

# **LEGAL FRAME WORK FOR MERGERS AND ACQUISITIONS**

*BY*

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# INTRODUCTION

A legal framework exists for mergers and acquisitions in Nigeria as in other jurisdictions. The legislations that have impact directly or indirectly on Mergers and Acquisitions are:

- The investment and Securities Act (ISA) No 45 of 1999 and the Rules and Regulations of SEC pursuant to the ISA.

# Cont'd

- The Companies and Allied Matters Act (CAMA) 1990
- The Banks and Other Financial Institutions Act (BOFIA) No 25 of 1991
- The Insurance Act
- The Companies Income Tax Act

# INVESTMENT AND SECURITIES ACT (ISA)

This is the principal legislation regulating Mergers and Acquisitions in Nigeria. It repealed the specific provisions for the regulation of M & A's in CAMA and transferred the relevant sections to the ISA.

- The objective of M & A regulation by the ISA is to Prevent restraint of competition and monopolistic tendencies.

# Cont'd

- The ISA provides that all other laws shall be read in conformity with it in respect of capital market issues. This confers the ultimate regulation of M & A's on SEC.
- It also mandates the SEC to make Rules and Regulations for the market.
- Sections 99 – 122 of the ISA contain specific laws for regulating M & A's

# PROVISIONS IN ISA FOR REGULATING MERGERS AND ACQUISITIONS

- Provisions are made for reconstruction and mergers of companies as well as for the holding of court-ordered meetings
- A majority agreement is required at the court-ordered meetings before approval of the Commission is sought.
- If a scheme is approved by the Commission and sanctioned by the court it shall become binding on the companies and the court will by the order sanctioning the scheme provide for the following:

# Cont'd

- Transfer to the transferee of property and liabilities.
- Allotting or appropriation by transferee company of shares, debentures, policies or other like interests.
- Continuation by or against the transferee company of any legal proceedings pending.
- Dissolution, without winding up, of any transferee company
- Provision for dissenting shareholders

# Cont'd

- Provide for incidental, consequential and supplemental matters
- An order for dissolution or winding up of any transferee company shall not be made unless:
  - Whole of undertaking and the property, assets and liabilities of the transferor company are transferred into the transferees company
  - Court is satisfied of adequate provision by way of compensation or otherwise have been made with respect to the employees of the company.

# ENFORCEMENT OF THE LAWS

- The ISA makes specific provisions for enforcement of laws relating to M & A's.
- fines, penalties and terms of imprisonment are provided for violations.
- Administrative and judicial machinery are available for enforcement. They include:

# Cont'd

- Administrative Proceedings Committee (APC) of the Commission
- Investment and Securities Tribunal (IST)
- Other superior courts

# Cont'd

- The provisions of the ISA are quite extensive and cover Registration, Monitoring, Investigation and enforcement actions.

# **RULES AND REGULATIONS OF SEC**

- The rules and regulations prescribe the disclosure requirements and procedures.
- The Rules and Regulations cover the following areas:
  - **Scope of Regulations**
    - Public and private companies
    - All mergers and acquisitions

# Cont'd

- Approval given by the Commission if not likely to restrain competition or create monopoly
  
- **Exemptions**  
holding companies acquiring shares solely for investment
  
- **Procedures for obtaining approval**
  - (i) Pre-merger notice
  
  - (ii) Formal application for approval – including agreements, terms and conditions

- **Post approval requirements**

Court order sanctioning the scheme to be filed with the Commission

Notification of the completion of the exercise required

- **OTHER LAWS**

1. Companies and Allied Matters Act

Provisions for regulating Mergers and Acquisitions repealed and transferred to ISA No. 45 of 1999.

CAMA, however, still provides for incorporation of companies and Memorandum and Articles of Association and their certification by the CAC for Mergers and Acquisitions purposes. Therefore, s till relevant.

## **2. Banks and Other Financial Institutions Act**

Relevant as it provides that the CBN shall sanction the Mergers and Acquisitions of Banks

SEC requires the no-objection letter of the CBN to process Bank mergers.

## **3. Insurance Act**

Provides for the sanction of Mergers and Acquisitions of insurance companies

## **4. Companies Income Tax Act**

- Mergers require clearance of FIRS with respect to tax due and payable under the Capital Gains Tax act.

# Conclusions

- The ISA is the principal law regulating Mergers and Acquisitions in Nigeria
- The Rules and Regulations of SEC make extensive provisions for regulating M & A's pursuant to the ISA
- Other laws have impact on the regulation of M & A's
- There is need for continued of the various institutions implementing the laws, for the Consolidation of banks to achieve the objective.

Thank you