

The Effective Management of Mergers and Acquisition Related Disputes

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Questions

Can CBN and SEC take over responsibility for shareholders court ordered meeting instead of the Federal High Court.

What kind of strategies do we develop to ensure that disputes which arise during or after a merger do not scuttle the process/product

What can be done when an already merged bank – AB discovers that B has given some wrong information during due diligence?

Case Study 1: Singapore

- Keppel Bank and Tat Lee Bank
- Total workforce – 2,000
- Workforce needed – 1, 300
- Casualties – 700
- Natural attrition – 400 left
- Resolution- negotiation with employees

Case Study 2: Unipetrol and Agip

- **Dissenting Minority Share holder Litigation**
- **Merger Approval – February**
- **Litigation – February**
- **Court Ruling – July**
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- **6 months**

The Year 2000 Report

- The Lagos State Ministry of Justice described the State Judiciary as
- “an unfit and embarrassing structure for the 21st Century”.

Why?

DELAY!! COST!!

In the Year 2000

- **9,929 fresh cases were filed**
- **23, 197 remained pending**
- **5 – 7 years to conclude an average civil case**
- **8-10 years to resolve land disputes**

What To Do:

Be Reactive or Proactive

- December 2004 to December 2005 is approximately 12 Months!!!

“ The Central Bank will collaborate with other institutions “ to work out the structure of incentives and Legal/regulatory frameworks to facilitate the rapid consolidation of the system”.

*Prof. Charles Soludo,
Governor, Central Bank of Nigeria*

The Proposed Framework:

The Mergers and Acquisition
Dispute Resolution Program

(MADREP)

MADREP : WHAT IS IT?

- **The MADREP Pledge**
- **The MADREP Agreement**
- **The MADREP Solve**

1. The MADREP Pledge

- This is a promise of good faith between:
 - Merging Banks
 - Merging Banks and their Employees
 - Merging Banks and their Advisers
 - Merging Banks and their Shareholders
 - Merging Banks and their Executive Management Board
 - Merging Banks and the various Unions

- The aim of the pledge is to foster a commitment between merging parties to confidential and non-adversarial forms of dispute resolution through Alternative Dispute Resolution (ADR). Signatories to the MADREP pledge undertake to make ADR their first option in the resolution of disputes that may arise.

The Pledge

“ Being aware of the disputes that may arise form the ongoing mergers between our bank and other banks we hereby subscribe to a less expensive and more effective mode of dispute resolution than the traditional lawsuit to avoid in-ordinate delays, and the threat to our long standing relationships”.

In demonstration of the commitment of our Bank to the merger process/agreement, to an effective administration of Justice and the ideals of ADR, WE

of.....

Bank's name

Hereby pledge as follows:

1. To explore Negotiation, Mediation or Arbitration towards the resolution of any dispute which may arise as a result of this merger agreement before litigation is considered.
2. In the event that litigation is recommended or finally resorted to in the resolution of any given dispute which involves any other party that has signed this pledge, it will be commenced only after a notice has been forwarded to the other party, provided that the commencement of such an action does not preclude further attempts at negotiaion or mediation by the parties.

2. The MADREP Agreement

- **The MADREP Agreement refers to clauses which parties to a Memorandum of Understanding or merger agreement may insert to instruct disputes that may arise from their contract.**

Clauses: One Step or Multi- Step

- Dispute resolution clauses may specify one dispute resolution mechanism or may provide an opportunity for others. ***A two or three step is highly advised.***

Sample Clauses

Step 1: Negotiation

In the event of any dispute, claim, question or disagreement arising from or relating to this Memorandum of Understanding (or merger agreement) or the breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

Step 2: Mediation

Failing the ability of the parties to resolve the dispute within a period of 14 days through negotiation; all disputes, claims, questions or differences shall be referred to confidential mediation at The NCMG Centre for Dispute Resolution in accordance with the provisions its Commercial Mediation Rules. The mediation proceedings may be initiated by either of the parties upon notice to the other party (ies) or The NCMG Centre for Dispute Resolution.

[This clause may also provide for the qualifications of mediator's, method of payment, venue and any other item of concern to the parties]

Step 3: Arbitration

Failing the ability of the parties to resolve the dispute through mediation, the dispute shall be referred to (binding/advisory arbitration as administered by the NCMG Centre for Dispute Resolution in accordance with the Arbitration and Conciliation Act, Cap. 19, L.F. N.

There shall be a single arbitrator and the appointing authority shall be the NCMG Centre for Dispute Resolution. The venue of the arbitration will be the NCMG Centre for Dispute Resolution, Lagos or such other venue as agreed by the parties or advised by the NCMG Centre for Dispute Resolution.

Step 4: Litigation

The parties hereby agree that failing the ability of the parties to resolve following an advisory arbitration, the dispute shall be submitted to litigation.

3. The MADREP Solve

The Mediation Procedure:

- Request for Mediation/Arbitration
- **SELECTION** of the Mediator/Arbitrator
- Preparation for Mediation/Arbitration
- The Mediation/ Arbitration Session
- The Settlement/ Award
- Follow up

Thank You.