



S.O Oloruntimehin & Co.



MERGERS AND ACQUISITION IN NIGERIA *PART 1*

What are Mergers and Acquisitions?

Mergers and acquisitions (M&As) are a general term that describes the consolidation of companies or assets through diverse types of corporate reorganization mechanisms, which includes mergers, acquisitions, joint ventures, divestitures, consolidations, tender offers, purchase of assets, and management acquisitions.

Although often used interchangeably, mergers and acquisitions are different. In an acquisition, one company (acquirer) purchases another company (target company) outrightly. This can be done either by the purchase of all or substantially all the shares of the target company or the purchase of all or substantially all the assets of the target company. However, in a merger, two companies/entities combine and consequently form a new legal entity under the banner of one pre-existing corporate name. Similar to a merger is an amalgamation with the deferring aspect being that in an amalgamation a completely new entity is formed and both companies are consolidated into this new entity, whereas in a merger, one of the companies is typically absorbed by the other and this other company becomes the new entity formed.

Legal Framework for Mergers in Nigeria

The laws and Rules guiding merger are:

1. Investment and Securities Act (ISA) 2007
2. Central Bank of Nigeria Act;
3. Banks and Other Financial Institutions Act.
4. Federal High Court Act.
5. Nigerian Deposit Insurance Commission Act
6. Asset Management Company of Nigeria Act
7. Securities and Exchange Commission Rules 2013
8. Federal High Court Rules

When An Acquisition Can Amount To A Merger

A merger can be achieved by the purchase or lease of the shares, interests or assets of the other company or by the amalgamation or other combination with the other company in question. **See Section 119 (2) ISA 2007.** A person is deemed to be in control of a company if such person owns more than half of the issued share capital of the company with the corresponding voting rights or such person is a holding company and the other is a subsidiary. **See Section 119 (3) ISA 2007.** Invariably, this implies that an acquisition of more than 50% of the shares of a company may be deemed to occasion a merger.

Reasons for Mergers and Acquisitions

1. **Risk Diversification:** When a company diversifies into an unrelated line of business, the costs and risks involved in developing and managing a new product line may be avoided or reduced through the acquisition of another company that is already established in this line of business.
 2. **Economies of Scale:** The amalgamation of entities brings about expanded productive capacity in the surviving/evolving entity.
 3. **Stock Exchange Quotation:** A private company desirous of public quotation may integrate with a publicly quoted company in order to realize its goal.
 4. **Corporate Leverage:** A company seeking to improve its debt-to-equity ratio may utilize the option of merging with another company.
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6. **Management Expertise:** Where a company lacks the requisite human resource with high level, technical or managerial skills to achieve its corporate objectives, it may decide to merge with, or be acquired by, another company.
 7. Desire for growth and increased market share.
 8. **Survival of regulatory requirement for consolidation:** The desire to remain in business in the face of stringent requirements for consolidation in a particular business line, may force a company to go for merger or acquisition.

Classification/Economic Forms of Mergers – Rule 421 SEC Rules 2013 and Section 117 of ISA

Mergers and acquisitions are broadly classified into three types:

1. Horizontal
 2. Vertical
 3. Conglomerate
1. **Horizontal Merger** involves the combination or fusion of enterprises in the same line of business. Therefore, this typically entails the merger of companies that are competitors.
 2. **Vertical Merger** involves the combination or fusion of companies that participate in the same market but operate at different levels in the supply chain, thus, they typically offer complimentary services. This means that they could have a customer – supplier relationship. For example, a merger between a packaging company and a manufacturing company would be deemed a vertical merger.

3. **Conglomerate Merger** involves the combination of two business entities in completely unrelated lines of operation. This merger is just with the objective to diversify and expand their control of the market.

Merger Thresholds/Categories of Merger

For the purposes of determining categories of mergers, the Investment and Securities Act 2007 prescribes **thresholds** based on either a **combination of assets and turnover or combined annual turnover or assets as follows;**

1. **Small Merger** means a merger or proposed merger with a value at, or less than, NGN500 Million,
2. **Intermediate Merger** means a merger or proposed merger with a value between NGN500 Million and NGN5 Billion (above NGN500 Million but less than NGN5 Billion),
3. **Large Merger** means a merger or proposed merger with a value of NGN5 Billion or above.

See Section 120 of ISA

Mergers and Acquisitions are favored mechanisms for corporate reorganizations globally but they possess a robust framework on procedure and regulations. Do you want to know more about mergers and acquisitions, why not **contact us** today.