course, investment decisions would be predicated on successful due diligence and consideration of business case for the investment. Careful thought must be given to structuring the investment for optimality of returns and ease of exit at the appropriate time – these are matters on which PE practitioners have deep expertise. Expectedly, professional advisers including legal counsel will provide transactional support including any post investment compliance requirements.<sup>13</sup>

### Value Chain 'X-Ray': Potential Areas for PE Investment

In developed countries like the USA, PE investors are one of the greatest contributors to the HI growth: they engage in buy-and-build strategy to arbitrage multiples that expands the investee company growing scale.<sup>14</sup> For instance, **TPG Capital** bought **Par Pharmaceutical** in 2012 for \$1.9 billion; within three years



SKILLED WORKERS  
DEFICIT IS VERY HIGH  
IN NIGERIA.  
DOCTORS TO PATIENT  
RATIO IS PUT AT 1 : 2000;  
AND NURSES 1 : 20,000

after the purchase, **TPG Capital** realized US\$5 billion profit of its investment from its sale to **Endo International Plc** in 2015.<sup>15</sup>

Even if it seems counter intuitive, PE firms can support the FG to achieve its universal health coverage (UHC) goals as part of the firm's respective corporate social responsibilities (CSR). Part of the HI investment attractiveness quotient for PE firms is that some potential investee companies may qualify

for tax incentives like pioneer status thus enhancing the prospect of higher investment returns.<sup>16</sup>

PE firms' through capital injections and provision of experienced management teams should positively impact any investee company by providing strategic support and much needed growth capital for expansion of the acquired company's footprint. In March 2018, **CardinalStone** and **Alta Semper LLP** invested US\$18 million in **HealthPlus**, a Nigeria pharmaceutical chain store.<sup>17</sup> This investment will enable **HealthPlus** gain access to more dry powder for organic expansion and help reduce sales of fake drugs by smaller stores. Also, PE firms can transform the health sector vide strategic acquisitions. In January 2018, Nigeria's HI had some major acquisitions by PE firms.<sup>18</sup> These are expected to be on the growth trajectory following the PE investments.

Potential investments to remedy infrastructural deficits such as building or renovation of

<sup>13</sup> Daniel Odupe's 'Lessons: Issues and Practical Considerations in Equity Financing in Nigeria' *LeLaw Thought Leadership*, August 2018 is a good read on equity financing and its investment potentials in Nigeria: <http://lelawlegal.com/blog-details.php?title=Lessons-Issues-and-Practical-Considerations-in-Equity-Financing-in-Nigeria> last accessed 10/12/2018.

<sup>14</sup> SC&H Capital, 'How Private Equity Is Helping to Underwrite the Transformation of Healthcare', March 2018: <https://www.schgroup.com/resource/blog-post/how-private-equity-is-helping-to-underwrite-the-transformation-of-healthcare/> last accessed 9/8/2018.

<sup>15</sup> David Carey and Devin Banerjee, 'TPG Scores \$5 Billion Gain in Three Years on Par Pharma Sale', May 18 2015: <https://www.bloomberg.com/news/articles/2015-05-18/tpg-scores-5-billion-profit-in-three-years-on-par-pharma-sale> last accessed 9/10/2018.

<sup>16</sup> Areas in medical field that can qualify for pioneer status are-manufacturing of pharmaceuticals, surgical dresses, medical and dental equipment. See *Items 20, 21, 35 Industrial Development (List of Pioneer Industries) Notice 1982*; Also, manufacturers of medical and pharmaceutical products, and medical services are exempted from Value Added Tax, which is 5%. See *Part 2 and 3 First Schedule Value Added Tax Act Cap. V1, LFN 2004*.

<sup>17</sup> Kemi Ajumobi, 'Alta Semper LLP invests \$18million in HealthPlus', *BusinessDay*, March 28 2018: <https://www.businessdayonline.com/news/article/alta-semper-capital-llp-invests-18mn-healthplus-limited/> last accessed 8/10/2018.

<sup>18</sup> *Echo Venture Capital* acquired **Life Bank** (₦720 million); *Integrated Diagnostics and Holding Man. Capital* acquired **Echo-Scan** (₦9 billion). Multi-specialist hospitals like the **American Specialist Hospital, Abuja** (worth \$73million) funded by **Edifice Capital (France)**, **Apex Medical Centre (USA)** and **GE Healthcare (USA)** are examples of the utility of PE investment partners in Nigerian HI. See Lolade Akinmurele, 'Nigeria Dealmaking Hits ₦232 Billion in H1 2018', *BusinessDay*, 4 July 2018, p.A6.



THE FRONT VIEW OF UNIVERSITY COLLEGE HOSPITAL (UCH), IBADAN, NIGERIA

hospitals and other health facilities, purchase of medical equipment/accessories and consumables, diagnostic services, diagnostic equipment purchase, maintenance and repairs, vaccine production, ambulance/medical evacuation services, health facility management, private medical schools etc. still abounds.<sup>19</sup> These could provide veritable outlets for utilising PE firms' dry powder.

Nigeria's underperforming health insurance sector can also be bolstered through PE intervention. For instance, **Hygeia HMO**, foremost private health insurance provider in Nigeria,

achieved great mileage through PE investments into its parent company, **Hygeia**, operator of Lagoon Hospitals. In 2016, **International Finance Corporation (IFC)** led a group of investors to make a US\$66.8million (₦13.3 billion) investment in **Hygeia**. The investment positively impacted **Hygeia HMO**, and must have contributed to its leading HMO status today.<sup>20</sup>

In contrast, **Eko Hospitals (EH)**, an establishment of **Ekocorp Plc**, the only hospital business quoted on the Nigerian Stock (NSE) was until recently, a peer of Hygeia or even marginal leader of **Hygeia**. However, their current different

circumstances may be attributable to the impact of PE investment in **Hygeia** and absence of same in **EH**. PE investment is likely to better improve **EH's** fortune – a potential public issue (whether rights offer or new issue) may not be well received by the investing public. Thus, **Ekocorp Plc's** current stock position could be improved if PE firms' funding and management support are leveraged. This will encourage more hospitals to be listed on the NSE whilst resolving major issues affecting the investee companies' performance index. Investment in medical mini-cities similar to the one in the US, Dubai, and Mexico will be a welcome development.

## PE FIRMS CAN SUPPORT THE FG TO ACHIEVE ITS UNIVERSAL HEALTH COVERAGE GOALS

<sup>19</sup> Nigeria has very few one-stop diagnostic centres that can handle all diagnostic tests, See further, Philips Consulting, '**Investment Opportunities In Nigerian Health Industry**' <http://phillipsconsulting.net/files/articles/investment-health.pdf>, last accessed 9/3/2018.

<sup>20</sup> In 2009, **IFC** led earlier investment round where **Satya Capital and FMO** invested US\$25 million in **Hygeia**. Currently, **Hygeia Group** operates a network of three hospitals and three clinics under the **Lagoon Hospital** brand and **Hygeia HMO**.

## Conclusion

The opportunities that abound in the health sector are enormous: PE firms as a subset of private investors can obviously do more. One significant opportunity could be the **Abuja Medical City Project (AMCP)**, a US\$60 million public private partnership project inaugurated by the FG in August 2014 and expected to cater for over two million patients at a time. In July 2018, the Infrastructure Concession Regulatory Commission (ICRC) reported that the AMCP is still at

development phase because the Ministry of Health is in the process of procuring a Transaction Adviser (TA) to prepare an Outline Business Case (OBC) as a prelude to determining project viability and bankability.<sup>21</sup>

PE investment could help drive or accelerate transformation of Nigerian HI and encourage 'brain gain' of repatriates – return of skilled Nigerians who had gone abroad in search of greener pastures. Nigeria would be the ultimate beneficiary with enhanced HI capacity. These would be

exemplified by increased contribution to GDP, for example, through employment of sector personnel across the entire value chain and conservation of foreign currency outflows *vide* reduced medical tourism. As a matter of fact, Nigerian hospitals can begin to attract patients from other African countries as hospitals in SA and Egypt currently do. PE can more actively accept the challenge to help Nigeria get there soonest. The HI challenges should represent exciting times ahead. 🌐

ABUJA MEDICAL CITY PROJECT IS A \$60 MILLION (USD) PUBLIC PRIVATE PARTNERSHIP PROJECT EXPECTED TO CATER FOR OVER TWO MILLION PATIENTS AT A TIME.

## LeLaw Disclaimer

Thank you for reading this article. Though we hope you find it informative, please note that same is not legal advice and must not be construed as such. However, if you have any enquiries, please contact the authors, Afolabi Elebiju at [a.elebiju@lelawlegal.com](mailto:a.elebiju@lelawlegal.com) or Gabriel Fatokunbo at [g.fatokunbo@lelawlegal.com](mailto:g.fatokunbo@lelawlegal.com), or email: [info@lelawlegal.com](mailto:info@lelawlegal.com).



PRIVATE EQUITY INVESTMENT COULD HELP ACCELERATE THE TRANSFORMATION OF NIGERIAN HEALTH INDUSTRY AND ENCOURAGE 'BRAIN GAIN' OF REPATRIATES

<sup>21</sup> ICRC, 'Projects Under Development and Procurement (Pre-Contract)' July 2018: <http://www.icrc.gov.ng/projects/projects-under-conceptualization-development-and-procurement/> last assessed 8/10/18.