



CHECK LIST: PROCESSING APPLICATIONS OF MERGERS, ACQUISITIONS & TAKEOVERS



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***All documents required shall be filed in duplicate**

1. Mergers

1.1 Merger Notification – Documents Required

- a. Completed Merger Notification Form
- b. A joint letter of intent from the merging entities.
- c. Extract of Board Resolutions of the merging entities in support of the merger duly certified by a Director and the Company Secretary.
- d. A copy of the letter appointing the financial adviser (s)
- e. Certificate of Incorporation certified by the Company Secretary, certified true copies of Form CAC 7, and Memorandum and Articles of Association of the merging entities.
- f. A letter of No objection from the Companies' Regulator(s) (where applicable)
- g. The Audited Accounts of the merging entities for the preceding five (5) years or the number of years the Companies have been in operation if not up to five (5) years.
- h. Evidence of payment of filing fee of N50, 000.00 (Fifty Thousand Naira only) per merging entity
- i. Information Memorandum

1.2 Contents of Information Memorandum

1.2.1 Brief information on the merging entities and the merger

- a) Brief history of the merging entities – incorporation, line of business, location, etc
- b) Authorized share capital, issued and fully paid, Directors' direct & indirect beneficial interests and list of shareholders with 5% and above shareholdings
- c) Rationale/objectives of the merger
- d) List of competitors of the merging entities and their percentages of market share, including those of the merging entities



- e) Analysis of the effect of the transaction on the industry, including post – merger percentage market share of the resultant entity
- f) A summary of financial information which include balance sheet and profit and loss accounts

1.2.2 Provide the following additional information:

- a) The actual and potential level of import competition in the relevant industry.
- b) The ease of entry into the industry, including tariff and regulatory barriers.
- c) The level of trends of concentration and history of collusion in the relevant industry.
- d) The import competition such as existing import duties and degree of countervailing power.
- e) The dynamic characteristics of the relevant industry including growth, innovation and product differentiation.
- f) The nature and extent of vertical integration in the relevant industry.
- g) Whether the business or part of the business of a party to the merger or proposed merger has failed or is likely to fail.
- h) Whether the merger will result in the removal of an effective competitor.

1.2.3 Products and Services

- a) State the products or services that the merging entities sell or provide in, into or from Nigeria. In addition, identify any products or services that you believe are considered by buyers as reasonably interchangeable with, or a substitute for, a product or service provided in, into or from Nigeria by parties to the merger.
- b) For each identified product or service, state the geographic area (s) in Nigeria, in which the merging entities sell.
- c) For each identified product or service, identify and provide contact details for, the five producers or providers in each identified geographical area with the largest



- estimated turnover in value, and their estimated share of the total turnover during the last financial year.
- d) For each identified product or service, state the turnover in each of the identified geographical area during the last financial year.
 - e) For each identified product or service, identify and provide contact details for the merging entities' five customers in each of the identified geographical area with the largest aggregate purchases in value during the last financial year.
 - f) The business relationship among the merging entities in terms of the products or services they sell to one another as well as the value of those products and services sold during the last financial year.

1.2.4 Indicate whether the merger will involve the following:

- a) Transfer of all or part of the assets, liabilities, undertakings, including real and intellectual property rights.
- b) Transfer of shares or other interests.
- c) A Buy-back of shares.

1.2.5 Where the merger transaction is relying on a failing firm defence, include the following:

- a) Financial information demonstrating that the firm will be unable to meet its financial obligations in future.
- a) Information concerning efforts taken to elicit reasonable alternative offers.
- b) Information indicating that the failing firm would reasonably be expected to exit the market unless the merger is implemented.

1.3 Clearance of Scheme Document – Documents Required

- a) Draft Financial Services Agreement between the merging entities and their financial advisers
- c) Evidence of increase in Authorized Share Capital (where necessary)
- d) Signed and notarized consent letters of Directors and parties to the merger



- e) Copy of merger implementation agreement and any other agreements executed by the merging entities
- f) A letter of undertaking to file evidence of settlement of all tax liabilities of the Federal Inland Revenue Services (FIRS)
- g) Certificate of capital importation (where applicable)
- h) Reporting Accountants' report on the financials and forecast of the merging entities
- i) List of claims and litigation of the merging entities
- j) Evidence of payment of processing fee on the purchase consideration
- k) Scheme Document – (Contents) See the relevant Rules in the Rules and Regulations of the Commission

1.4 Formal Approval – Documents Required

- a) Copies of executed Scheme Documents by the parties to the Scheme at the Shareholders meetings
- b) Copies of executed Financial Services Agreements
- c) Copies of the executed Order of Proceedings of the merging companies
- d) Copies of the evidence of dispatch of Scheme Document to the shareholders of the merging companies
- e) Evidence of the executed resolutions passed at the separate Shareholders meetings
- f) Scrutineer's Report
- g) Stamped Power of Attorney of Directors who were not present at the separate shareholders meetings (where applicable)
- h) Forms SEC 6 (where applicable)
- i) Evidence of clearance letter from the Federal Inland Revenue Services regarding any tax liability (where applicable)
- j) Amended copy of the Memorandum and Articles of Association of the Resultant company (where applicable)



1.5 Post – Approval – Documents Required

- a) A copy of the Court Order sanctioning the Scheme within seven days of the order for registration in accordance with Section 122 (a) of the ISA 2007.
- b) A Notice of the Order shall be published in at least one National Newspaper and a copy filed with the Commission.
- c) A copy of the order shall be published in the Gazette and a copy filed with the Commission.
- d) File statement of the actual cost of the scheme.
- e) File a Report of the completion of the exercise within three (3) months, containing the following information among others:
 - Arrangement relating to employees of the dissolved Companies.
 - Settlement of shareholders of the dissolved companies.
 - Utilization of monies injected into the company (where applicable).
 - General implementation of the merger as provided by Section 122 (6) of the ISA.
 - Report of the Shareholders' Representatives (where applicable)
 - Report on Share Adjustment (as provided in the Scheme Document where applicable)

1.6 Post - Merger Inspection

There shall be a post – merger inspection to be carried out by the Commission three months after approval to assess how the resultant company is faring.



2. Acquisition

2.1 Acquisition Stage - Documents Required

The acquirer shall file a letter of intent accompanied with the following documents. The filing shall be made by a registered capital market operator registered to function as an Issuing House:

- a) Two draft copies of Information Memorandum
- b) Extracts of Board Resolutions of the acquirer and the acquiree agreeing to the acquisition signed by the Company's Secretary and a Director. (where applicable)
- c) A recent CAC certified true copy of the Memorandum and Articles of Association of the acquirer and the acquiree. (where applicable)
- d) A certified Certificate of Incorporation of the acquirer and the acquiree. (where applicable)
- e) Extrats of shareholders resolution of the acquirer and the target company to be signed by a Director and Company Secretary. (where applicable)
- f) Summary of the claims and litigations of the company to be acquired.
- g) A copy of 'No Objection' letter from the relevant regulatory body (where applicable).
- h) Copies of letters appointing the financial adviser(s)
- i) A CAC certified Form CAC 7 of the acquirer and the target company. (where applicable)
- j) Notarized consent of Directors of the acquirer and the target company (where applicable).
- k) Financial Services Agreement between the acquirer and the target company and their respective Financial Advisers. (where applicable)
- l) Share Purchase Agreement and any other relevant agreement executed between the acquirer and the target company. (where applicable)
- m) Payment of N50,000 application fee



- n) Payment of relevant fees of the total value of shares being acquired as processing fee and/or a requirement to cross the transaction on the floor of the Exchange where the transaction involves quoted companies.
- o) Annual report and accounts of both companies for the preceding period of five years or the period the companies have been in operation if less than five years.
- p) For nominal transaction, the companies are required to submit the above listed documents and pay the application fee only. The companies shall show evidence that the transaction is nominal.
- q) Sources of fund to finance the acquisition must be clearly disclosed and backed by documentary evidence.
- r) File report of valuation of shares/assets. (where applicable)
- s) Publication of the acquisition in at least two national dailies after consummation.

2.2 Contents of the Information Memorandum

The Information Memorandum shall contain the following among others:

a) Background Information

- Background to the Acquisition
- Statement of acquisition objectives
- Parties to the Acquisition
- The list of assets to be acquired and their value (where applicable)
- Statement of Financial Capability

b) The Offer

- The purchase consideration
- Comparison of purchase consideration with historical market price (where applicable)
- Effect of the acquisition on the management and employee of the target company
- Terms and conditions of the acquisition
- Manner of Acceptance
- Treatment of dissenting shareholders (if any)



c) The Acquirer

- History and Business
- Share Capital & Ownership Structure
- Director's Beneficial Interests
- Three/five years financial summary

d) The Target Company

- History and Business
- Share Capital and Ownership Structure
- Director's Beneficial Interests
- Three/five years financial summary
- Summary of Claims and Litigations

e) Effects of the Acquisition on the Relevant Industry

- Line of operation of the acquirer
- Statement of existing investment in a related line of business
- Analysis of market share of the acquirer in the relevant industry

f) Financial Projections

- Effects of the acquisition on the financial position of the acquirer
- Projected consolidated balance sheet (where applicable)
- Earnings projections of the acquirer



2.3 Post – Acquisition – Documents Required

After a 'No Objection' is granted, the companies shall file a report of compliance with the terms of approval within three months. The report should be forwarded along with the following:

- a) Signed and dated Information Memorandum
- b) Executed share/asset purchase agreement
- c) Evidence of settlement of purchase consideration (where applicable)
- d) Evidence of settlement of severance benefit of employees that may lose their jobs as a result of the acquisition
- e) Evidence of settlement of dissenting shareholders (where applicable)
- f) Newspaper publications on the acquisition

2.4 Post - Acquisition Inspection

There shall be a post-acquisition inspection to be carried out by the Commission three months after approval to assess how both the acquirer and the target company are faring.



3. Takeover

Application for the processing of Takeover transactions shall be filed with the Commission by the Financial Advisers to the offeror. The Financial Advisers shall be capital market operators who are registered with Commission to function as Issuing House.

3.1 Application for Authority to proceed with a Takeover

Documents to be filed

- a) A letter of application.
- b) Two copies of Information Memorandum.
- c) A letter of No Objection from the relevant regulatory body (where applicable).
- d) Extract of shareholders and Board Resolutions of the offeror approving the takeover.
- e) Copies of the Certificate of Incorporation of the offeror certified by the Corporate Affairs Commission
- f) Copies of the Memorandum and Articles of Association of the offeror certified by the Corporate Affairs Commission.
- g) Copies of letters from the offeror appointing their Financial Advisers to the transaction.
- h) Payment of N50,000 filing fee.



3.2 Contents of Information Memorandum

3.2.1 Background Information on the Takeover

- Background to the Takeover
- Parties to the takeover
- Statement of intention/objectives
- Statement of financial capability, where the offeror is an individual

3.2.2 Brief Information on the Offeror

- Brief History of the offeror
- Share capital, ownership structure, and Directors of the offeror
- The percentage market share of the offeror in the relevant industry
- Current shareholding of the offeror in the target company
- Number of shares and percentage holding to be acquired (where applicable)
- Post-takeover status of the target company
- State the likely effect of the take-over bid, if successful on:
 - The economy of Nigeria.
 - The Staff of the target Company.



3.3 Filing of a Draft Takeover Bid

Upon the receipt of authority to proceed with a takeover bid, the following documents shall be filed with the Commission:

Two draft copies of the Takeover Bid

- a) Consent letters of Directors and other parties to the transaction
- b) Form CAC 7 of the offeror
- c) A copy of Draft Financial Services Agreement between the Financial Advisers and the offeror, and any other agreement (s) entered into in the course of the transaction
- d) Annual Report and Accounts of the offeror for the preceding period of five years
- e) Payment of the relevant SEC fees based on the value of shares to be taken over.

3.4 Filing of executed Offer Documents

Upon the clearance of the Draft Takeover Bid, a signed copy of the proposed bid shall be filed with the Commission for Registration along with the following:

- a) Notice of the Takeover Bid published by the offeror in at least two national daily newspapers
- b) Financial Services Agreement and other executed agreements.

3.5 Contents of a Takeover Bid

The contents of the takeover bid shall comply with the provisions of Section 136 of the Investment and Securities Act, 2007.



3.6 Filing of Result of The Offer

Upon registration of the Takeover Bid, the offeror should launch the bid by officially opening the Bid to the shareholders of the target company and should remain in force for the period as approved by the Commission.

When the Bid is closed, the offeror should file the results with the Commission containing the following:

- a) Summary of Acceptances
- b) Acceptance Forms
- c) Full list of Acceptances
- d) Rejected Acceptances
- e) Draft Newspaper Announcement
- f) Evidence of settlement of purchase consideration
- g) Evidence of payment of processing fee



3.7 Post-Takeover Inspection

There shall be a post-takeover inspection to be carried out by the Commission three months after registration of the Bid to assess how both the offeror and the target company are faring.