

# Key Takeaways from Top Dealmakers in South and Sub-Saharan Africa

As companies and the men and women who lead them continue to be buffeted by uncertainty around the timing of the global interest rate cycle, the art and science of dealmaking demand constant adaptation, creativity, and meticulous planning. The dynamic nature of mergers and acquisitions (M&A) in South and Sub-Saharan Africa presents unique challenges and opportunities.

Through insightful conversations with some of the region's leading dealmakers, we have distilled four key takeaways that illuminate the current state and future direction of M&A activity.

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Creativity in deal structures

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Importance of thorough due diligence

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Impact of macroeconomic factors and regulatory environment

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Sector-specific opportunities and resilience





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# Morné van der Merwe

Founding Partner  
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**Tell us a little bit more about yourself and your career so far and what it is you do?**

Morné: I think my career can be summarised as having dedicated 20 years to the M&A space, spending many, many hours around negotiating tables with parties doing deals. M&A is the alchemy of money meeting opportunity.

Wildu: Morné and I have actually been partners for the last 30 years. I focus more on the investment and the financing side, whereas Morné focuses on the M&A deals. We both have a history of conducting inbound and outbound investments from South Africa.

**The art and science of deal-making. Morné, let's start off with the macroeconomic situation and forecast at the moment. We certainly started the year with expectations of rate cuts by mid-year; that's been pushed back. When do you expect to see the macroeconomic conditions easing and interest rates declining to help provide a bit more of a tailwind for deal-making?**

Morné: I think the core of the response to that is when are we going to see more certainty insofar as the geopolitical situation is concerned. We're experiencing uncertainty around elections here in South Africa but this has been the case worldwide, with elections taking place in many countries across the globe, and then obviously also the situation in the United States and Ukraine. And until we see things settling down a bit, I think the regime that we have on the table will continue.

My prediction is that in the next six to eight months, I think we should start seeing a stabilisation of the geopolitical situation, or at least more certainty, which in turn will have an impact on recalibration to normality insofar as interest rates, etc. are concerned. And that obviously would provide a bit more confidence.

**Wildu, what are your expectations on when might financing conditions improve?**

Wildu: Let me just speak from my own experience and the deals that we've got in the pipeline at the moment. From an inbound point of view, I think there are huge pricing opportunities; assets are perceived to be quite cheap at the moment and furthermore the nature of these assets is important. Again, in the context of the geopolitical scenario that we've just discussed, the fact of the matter is that South Africa does sit on strategic assets. Both in the mining sector and also insofar as food security is concerned. I think those are very strategic. And from an inbound point of view, there remains a lot of interest in South Africa as a result of that.

From an outbound M&A perspective, I think you have quite a lot of well-established South African businesses who are looking at opportunities in offshore markets at the moment to find some kind of a hedge in their asset portfolio against the risks associated with South Africa and, with the depreciation of the rand – to find some balance in their portfolios for investors. So that is where the driving forces are aligned at the moment.

**Do you think companies are going to be more offensive or defensive? And by that, I mean, often in downturns, you see companies getting rid of non-core assets. You see opportunities emerge in restructurings and maybe some consolidation in the market, versus companies that have now trimmed down, have deleveraged their balance sheet and are still trying to build up war chests to be more proactive and on the front foot. How do you see that balance evolving over the course of the year?**

Wildu: You are going to see more offensive transactions. We are currently holding mandates to look at one or two other very interesting offensive actions.

On the defensive action side, I think you will see that, by and large, if you look at South African entities, a lot of them have already started to get rid of non-core businesses, resize themselves and so on, because during the last few years, South African-based companies were forced to do that in order to refocus and align their strategies. And now, it's a good time to deploy that if you've got the financing shoulder or the war chest on your balance sheet.

Morné: It's made a lot of boards sit up and pay careful attention. The depressed market circumstances in South Africa creates risk, however depending on the angle from which you're looking at it, it also opens up possible opportunities. But if you're not focused on your core business, and on delivering credible return to investors, I think we find ourselves in an environment where there's a feeling of being unsettled in certain quarters and there's a feeling of huge opportunity in others. And it's going to be interesting to see how it's going to pan out. Though the BHP Anglo bid is off for now, I don't think that that is necessarily the end of that story. It's put blood in the water. And it's also drawn international attention to South Africa and opportunities in the country. And that's what I'm sensing: the change in the energy and the atmosphere. Very interesting that.

**What do you see as the major risks or challenges that could face dealmakers in getting deals over the line in this environment?**

Morné: Certainly the regulatory challenges that we have in South Africa. I think black economic empowerment remains a challenge for offshore investors. Not necessarily the concept. I think it's just become very, very complicated in the way that it's being implemented. The way that our Competition Commission's mandate has been expanded to not only look at competition issues, but to also extend into other areas pertaining to public interest. If you put all of that

together with the backdrop of political uncertainty, the challenges that we have with electricity supply, the challenges that we have with railroads and ports, it does roll up into quite a lot. You've got to chew through a lot of fat before you get to the steak. I'm not suggesting for a minute that investors have turned their back on the opportunities – the opportunities are here, they are strategic, and there's good pricing in the market – [but] it does impose a certain level of creativity with deal structuring to navigate the challenges.

**What are you seeing in deal structuring in order to navigate this complexity?**

Wildu: Your planning has to be of such a nature that you must have a line of sight on all of these challenges and that you are ready to deal with them. That's where the whole notion of creative thinking becomes very important. Right from the outset, designing and putting an architectural structure around your deal plan. So that you don't head off in a direction and then start running into roadblocks and you get stuck. That's when things go wrong. The issue around greater thinking about creative funding is important. And that's where quite a lot of the magic lies.

But I also do think just in structuring the transaction itself, the way that you decide to sequence things, which are the areas that you're going to focus or let's say your competition aspects, you have those things in mind and be creative in the way that you approach the deal. So deal making is no longer a dogmatic kind of playbook where it's foreseeable that things are going to play out in a certain way. You need to spend much more time right at the beginning of the deal to actually plan for where things are going to possibly go wrong and what do you do then.

**How does that then start feeding through more into the impact on your due diligence? Because it's quite clear that deal makers therefore must be ramping up their due diligence efforts. What areas of due diligence are then becoming more of a focus in deal-making and earlier on in the process?**

Morné: I always start with the end in mind. The expectations of experience with clients in the deal-making space is not for you to run off and regurgitate the agreements that are in play. What are clients expecting of us? Does it go into the indemnity bucket? Does it go into the pricing bucket? Does it go into the 'deal-is-off' bucket?

And then the other important trend in the context of due diligence that's becoming more and more visible in South Africa, is the notion of warranty and indemnity insurance (W&I). Again, this is a way to manage risk. We are seeing that becoming a feature of South African deal-making. And the reason I'm mentioning that is because you need to make sure that when you go into your due diligence and you expect that there's going to be a W&I insurance piece to the transaction, your due diligence needs to be structured in such a way that it has an outcome that will talk to what needs to be answered by the time that you get to the insurer.

Wildu: A real risk for me, is especially legal advisors, who for almost the last decade have had a field day, saying: 'A due diligence. Fantastic. It's not a real risk I can throw 30 of my youngsters at it, prepare a 400-page due diligence report that highlights every single bit, including 'licences' spelt with an S rather with a C for the noun', you know, that sort of thing. Not a real risk. I don't think W&I insurers are going to make sense of it and then of course when you have to talk to your investors you've got to assume they would want to understand what the real risks are, so that bit has been a big change.

Another aspect I want to highlight is how the use of AI in due diligence could change the game plan moving forward. We've started to see some of its impact, but not yet in full. AI is being used not only for document review but also to identify industry challenges. I believe this will be a significant game changer going forward. It's very interesting.

**What would your key nugget of advice be to get a deal over the line in this environment?**

Morné: Make sure that you focus on the real issues when it comes to risk assessment because at the end of the day the role that we as lawyers in the deal making and the M&A space play is not only to ensure that you have a proper transaction in place, but also to ensure that when it comes to the allocation of risk and responsibility, there is absolute clarity on what the risks are and what the responsibilities are.

And keep your eye on the prize. Before you go into a deal – I am going to repeat it again – start with the end in mind. What are the things that I want out of this deal that are non-negotiable? And what are the things that I am happy to negotiate and trade on? To have that in your mind as you go into the deal-making process is key, otherwise you risk getting sidetracked and losing focus and ultimately losing the deal.



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