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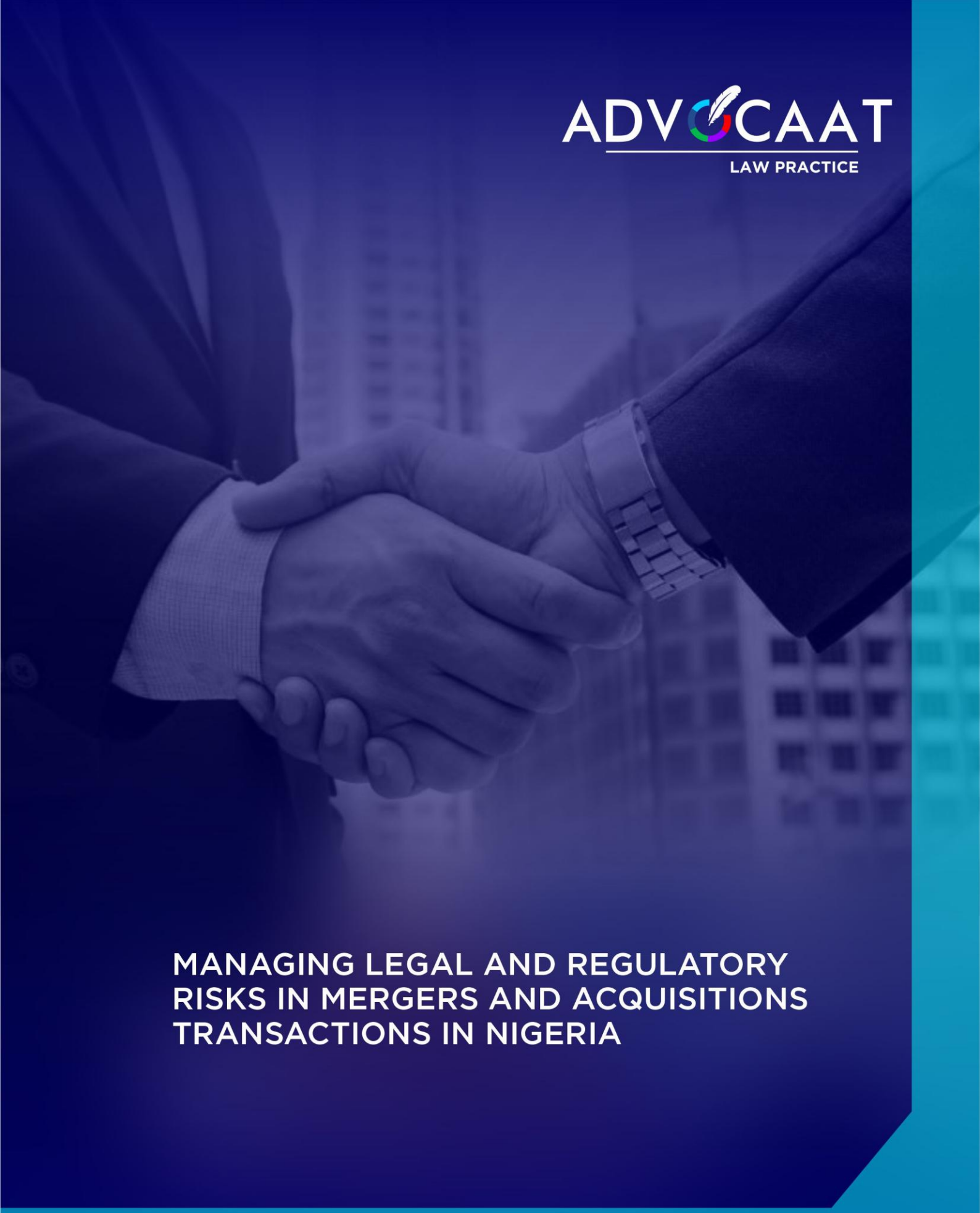

MANAGING LEGAL AND REGULATORY RISKS IN MERGERS AND ACQUISITIONS TRANSACTIONS IN NIGERIA

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INTRODUCTION

Mergers and acquisitions ("M&A") transactions remain a significant tool for corporate restructuring, market expansion, capital consolidation, and strategic repositioning in Nigeria. M&A transactions operate within a structured legal and regulatory framework anchored principally on the Federal Competition and Consumer Protection Act ("FCCPA"), the Banks and Other Financial Institutions Act 2020 ('BOFIA')[1] (for M&A transactions involving financial institutions, where the Central Bank of Nigeria ['CBN] has exclusive jurisdiction) and the Companies and Allied Matters Act 2020 ("CAMA"). There are also sector specific legislations that regulate M&A transactions in certain industries. These legislations include the Nigerian Communications Commission Act 2003; the Nigerian Insurance Industry Reform Act 2025; the Pension Reform Act 2014; the Electricity Act 2023; and the Petroleum Industry Act 2021. Where a merger involves a public listed company or a capital market operator, the Investment and Securities Act, 2025 will also apply.

M&A transactions have become central to corporate strategy in emerging markets. In Nigeria, it has historically developed through banking consolidation, oil and gas restructuring, telecommunications expansion, and private equity investments. This article examines the legal and regulatory framework governing M&A transactions in Nigeria, identifies the key legal and regulatory risks that arise, and proposes practical risk avoidance and mitigation measures.

LEGAL FRAMEWORK OF MERGERS AND ACQUISITIONS

A merger occurs when one or more undertakings directly or indirectly acquire or establish control over the whole or part of the business of another undertaking.[2] Control may be achieved through purchase or lease of shares, purchase or lease of assets, amalgamation, or joint venture formation.[3] The FCCPA does not explicitly distinguish between a "merger" and an "acquisition" as separate legal concepts. Instead, its statutory language treats these transactions under the broader umbrella of "mergers". A similar approach is adopted under the Investments and Securities Act, 2025.[4] In practice, this means

[1] Section 65 of the Banks and Other Financial Institutions Act 2020
[2] Section 92 (1) (a) Federal Competition and Consumer Protection Act 2018.
[3] Section 92 (1) (b) ibid
[4] Section 357 provides: "merger" means the amalgamation, combination, acquisition, establishment, or otherwise directly or indirectly, by one or more persons, whether by purchase of shares or lease of assets, resulting in a joint venture, control over or significant interest in the whole or a part of a business of any other person.

that for regulatory purposes, what matters is whether the transaction results in a substantial change in control, ownership, or market structure, not whether it is technically a merger or an acquisition.

Under the FCCPA, mergers in Nigeria are classified as either small mergers or large mergers. A merger will be regarded as a large merger where the combined annual turnover of the acquiring undertaking and the target undertaking in, into, or from Nigeria equals or exceeds ₦1,000,000,000 (One Billion Naira), or where the annual turnover of the target undertaking in, into, or from Nigeria equals or exceeds ₦500,000,000 (Five Hundred Million Naira)[5] in the financial year preceding the merger. Any merger that falls below these thresholds is classified as a small merger. However, under the BOFIA, mergers involving banks and other licensed financial institutions fall exclusively under the jurisdiction of the CBN, and the FCCPA thresholds do not apply to such transactions.

Mergers and acquisitions may also be categorised based on the relationship between the parties involved. Horizontal mergers[6] occur between companies operating at the same level of the market and within the same line of business, typically as direct competitors. Such transactions can increase market concentration or create a dominant market position, and as a result often attract heightened regulatory scrutiny, particularly with regard to the risk of a substantial lessening of competition. For instance, a merger between major banks in Nigeria would undergo intensive review by the CBN to assess potential effects on competition, market share, and consumer welfare.

Vertical mergers,[7] by contrast, involve firms operating at different stages of the supply chain, such as a manufacturer and a distributor. In these transactions, regulatory attention is generally focused on potential foreclosure concerns, including whether the merged entity could restrict competitors' access to critical inputs or distribution channels.

Conglomerate mergers[8] involve companies engaged in unrelated business activities. As the parties neither compete directly nor operate within the same supply chain, these transactions generally pose lower competition risks. Nevertheless, regulators may still examine potential portfolio effects or the possibility of leveraging market power across different markets.

LEGAL AND REGULATORY RISKS IN NIGERIAN M&A TRANSACTIONS

Just like in every business undertaking, M&A transactions involve significant risks that must be carefully evaluated before proceeding. In Nigeria, these risks are heightened by a dynamic regulatory environment and the involvement of multiple oversight authorities. Failure to properly identify and manage these risks has been a major reason why many M&A transactions either collapse before completion or encounter serious post-completion challenges. It therefore behoves the parties to conduct thorough due diligence, assess regulatory exposure, and proactively mitigate potential liabilities.

[5] Section 1 of the Notice of Threshold for Merger Notification, 2019. https://fccpc.gov.ng/wp-content/uploads/2022/07/Notice-of-Threshold-for-Merger-Notification.pdf
[6] Paragraph 7.1 (i) FCCPC Merger Review Guidelines 2020
[7] Paragraph 7.1 (ii) ibid
[8] Paragraph 7.1 (iii) ibid

Below are key legal and regulatory risks in Nigerian M&A transactions:

Regulatory Approval Risk

Under the FCCPA, large mergers are required to obtain prior approval from the FCCPC, and any transaction that meets the prescribed thresholds cannot be implemented without such approval. Failure to secure the required approval will render the transaction void.[9] In addition to FCCPC approval, sector-specific regulatory consent may also be required, depending on the industry involved. Delays in obtaining these approvals, or a refusal by any of the relevant authorities, can significantly disrupt transaction timelines, financing arrangements, and the overall viability of the merger.

Corporate Governance Risk

Just like regulatory approval risk, non-compliance with CAMA, and sector specific corporate governance guidelines may invalidate aspects of an M&A transaction, particularly where there is failure to obtain proper board or shareholder approvals, defective corporate filings, or breaches of directors' fiduciary duties, and such procedural defects may render the transaction voidable or open to challenge by minority shareholders. The rights of minority shareholders are expressly provided for under CAMA and are enforceable before the courts, and a minority shareholder may challenge issues relating to illegal and oppressive conduct, unfair prejudice, or procedural irregularities[10] in the approval and implementation of an M&A transaction.

Due Diligence Risk

The importance of conducting a robust and comprehensive due diligence exercise in an M&A transaction cannot be overemphasised, as parties, particularly those with little or less to lose in the proposed transaction, may deliberately conceal material information that could later create serious challenges for the deal. Where due diligence is incomplete, superficial, or defective, the acquirer may be exposed to undisclosed liabilities, pending litigation, tax exposures, environmental liabilities, and regulatory non-compliance. If such issues are only discovered after completion, the resulting financial losses, operational disruptions, and reputational damage can be substantial and extremely difficult to remedy.

Tax and Financial Reporting Risks

M&A transactions trigger various tax implications, including capital gains tax, stamp duties, value added tax, and withholding tax exposures, and failure to properly structure the transaction in compliance with applicable tax laws may result in unexpected liabilities, penalties, or disputes with tax authorities.

Employment and Labour Law Risks

M&A transactions may affect employee rights and obligations, potentially giving rise to redundancy, pension liabilities, breaches of employment contracts, or trade union disputes where employee transitions are not properly managed in accordance with applicable labour laws.

[9] Section 96 (5) Federal Competition and Consumer Protection Act 2018
[10] Section 341 Companies and Allied Matters Act 2020

Contractual Provision Risk

Many commercial agreements contain change-of-control clauses, and an M&A transaction may trigger termination rights or require third-party consents such as lender approvals. Failure to identify and address these requirements early may jeopardize key contracts and undermine the commercial viability of the transaction.

Data Protection and Privacy Risk

M&A transactions may trigger the transfer of personal data from one organization to another or cross-border transfer of data. Non-compliance with the provisions of the Nigeria Data Protection Act 2023 and the General Application and Implementation Directive ('GAID') 2025 on data transfer can expose the merging parties to regulatory sanctions, significant penalties and reputational risks.

Political and Policy Risks

Political and policy changes, including regulatory reforms, economic policies, or sectoral restructuring, may alter licensing conditions, foreign investment rules, or fiscal obligations, and such shifts in the regulatory environment can materially affect the feasibility, structure, and long-term success of an M&A transaction in Nigeria.

MANAGING LEGAL AND REGULATORY RISKS

Early Regulatory Mapping

To mitigate regulatory approval risks, parties should engage early with the relevant regulators, make complete and accurate filings with the FCCPC (except in the financial services sector, where the CBN has exclusive jurisdiction under BOFIA), and with any sector-specific authorities. Transaction plans should factor in regulatory timelines. A regulatory matrix should be conducted to identify competition thresholds, sector approvals, and foreign ownership restrictions, with clear delineation of FCCPC versus sector-specific jurisdiction.

Careful Planning

Corporate governance and compliance risks can be effectively mitigated through careful planning, strict adherence to statutory procedures, and proactive stakeholder engagement. All necessary corporate approvals must be properly obtained, including valid board resolutions and shareholder resolutions passed in accordance with the company's articles of association, ensuring that meeting notice requirements, quorum, and voting thresholds are strictly complied with.

Additionally, directors should act in good faith, disclose conflicts of interest, and uphold their fiduciary duties, while independent fairness opinions should be sought to validate transaction valuations. Transparent communication with minority shareholders, including the provision of exit options where appropriate, further mitigates the risk of post-transaction disputes and ensures compliance with corporate governance obligations.

360° Due Diligence

A 360° due diligence approach reduces M&A risks by comprehensively reviewing legal, financial, operational, and regulatory aspects of the target company, verifying corporate filings with the

Corporate Affairs Commission and sector specific regulators, contracts, and licenses, and engaging independent advisers for valuation, tax, and environmental assessments.

Transaction Structuring

Adequate transaction structuring allows for effective risk allocation, which can be clearly defined through mechanisms such as representations and warranties, indemnities, escrow accounts, conditions precedent, and long-stop dates, ensuring that potential liabilities are properly managed and obligations remain enforceable. Additionally, warranty and indemnity insurance can be employed to mitigate post-merger exposure, protecting the acquirer from unforeseen liabilities arising from breaches of representations, warranties, or indemnities.

CONCLUSION

M&A activities in Nigeria are highly regulated to prevent anti-competitive arrangements and the creation of monopolies, reflecting the FCCPC's objective to promote fair competition. While this enhances market discipline, it also introduces layers of complexity that expose parties to legal and regulatory risks. These risks are multidimensional, encompassing competition law exposure, sector-specific approvals (such as CBN for financial institutions, NAICOM for insurance, SEC for capital markets, and NCC for telecoms), tax obligations, and corporate governance challenges. Effective risk management requires early planning, proactive engagement with regulators, thorough due diligence, and strategic contractual allocation of liabilities. By accounting for contingencies and factors beyond the parties' control, proper risk management ensures that M&A transactions deliver economic value while maintaining regulatory compliance and safeguarding investor interests. Though inherently complex, well-managed M&A transactions can generate significant economic growth and financial gains.

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