



CENTRAL BANK OF NIGERIA

**REVISED PROCEDURES MANUAL
FOR PROCESSING APPLICATIONS FOR
BANK MERGERS/TAKE-OVERS**

MARCH 30, 2005

REVISED PROCEDURES MANUAL FOR THE PROCESSING OF APPLICATIONS FOR BANK MERGERS/TAKE-OVERS

1.0 INTRODUCTION

Paragraph 6.2 of The Guidelines and Incentives on Consolidation in the Nigerian Banking Industry issued by the CBN on August 5 2004, stipulates that "banks should obtain the prior approval of the Governor of the Central Bank of Nigeria as required under Section 7 of the Banks and Other Financial Institutions Act (BOFIA) 1991 as amended before any merger and/or acquisition is consummated and/or announced".

Also, Paragraph 6.1 of the same Guidelines provides that "banks should comply with the legal requirements on mergers and acquisitions as contained in Section 100 - 122 of the Investments and Securities Act No 45, of 1999 (ISA) and all other regulatory requirements".

In order to give effect to these provisions of the Guidelines and to fast track the processing of banks' request for mergers and acquisitions in order to meet the December 31 2005, compliance deadline, the following documentation and procedural requirements are being proposed to guide the processing of applications.

2.0 ALLOWABLE LEGAL MODES OF CONSOLIDATION

Paragraph 3.0 of the Guidelines specifies that "the only legal modes of consolidation allowed are mergers and outright acquisition/takeovers".

3.0 DEFINITION OF TERMS

For the purpose of this Procedures Manual, the following definitions shall apply.

3.1 MERGER

"Merger" is the amalgamation of the undertakings of two or more banks whereby either; one of the merging banks absorbs the other bank(s) or, all the merging banks combine to form a new bank, and in both instances the rights and obligations of all the merging banks pass to the successor bank and the other banks are simultaneously dissolved.

3.2 **TAKEOVER**

“Takeover” is a reorganization process involving the acquisition of all of the shares of one or more banks (target bank(s) by another bank (acquiring bank), and the acquiring bank takes over the rights and obligations of the target bank(s). For the purpose of the consolidation exercise, after the takeover, the legal status of the acquiring bank remains unchanged and the acquired bank(s) shall cease to exist as a bank.

4.0 **STAGES OF APPROVAL**

There shall be three stages of approval for mergers - pre- merger consent, approval-in-principle and final approval and two stages of approval for takeovers - approval-in-principle and final approval.

4.1 **PRE-MERGER CONSENT**

Pre-merger consent represents CBN's preliminary consent to the banks wishing to merge to the effect that it has no objection to the proposed merger. This is to enable the merging banks forward their application for merger to the Securities and Exchange Commission (SEC) in accordance with the provisions of the ISA for processing and approval.

4.2 **APPROVAL-IN-PRINCIPLE**

Approval-in-principle represents CBN's conditional approval of the merger or takeover.

4.3 **FINAL APPROVAL**

Application for this approval may be made simultaneously with the application to the Securities and Exchange Commission (“SEC”) for its statutory approval of the merger. However, the Final Approval shall only be granted after the merger has been approved by SEC or in the case of a takeover, on presentation of the registration of the takeover bid by SEC to CBN. The Banking Licence of the successor bank will thereafter be prepared by the CBN, and delivered to the successor bank immediately upon the grant of the Court order sanctioning the merger.

5.0 **OPERATIONS OF BANKS IN THE PROCESS OF CONSOLIDATION**

Banks that are undergoing consolidation shall continue to transact business under their old names and licences but should not embark on further expansion or new capital projects until CBN's final approval is granted to the successor bank in the case of a takeover or until the Court grants an order sanctioning the merger in the case of a merger transaction.

6.0 **TIMELINES FOR COMPLETING PROCESSING AND CONVEYING APPROVALS**

6.1 **PRE-MERGER CONSENT**

Within a maximum of three (3) working days of the receipt of an application seeking pre-merger consent, the CBN shall issue a no objection letter or a rejection letter. A rejection letter shall inform the applicants of the reasons for rejection.

6.2 **APPROVAL-IN-PRINCIPLE**

6.2.1 Within a maximum of five (5) working days of the receipt of an application for merger, the CBN shall issue an approval-in-principle or reject the application. A rejection letter shall state the reasons for CBN's refusal to grant the requisite approval.

6.3 **FINAL APPROVAL**

Final approval shall be conveyed to the successor bank or the acquiring bank within a maximum of seven (7) working days of receipt of the application for final approval.

7.0 **DOCUMENTARY REQUIREMENTS FOR MERGERS**

7.1 **PRE-MERGER CONSENT**

7.1.1 A formal application by the merging banks addressed to the Governor of Central Bank of Nigeria and signed by the Chairmen

and Managing Directors of each of the merging banks accompanied with the following;

- 7.1.2 The proposed name of the successor bank (where a new entity will be formed).
- 7.1.3 Memorandum of Understanding between the merging banks.
- 7.1.4 Current Memorandum and Articles of Association (MEMARTS) of each of the merging banks.
- 7.1.5 Resolution by each of the boards of the merging banks approving the merger.
- 7.1.6 List of Directors, designation and the interest they represent in the merging banks.
- 7.1.7 List of the top management team (AGM and above) of the merging banks and their designation.

7.2 APPROVAL-IN-PRINCIPLE

- 7.2.1 Draft Memorandum and Articles of Association (MEMARTS) of the new bank or Memarts of the surviving bank (with proposed amendments if any).
- 7.2.2 List of significant shareholders of the existing banks (i.e. shareholding of 5% and above) showing their names, business and residential addresses (not P.O. Box)
- 7.2.3 Proposed organisational structure, showing functional units, reporting relationships and grade (status) of heads of departments/units of the successor bank.
- 7.2.4 List of proposed Directors, their curriculum vitae, designation and interest they represent in the successor bank.
- 7.2.5 List of the proposed top management team (AGM and above), designation and their detailed curriculum vitae.
- 7.2.6 Method of valuation agreed to by the banks.
- 7.2.7 Draft Scheme of Merger.
- 7.2.8 Due diligence report on each of the merging banks.

7.3 FINAL APPROVAL

- 7.3.1 Formal application accompanied by the following documents;
- 7.3.2 List of significant shareholders of the successor bank (i.e. shareholding of 5% and above) showing their names, business and residential addresses (not P.O. Box)
- 7.3.3 Resolution of the Shareholders of each of the merging banks approving the merger at the court-ordered meeting.
- 7.3.4 Business/Strategic plan of the successor bank for the next five years showing how the integration process will be managed, future goals and operations, branch expansion/rationalization, treatment of surplus staff and staff to be retained, etc.

- 7.3.5 Certificate of Incorporation of the successor bank (where a new entity is formed).
- 7.3.6 SEC final approval of the scheme of merger.
- 7.3.7 Evidence of stamp duties paid to Federal Inland Revenue Service on the new entity's or the surviving entity's new authorized share capital.

After the Final Approval has been obtained, the merging banks shall apply to the Court for the Sanction of the Scheme of Merger (under section 100 of the ISA).

After the Final Approval is obtained in the case of a new bank, CBN will prepare a new Banking Licence that will be issued to the successor bank and delivered to the successor bank by a representative of CBN in court immediately upon the grant of the court order sanctioning the merger. The Banking Licences of the merging banks will also be handed over to the CBN representative present in Court

For the purposes of this consolidation exercise, the merging banks shall advise CBN of the date fixed for the hearing of the Petition praying the Court sanction of the merger and a CBN representative shall attend the Court proceedings to deliver the new Banking Licence upon the grant of the Court sanction, and also retrieve the old licences of the dissolved banks.

After the Court has sanctioned the Scheme, the surviving or new bank shall file the hereinafter specified documents with the CBN (within the specified period).

7.4 Post Court Sanction Compliance

- 7.4.1 CTC of CAC Form 2.5 – Return of Allotment (to be submitted within one (1) month of the Court Sanction)
- 7.4.2 CTC of CAC Form 2.3 – Particulars of Directors (to be submitted within one (1) month of the Court Sanction)
- 7.4.3 CTC of CAC Form 6 – Location of Registered Office Address (to be submitted within one (1) month of the Court Sanction)
- 7.4.4 Evidence of de-registration of the merging banks by CAC (to be submitted within one (1) month of the Court Sanction)
- 7.4.5 A signed undertaking from each of the proposed directors that he/she will comply with the code of conduct for Directors as the CBN shall from time to time prescribe (to be submitted within one (1) month of the Court Sanction)

- 7.4.6 Opening Statement of Affairs showing the details of the surviving entity's capital base (to be submitted within one (1) month of the Court Sanction)
- 7.4.7 Schedule of staff to be disengaged, including the total severance package and mode of settlement (to be advised to CBN over a one (1) year period from the date of the merger).

8.0 DOCUMENTARY REQUIREMENTS FOR TAKEOVERS

8.1 APPROVAL-IN-PRINCIPLE

- 8.1.1 A formal application by the acquiring bank addressed to the Governor of Central Bank of Nigeria and signed by the Chairman and Managing Director of the acquiring bank, accompanied with the following:
 - 8.1.2 A Takeover application stating clearly that the acquired bank(s) will cease to exist and other documents attached including:
 - i. The Valuation Report
 - ii. Due Diligence Report on the bank(s) to be taken over
 - 8.1.3 Memorandum of information/understanding.
 - 8.1.4 Memorandum and Articles of Association (MEMARTS) of the acquiring bank.
 - 8.1.5 Resolution of the board of directors of the acquiring and acquired banks approving the takeover.
 - 8.1.6 Certificate of Incorporation of the acquiring bank.
 - 8.1.7 List of significant shareholders of the **acquiring bank** (i.e. shareholding of 5% and above) showing their names, business and residential addresses (not P. O. Box).
 - 8.1.8 Proposed organizational structure of the acquiring bank post takeover, showing functional units, reporting relationships and grade (status) of heads of departments/units.
 - 8.1.9 List of proposed Directors, their curriculum vitae, designation and interest they represent.
 - 8.1.10 List of the proposed top management team post take-over (AGM and above), designation and their detailed curriculum vitae.

8.2 FINAL APPROVAL

- 8.2.1 Formal application accompanied by the following documents:
 - 8.2.2 CTC of CAC form 2.5 - return of allotment
 - 8.2.3 CTC of CAC form 2.3 - particulars of directors.
 - 8.2.4 CTC of form CAC 6 - location of principal place of business.
 - 8.2.5 Evidence of voluntary liquidation/winding up of the acquired bank(s).
 - 8.2.6 Original banking licence(s) of the acquired bank(s).

- 8.2.7 Evidence of stamp duties paid to Federal Inland Revenue Service on the new authorized share capital.
- 8.2.8 Opening Statement of Affairs showing the details of the acquiring bank's capital base.
- 8.2.9 Schedule of staff to be disengaged, including the total severance package and mode of settlement.
- 8.2.10 Business/Strategic plan of the acquiring bank for the next five years showing how the integration process will be managed, future goals and operations, branch expansion/rationalization, treatment of surplus staff and staff to be retained etc.
- 8.2.12 Evidence of registration of the Takeover bid with SEC

9.0. PROCESSING MANUAL

9.1 RESPONSIBILITY

The Bank Consolidation Implementation Committee (BCIC) shall be responsible for processing banks' applications for mergers and/or takeovers.

9.2 PRE-MERGER CONSENT

9.2.1 RECEIPT OF APPLICATION

The application for merger shall be received in the Office of the Director of Banking Supervision, checked for completeness and accuracy of documentation before an on-the-spot acknowledgement of receipt is issued to the applicant(s).

9.2.2 PROCESSING

On receipt of application, the processing officer will:

- i) Ensure that the application has been duly registered.
- ii) Determine if the name of the emerging entity is acceptable and conforms with the requirements of Section 39(1) (a) and (2) of BOFIA 1991 as amended. (This will only apply if a new entity is to be formed).
- iii) If the name is acceptable, notify the promoters to go ahead and register the name with the Corporate Affairs Commission (CAC) and thereafter provide all the requisite statutory documentation and certified true copies thereof.
- iv) If name is not acceptable pursuant to the provisions of BOFIA, notify the promoters to provide a substitute.

- v) Check and compare the information on the documents submitted with those in CBN's records.

9.2.3 APPROVING AUTHORITY

If the promoters have complied with all the relevant requirements, the Director of Banking Supervision shall approve the pre-merger consent.

After the Director of Banking Supervision's approval, the processing officer shall communicate the pre-merger consent, through a letter signed by the Director of Banking Supervision, to the banks.

9.3 APPROVAL-IN-PRINCIPLE: MERGER

9.3.1 RECEIPT OF APPLICATION

As in 9.2.1.

9.3.2 PROCESSING

On receipt of application, the processing officer will:

- i) Ensure that the application has been duly registered.
- iii) Criteria for selecting new board members should be stated.
- iv) Top management (AGM and above) and board should be appraised applying CBN circular on pre-qualification for appointments into board and top management positions in Nigerian banks (if not already done).
- v) Organisational structure should show functional units, reporting relationships and grade (status), responsibilities, delegation of functions, succession plan for key officers and span of control.
- vi) Ensure that the emerging organization has defined lines of responsibility and hierarchy and that there are no Co-Chairman and/or Co-Chief Executive Officer arrangements.
- vii) Appraise the scheme of merger and comment on the following:
 - a. Group arrangements.
 - b. Plans for employees and directors and other dissenting shareholders.
 - c. Valuation.

9.3.3 APPROVING AUTHORITY

If the promoters have complied with all the relevant requirements, the Director of Banking Supervision shall seek the Governor's grant of an approval-in-principle.

After the Governor's approval, the processing officer shall communicate the approval-in-principle, through a letter signed by the Director of Banking Supervision, to the banks.

9.4 FINAL APPROVAL: MERGERS

9.4.1 RECEIPT OF APPLICATION

As in 9.2.1.

9.4.2 PROCESSING

On receipt of application for final approval, the processing officer shall:

- i) Ensure that the application has been duly registered.
- ii) Dispatch status enquiries on new directors who were not directors of any of the merging banks to other regulatory authorities viz: NDIC, NAICOM and SEC.
- iii) Dispatch completed Personal History Statement (PHS) forms accompanied by the CVs of the new directors who were not directors of any of the merging banks to the State Security Services to carry out security screening of the proposed directors.
- iv) Ascertain the fitness and properness of the new directors who were not directors of any of the merging banks through the responses received from the security agencies and status enquiries from SEC, NDIC, NAICOM, CRMS and CBN's Black book.
- v) Ensure that in the board composition the number of non-executive directors is more than the number of executive directors and that the board is not constituted with more than 20 directors.
- vi) Each of the directors shall sign an undertaking that he/she will comply with the code of conduct for directors as the CBN shall from time to time prescribe.
- vii) Compare the provisions of the scheme document in respect to staff to be disengaged or retained with the information provided on same in the schedules of disengaged and retained staff.

- viii) Roles and responsibilities of the board and its sub committees must be spelt out in the strategic plan

9.4.3 Approving Authority

Subject to the promoters' compliance with all the relevant requirements (where a new entity shall be formed), and receipt of satisfactory status enquiries and security reports, the processing officer shall prepare an appraisal memo to the Director of Banking Supervision requesting him to recommend to the Governor, the issuance of a new banking licence to the emerging bank.

A new banking licence signed by the Governor will be prepared by the CBN after the Final Approval is given, and same shall be released to the surviving or emerging bank, immediately upon the Court Sanction of the merger, whereupon, the licences of the merged banks will be withdrawn.

9.5 APPROVAL-IN-PRINCIPLE: TAKEOVERS

9.5.1 RECEIPT OF APPLICATION

As in 9.2.1.

9.5.2 PROCESSING

On receipt of an application, the processing officer will:

- i) Ensure that the application has been duly received and registered.
- ii) Ensure that the takeover bid documents submitted are in line with the specified requirements.
- iii) Examine the takeover bid to determine the terms and conditions of the takeover.
- iv) Examine the Memorandum of Understanding, MEMART, board resolution of the acquiring and acquired banks and the certificate of incorporation of the acquiring bank.

9.5.3 Approving Authority

Subject to the promoters' compliance with all the relevant requirements and receipt of satisfactory status enquiries and security reports, the Director of Banking Supervision shall seek the Governor's approval of the Takeover.

After the Governor's approval, the acquiring bank shall be notified in writing through a letter signed by the Director of Banking Supervision.

9.6 FINAL APPROVAL - TAKEOVERS

9.6.1 RECEIPT OF APPLICATION

As in 9.2.1.

9.6.2 PROCESSING

On receipt of an application, the processing officer shall:

- (i) Ensure that the application has been duly received and registered.
- (ii) Dispatch status enquiries on new directors who were not directors of either the acquiring bank or target banks to other regulatory authorities viz: NDIC, NAICOM and SEC.
- (iii) Dispatch completed Personal History Statement (PHS) forms accompanied by the CVs of the new directors who were not directors of either the acquiring bank or target banks to the State Security Services to carry out security screening of the new directors.
- (iv) Ascertain the fitness and properness of the new directors through the responses received from the security agencies and status enquiries from SEC, NDIC, NAICOM, CRMS and CBN's Black Book.
- (v) Ensure that in the board composition the number of non-executive directors is more than the number of executive directors and that the board is not constituted with more than 20 directors.
- (vi) Each of the new directors shall sign an undertaking that he/she will comply with the code of conduct for directors as the CBN shall from time to time - prescribe.
- (vii) Roles and responsibilities of the board and its sub committees must be spelt out in the strategic plan.
- (viii) Criteria for selecting board members should be stated.
- (ix) Top management (AGM and above) and board should be appraised applying CBN circular on pre- qualification for appointments into board and top management position in Nigerian banks (if not already done).
- (x) Organisational structure should show functional units, reporting relationships and grade (status), responsibilities,

delegation of functions, succession plan for key officers and span of control.

- (xi) Ensure that the successor bank has defined lines of responsibility and hierarchy and that there are no Co-Chairman and/or Co-Chief Executive Officer arrangements.
- (xii) Compare the provisions of the bid document in respect to staff to be disengaged or retained with the information provided on same in the schedules of disengaged and retained staff.

9.6.3 Approving Authority

Subject to the promoters' compliance with all the relevant requirements and receipt of satisfactory status enquiries and security reports, the Director of Banking Supervision shall seek the Governor's approval of the new capital base of the acquiring bank and the withdrawal of the licence(s) of the acquired bank(s).

After the Governor's approval, the acquiring bank shall be notified in writing through a letter signed by the Director of Banking Supervision, while the acquired bank(s) shall be required to return their licences for cancellation.

**BANKING SUPERVISION DEPARTMENT
MARCH 2005**