STEPS TO MERGERS AND ACQUISITION IN NIGERIA

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One of the major concerns of every business is how to remain in business. Many businesses in 2020 suffered financial loss as a result of the covid 19 and are currently facing financial difficulties. Companies have therefore sought various means of staying in business including borrowing, seeking private-equity investment and merging amongst others.

According to the Federal competition and consumer protection Act (FCCPA), 2019, a merger is an amalgamation or other combination into one or it is a product or an amalgamation or contribution between undertakings. A merger becomes an acquisition when there is an exercise of control whether directly or indirectly by one undertaking over the other.

Compliance with Laws Governing Mergers

- The Federal Competition and Consumer Protection Commission (FCCPC) is tasked with the responsibility of approving all mergers according to Section 93 of the FCCPA. However, public companies are to comply with the Nigerian Stock Exchange and Securities and Exchange Commission regarding quoted shares.

- According to the FCCPA, merging companies must notify FCCPC about a merger where the combined annual turnover of the acquiring company and target for the year preceding the merger should equal or exceed N1billion or the annual turnover of the target alone should equal or exceed 500million naira. Companies whose annual turnover fall below N500million need not inform the FCCPC unless otherwise required.

Compliance with Laws Governing Mergers

The Commission will consider the following in approving a merger:

- Has a relevant merger situation been created or are arrangements in progress or in consideration which if implemented will result in creation of a merger situation; and
- Does the creation of the situation result or expected to result in substantial prevention and lessening of competition in any markets in Nigeria. If yes, merger will not be allowed.

Merging parties will also need to comply with the Companies and Allied Matters Act, as well as relevant tax laws.

Stages Of A Merger

Preliminary Stage

This stage involves signing of non-disclosure agreements, exclusivity agreements, negotiation and due diligence.

One of the major reasons for failed mergers is neglecting due diligence. Due diligence involves looking through the company's records to see all its activities, looking through it books of accounts etc., to make an informed decision.

Benefits of due diligence:

- It will reveal everything about the target company.
- It will help the acquiring company know the assets and liabilities.
- It will reveal the target's legal rights to enter the transaction.
- It will reveal financial risks and opportunities. By assessing the accuracy of the target's past audited accounts, recent management accounts, budgets, projections and forecasts, and whether the values attributed to the target's assets in the accounts are correct.
- It will reveal the existence and extent of any tax liabilities and any disputes.
- It will help you properly negotiate. So, you can decide your cherry pick and say you do not want all the company but certain assets.
- It helps with pricing.
- It helps parties negotiate board positions, management and employees.

Documentation/Signing/Completion stage

- The Share Purchase Agreement together with any other transaction documentation will be signed by parties.
- In documentation, you must ensure to engage the right lawyers who will properly represent the interest of the parties and ensure the terms and intent of the parties are properly documented, warranties are placed in agreements to make targets liable for losses in the event that they have misrepresented facts. Documentation allays the issue of distrust between the merging parties.
- The parties will have to ensure proper integration of businesses in accordance with the terms of the agreement, to make the sale effective.

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Post Completion Stage:

The tasks that will be needed to be done after the completion of the merger are:

- Registration of share transfers with the Corporate Affairs Commission, update register of members at the target company and issue new share certificate to the buyer

- Updating of the target company's register of directors and register of secretaries and filing change of director/secretary with the CAC.

- Filing of change of company name and address of the target

- Where any shares have been issued by the buyer,

- Review existing employment terms and benefits of the target company's employees where necessary to bring them in line with its existing employment terms and benefits

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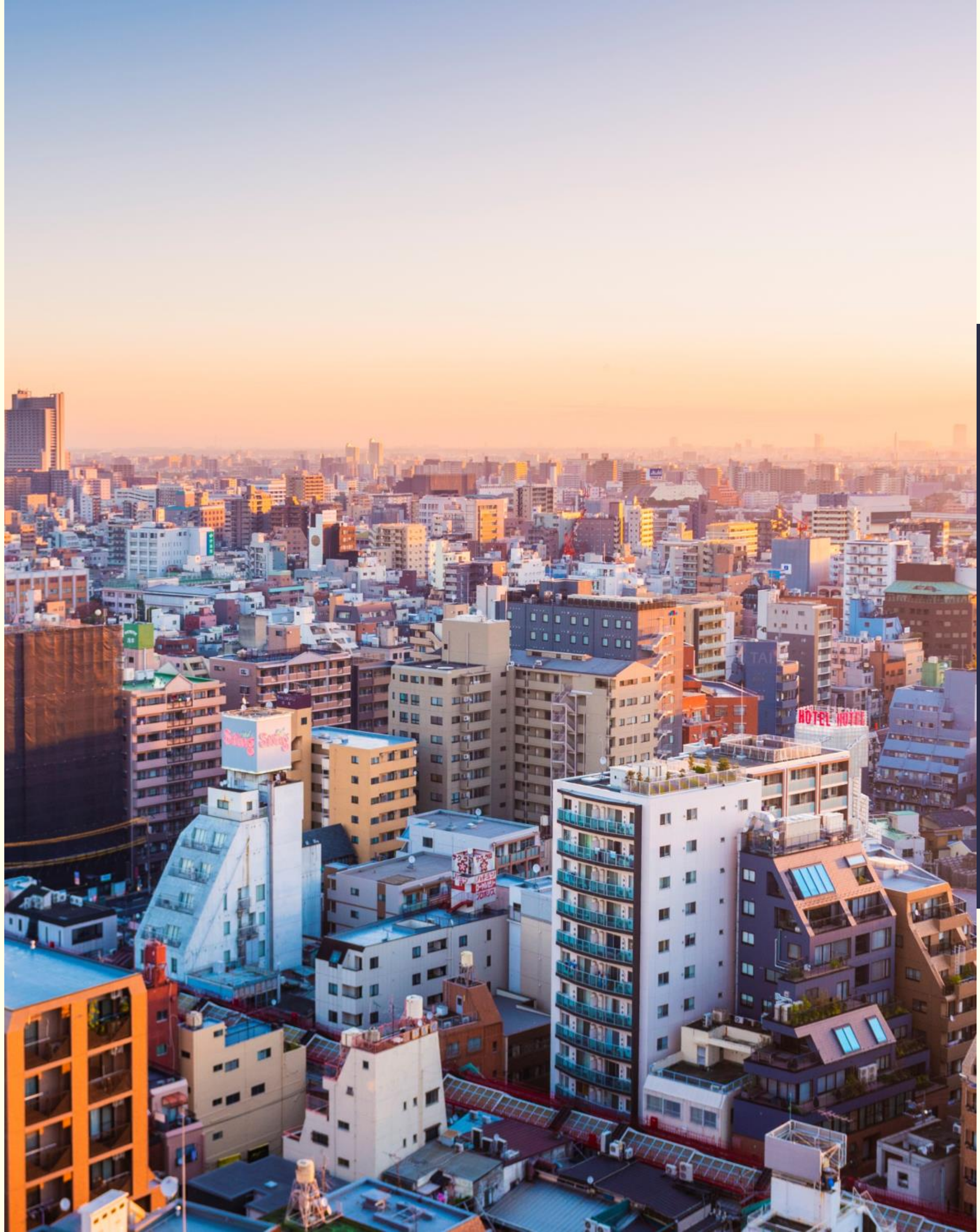

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