



CENTRAL BANK OF NIGERIA

**GUIDELINES AND INCENTIVES
ON CONSOLIDATION IN
THE NIGERIAN BANKING INDUSTRY**

AUGUST 5, 2004

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1.0 INTRODUCTION

Following the Governor's address to the Bankers' Committee on July 6, 2004, on the Nigerian banking sector reform and the subsequent interactions with various stakeholders, the Board of the Central Bank of Nigeria has approved the guidelines and incentives to facilitate consolidation in the industry in order to assist banks in meeting the approved capital base of N25 billion by December 2005.

2.0 DEFINITION OF TERMS

For the purpose of the guidelines, the following definitions shall apply:

- 2.1 Capital base:** paid-up capital and reserves unimpaired by losses.
- 2.2 Reserves:** all reserves except asset revaluation surplus resulting from revaluation in the course of consolidation.
- 2.3 Paid-up capital:** ordinary shares plus non-redeemable preference shares

2.4 Parties to the Consolidation: the banks that are merging, their boards and managements, financial/investment advisers, lawyers, accountants, auditors, shareholders and any other persons involved in the transaction.

3.0 CONSOLIDATION OPTION

The only legal modes of consolidation allowed are mergers and outright acquisition/takeover. A mere group arrangement is not acceptable for the purpose of meeting the N25 billion. Therefore, all banks that have other banks as subsidiaries or have common ownership are encouraged to merge.

4.0 INCENTIVES

The CBN intends to provide the following incentives for banks that consolidate and/or are able to achieve the set minimum capital base within the stipulated period:

- 4.1 Authorisation to deal in foreign exchange
- 4.2 Permission to take public sector deposits and recommendation to the fiscal authorities for the collection of public sector revenue.
- 4.3 Prospects of managing part of Nigeria's external reserves, subject to prevailing guidelines.

In order to ensure that banking institutions do not bear additional burden due to consolidation which they otherwise would have not borne, and also to encourage consolidation, the following additional incentives are being worked out:

- 4.4 Tax incentives in the areas of capital allowances, company income tax, stamp duties, among others, the details of which will be released after the on-going consultation with the fiscal authorities.
- 4.5 Reduction in transaction costs, the details of which will be released after the on-going consultations with the Securities and Exchange Commission, Nigerian Stock Exchange, Corporate Affairs Commission and all other parties involved in the scheme –
- Financial Advisers
 - Solicitors to the scheme
 - Stockbrokers to the scheme (where applicable)
 - Reporting Accountants to the scheme
 - Auditors to the scheme
- 4.6 The CBN will provide and pay for a team of experts to provide technical assistance to the banks from August 15, 2004.
- 4.7 There will be the CBN Governor's distinguished industry leadership award which would be based on the following:
- 4.7.1 Speed of completion of the consolidation exercise
 - 4.7.2 Successful acquisition of marginal and unsound banks; and
 - 4.7.3 The number of banks involved in each consolidated group
- 4.8 The CBN will provide a help desk to fast-track approvals.

5.0 FOREBEARANCE

- 5.1 The CBN will negotiate the possible write-down of its exposure to the distressed banks that would be acquired as a way of improving their balance sheets as well as the treatment of the distressed

banks' bad assets. The negotiation will also address the interests of the current owners of the distressed banks in the new arrangement.

- 5.2 The CBN will encourage and facilitate the setting up of an Assets Management Company (AMC) in collaboration with other relevant agencies.

6.0 LEGAL ISSUES

- 6.1 The banks should comply with the legal requirements on mergers and acquisitions as contained in S.100 – 123 of the Investment and Securities Act No. 45, 1999 and all other regulatory requirements.
- 6.2 The banks should obtain the approval of the Governor of the Central Bank of Nigeria as required under S.7 of the Banks and Other Financial Institutions Act [BOFIA] as amended before any merger and/or acquisition is consummated and/or announced.
- 6.3 The legal and regulatory requirements for effecting a consolidation will be obtainable from the CBN Help Desk, team of experts, the Securities and Exchange Commission (SEC) and the Nigeria Stock Exchange.
- 6.4 The CBN will actively collaborate with all agencies to fast-track the process of mergers and acquisitions.

7.0 ACCOUNTING ISSUES

- 7.1 The valuation of the shares should be carried out by reputable and independent advisers registered by SEC.

- 7.2 The valuation method should be agreed to by all the parties for the purpose of determining the consideration.
- 7.3 The valuation principles must be consistently applied to all parties involved in the combination.
- 7.4 Any revaluation of fixed assets carried out in the case of a merger should not be incorporated into the financial records of the consolidated bank except as approved by the CBN.
- 7.5 Subject to 7.4 above, the revaluation of fixed assets carried out where one bank acquires the other bank should be incorporated into the financial statements as these assets would be acquired at fair market value
- 7.6 The valuation should be to the satisfaction of the CBN that such a revaluation represents the fair value of the assets acquired.
- 7.7** It is the responsibility of the parties to the transaction to ensure that they conduct due diligence of one another as a necessary step in the consolidation process.
- 7.8 All the capital of whatever form, shall be denominated in Naira.
- 7.9 Both ordinary and preference shares shall be recognized in making up the minimum capital base of N25 billion.
- 7.10** Consideration in respect of all mergers by banks should be by exchange of shares and not monetary payments except where dissenting minority shareholders are to be bought out under the law, provided that any such payment does not impair the financial condition of the surviving bank.

8.0 CORPORATE GOVERNANCE

- 8.1 All parties to the consolidation must have access to all material information.
- 8.2 Each party should have an independent adviser except where the acquired bank is a wholly owned subsidiary of the acquirer.
- 8.3** The structure of the emerging organisation should reflect defined lines of responsibility and hierarchy. Co-Chairman and/or Co-Chief executive officer arrangements will not be allowed.
- 8.4** The number of non-executive directors in the enlarged bank should be more than the number of executive directors subject to a maximum board size of 20 directors.

9.0 SOCIAL SAFETY NET

- 9.1 The CBN and the NDIC will ensure that the banks protect the interest of the depositors
- 9.2 To ameliorate the effect of possible job losses or redundancies, any staff exiting as a result of the consolidation should be compensated by the consolidated entity in line with industry standards, but not below the terms of their sustaining employment.
- 9.3 In addition, the CBN will work with the Bankers' Committee to assist the staff that will be disengaged to access the SMIEIS Fund to set up their own SMEs and consequently create jobs and wealth.

10.0 AMNESTY FOR PAST MISREPORTING

- 10.1 Banks are enjoined to be open in their negotiations by placing the actual value of their assets on the table. Sanctions shall not be imposed for any previous misreporting detected in the course of consolidation.
- 10.2 However, if any of the parties to the consolidation is found, after the consolidation exercise, to have presented false or misleading information to the other parties and/or the regulatory authorities, such a party will bear the full legal and regulatory consequences of such misbehaviour.

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