EXPECTATIONS AND REGULATORY REQUIREMENTS FOR MERGERS & ACQUISITIONS

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Presentation Outline

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- SEC's Mandate
- Legal Framework
- Thresholds and Categories of Mergers
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Introduction

- **Mergers and Acquisitions:**
  - are business combinations which involve the coming together of two or more entities to form a single entity. In generic terms, mergers and acquisitions are often used synonymously, to refer to business transactions such other terms as takeovers, amalgamation and consolidations are also used to express the various variants of business combinations.

  - A typical merger is a combination of two or more entities, in which all except the resultant entity cease to exist legally. The combined entities continue under the original name of the resultant.
  - A merger of equals on the other hand, is a scenario where the merger participants are compatible in size, competitive position, profitability, market capitalization, etc.

  - Acquisition occurs when one entity takes a controlling interest in another entity. An acquisition may involve the purchase of another entity's assets or shares, with the acquired entity continuing to exist as a subsidiary of the acquirer.

Reasons for M&As

- There are a number of reasons why Mergers and Acquisitions occur.
  - To create Shareholders value over and above that of the sum of the two entities, (synergy);
  - Two entities are more valuable than two separate entities;
  - Positioning : To take advantage of future opportunities which can be exploited when the two companies are combined.
  - Gap filing: where the weakness of one company is filled by the combination of their strength, which is essential for long term survival.
  - Organizational Competencies: Acquiring human resources and intellectual capital can improve capacity in the company;
  - Bargain Purchase: It may be cheaper to acquire another company than to invest internally
  - **Market Power :** to increase the market share of a company. Acquiring a competitor is an excellent way to improve a company's position in the marketplace. It reduces competition, and allows the acquiring firm to use the target's resources and expertise.

SEC's Mandate

"review, approve and regulate mergers, acquisitions, takeovers and all forms of business combinations and affected transactions of all companies as defined in this Act"

- Section 13 (P) ISA

Legal Framework

Principal Regulation

- Investments & Securities Act (ISA) No 29, 2007
- Securities & Exchange Commission Rules & Regulations 2013

Some of the Subsidiary Legislations

- Companies & Allied Matters Act (CAMA)
- Banks & Other Financial Institutions Act (“BOFIA”)
- The Insurance Act
- The Companies Income Tax Act

Thresholds and Categories of Mergers

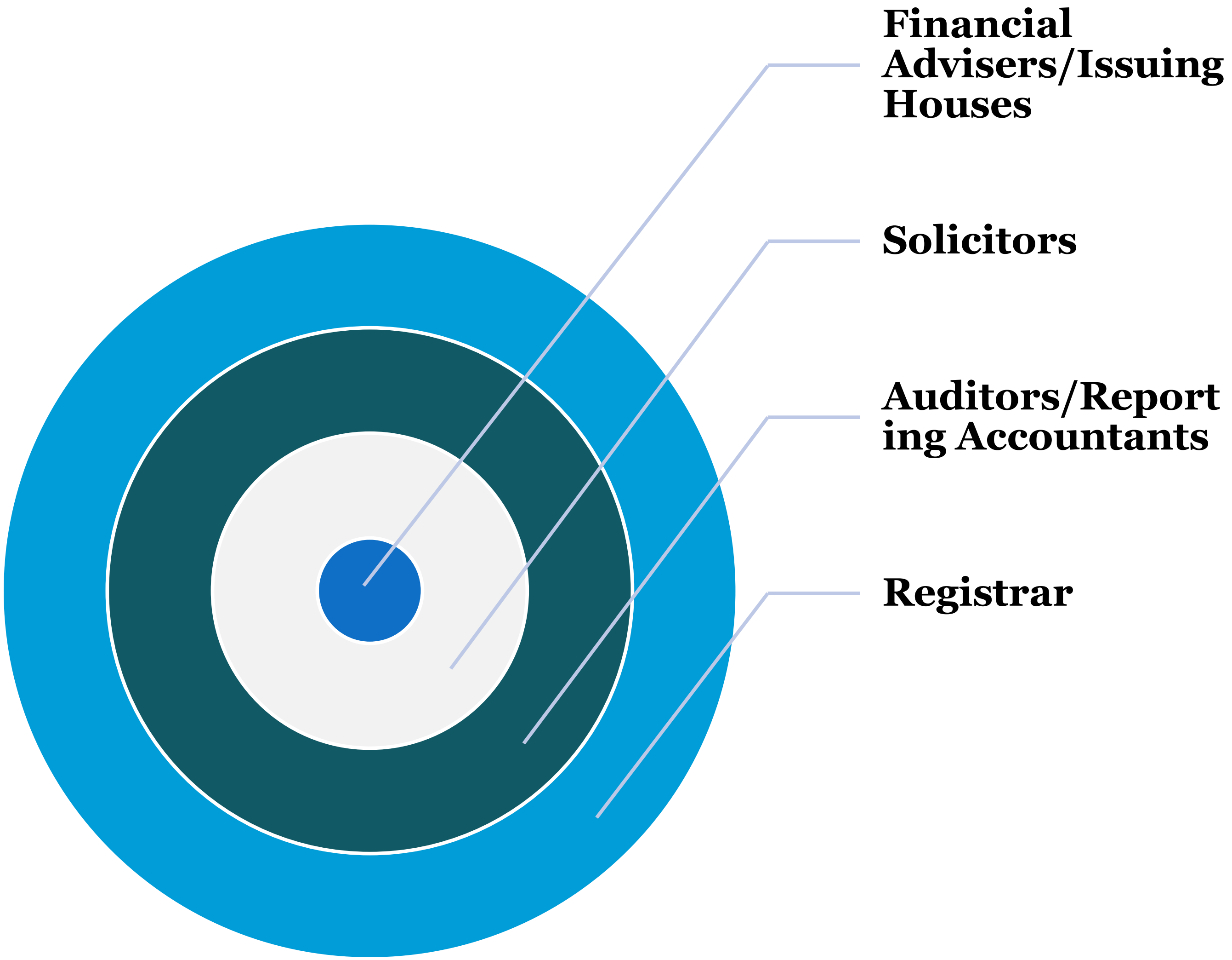
- Section 120 of the ISA provides for a lower and an upper threshold of combined annual turnover or assets, or a lower and an upper threshold of combinations of turnover and assets in general or in relation to specific industries.

Mergers are also categorized as small, intermediate and large.

- **Small Merger:**
  - is not required to notify the Commission of the merger unless required to do so
  - may implement the merger without approval unless required to notify the Commission
  - May voluntarily notify the Commission at any time.

- **Intermediate and Large Mergers**
  - Parties to intermediate and large mergers must notify:
  - The Commission.
  - any registered trade union that represents a substantial number of its employees
  - The employees concerned or representatives of the employees concerned.

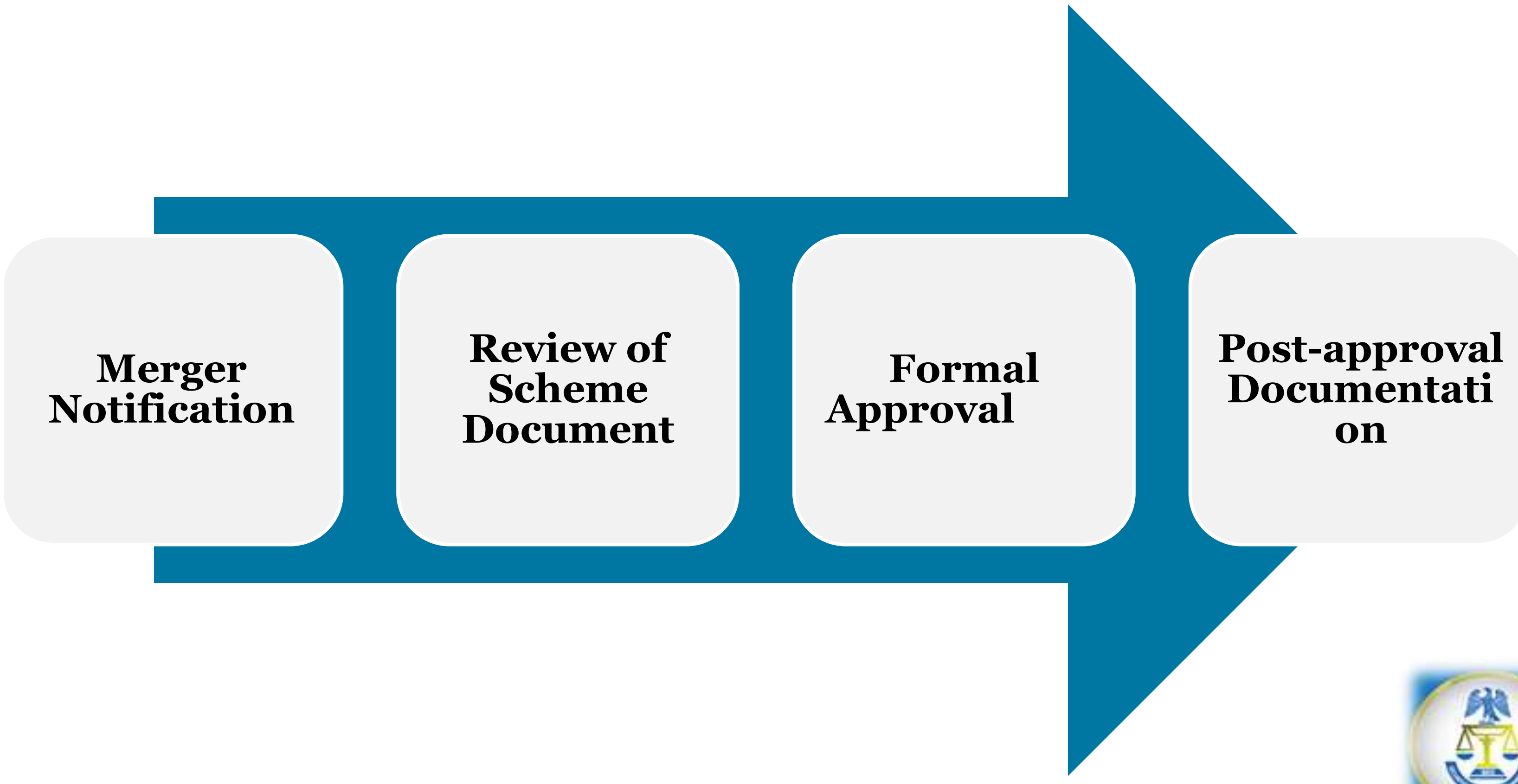
Parties to an M&A Transaction



Procedures, Requirements and Approval Process for Mergers

Merger Approval Process

- The process of obtaining approvals for Merger applications involve the following stages:



Merger Notification Stage

- **Filing of Application**: must be jointly filed by the companies making the applications through their separate financial advisers.

- **Consideration of Mergers**: The review process is based on the anti-trust provisions of Section 121 of the ISA.

Merger Notification Stage

- **The required documents at this stage are:**

a. Letter of intent signed by the merging companies;
b. A detailed Information Memorandum of the proposed transaction including all the background studies relating to the merger, and justification for it;
c. Extract of board resolutions of the merging companies authorizing the merger duly certified by a director and the Company Secretary;
d. A copy of the letter appointing the Financial Adviser(s);
e. Copy of certificate of incorporation certified by the company secretary;
f. CAC certified true copy of particulars of directors and allotment of shares;
g. Letter of no objection from their immediate Regulators (where applicable);
h. 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 less than five (5) years);
i. A copy of letter of notification to any registered trade union that represents a substantial number of its employees; or the employees concerned or representatives of the employees concerned, if there are no such registered trade unions;
j. two (2) copies of the draft financial services agreement;
k. list of claims and litigation;
l. Applicable merger notification fee of N50,000 (fifty thousand naira) per merging company (for intermediate and large mergers);
m. Any other information that the Commission may require in respect of the Merger.

Review of the Scheme Document

- Where the Commission is satisfied that the proposed merger would not violate the provisions of S.121 of the ISA, an approval-in-principle (AIP) would be granted to enable the Parties file the Scheme Document;
- Parties are given three months after obtaining an AIP to file the Scheme and other supporting documents;
- The supporting documents include: Financial Services Agreement, Draft Proxy Forms for each of the merging companies, consent letters of the parties to the Scheme, etc;
- Upon satisfactory disclosure of all material information in the Scheme, the document would be cleared to enable the parties proceed to hold their separate court-ordered meetings as required by S.121 (4) of the ISA.

Review of Scheme Document Cont'd

Where majority representing not less than three-quarters (3/4) in value of the shares of members present and voting either in person or by proxy at each of the separate meetings agree to the Scheme, it shall be referred to the Commission for approval S.121 (5) of the ISA.

Formal Approval Stage

- **Executed Documents to be filed after the Court-ordered Meetings:**

a. Extract of the minutes of the Court ordered meetings of the merging entities in support of the merger duly certified by a director and the Company Secretary. The extract shall capture the consideration as approved by majority shareholders.
b. Two (2) copies of the scheme document duly signed by the parties to the merger;
c. Resolutions passed at the separate court – ordered meetings;
d. Scrutineers' report showing the result of voting and total number of votes casts;
e. Stamped Power of Attorney of directors who were absent at the separate court – ordered meetings (where applicable);
f. Evidence of clearance letter from the Federal Inland Revenue Services regarding any tax liability (where applicable);
g. Amended copy of the Memorandum and Articles of Association of the resultant company (where applicable).
h. CAC Form 7 showing particulars of directors of the resultant Company;
i. CAC Form 2 showing allotments (for private companies) only;
j. Evidence of payment of processing fee;
k. Relevant SEC Form.

Post-Approval Documentation

- After the Scheme has been approved by the Commission, the Parties must apply for Court sanction for the merger to be effective S. 122 (6). Thereafter, the following documents are to be filed with the Commission:
  - a copy of the court-order sanctioning the scheme within seven (7) days of the court making the Order S.122(9);
  - A gazette copy of the Order S.122 (9);
  - a copy of the newspaper publication of the court-order S. 122 (9);
  - a statement of the actual cost of the Scheme;
  - notification of the completion or otherwise of the exercise within three (3) months of approval;
  - summary report of the scheme in respect of the following:-
    - arrangement relating to employees of the acquired company;
    - settlement of shareholders;
    - Utilization of monies injected into the company, if any.
    - Treatment of dissenting shareholders;
    - Evidence of allotment of shares (where applicable);
    - Evidence of settlement of severance benefits of employees (where applicable).

Post-Merger Inspection

Post-merger Inspection Requirements:

- All the assets and liabilities of the consolidated entities have been vested in the resultant company;
- All the liabilities have been assumed by the resultant entity;
- Employees of the wound-up entity have been duly compensated as provided for in the scheme document, where they opt not to be part of the resultant entity;
- Ensure that shareholders of the wound-up entity got the stipulated amount of shares approved in the scheme document;
- Creditors of the wound-up entity have been settled;
- dissenting shareholders have been paid; etc.

Prescribed Fees

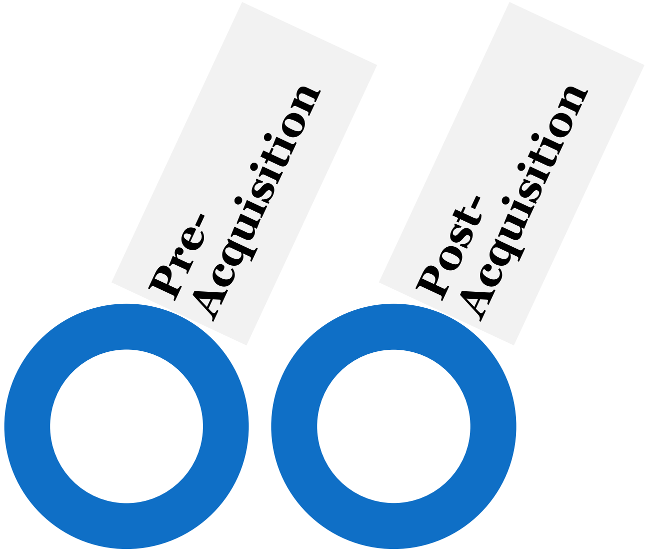
- public companies – market value of shares issued by the resultant company, calculated thus:
-
    - 1st N500 million **0. 3%**
    - next N500 million **0.225%**
    - any sum thereafter **0.15%**
-
- private companies – Based on the consideration of the transaction, and calculated as above.

Procedures, Requirements and Approval Process for Acquisitions

Acquisition Procedure

- The Commission regulates acquisitions in private and public ‘unquoted’ companies;

- Applications for Acquisitions are reviewed under the following stages:



Pre-Acquisition

- Prior to consummating the transaction, a letter of intent is filed by the Acquirer through the Financial Adviser, and accompanied with the following documents:

- Two (2) draft copies of Information Memorandum;
- Extracts of board resolutions of the acquirer and the acquiree companies, agreeing to the acquisition signed by the Company Secretary and a Director;
- A recent CAC certified true copy of the Memorandum and Articles of Association of the acquirer and the acquiree;
- A certificate of incorporation of the acquirer and the acquiree certified by the Company Secretary;
- Extracts of Shareholders resolution of the acquirer and the acquiree to be signed by a Director and Company Secretary;
- Summary of claims and litigation of the company to be acquired;
- Copies of letters appointing the financial advisers(s);

Pre-acquisition

- CAC certified form showing particulars of directors and allotment of shares of the acquirer and the acquiree;
- Notarized consent of directors of the acquirer and the acquiree;
- Financial services agreement between the acquirer and the acquiree and their respective Financial Advisers;
- Share purchase agreement and any other relevant agreement executed between the acquirer and the acquiree;
- Annual report and accounts of both companies for the proceeding period of five (5) years or the number of years the companies have been operating, if less than five (5) years;
- Source(s) of funds to finance the acquisition must be clearly disclosed and backed by documentary evidence;
- Report of valuation shares/assets (where applicable);
- Payment of N50,000 application fee;
- Payment of processing fee based on the value of the transaction on a graduated basis.

Post –Acquisition Documentation

After a “No Objection” has been granted, parties will be required to file a report of compliance with the terms of the approval within 3 months from the transaction was sanctioned, along with the following documents:

- Executed share/asset purchase agreement;
- Evidence of settlement of purchase consideration;
- Evidence of settlement of severance benefits of employees who may have lost their jobs as a result of the acquisition (where applicable).

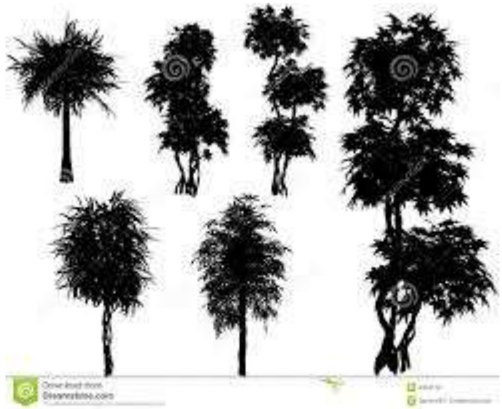
- **Post- Acquisition Inspection**

A post- acquisition inspection is usually carried out three (3) months after the approval of the application.

Expectations: Current Picture

- Total number of Registered Stockbrokers as at June 2014 275
- Active Player in the Market; 227
- Out of the 227, only 10 of the control about 75% of total Market transactions on the average;
- Leaving only 15% of the market to only 217 Stockbrokers

Expectations: Current Picture cont’d



Post Mergers/Acquisitions Position

GREETINGS


ANY
QUESTIONS
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