



NAVIGATING THE CENTRAL BANK OF NIGERIA'S RECAPITALIZATION PROGRAMME

INTRODUCTION

The Central Bank of Nigeria (CBN) has initiated a Banking Sector recapitalization programme through its Circular No. FPR/DIR/PUB/CIR002/009 (the "Circular") captioned

"Review of Minimum Capital Requirement for Commercial, Merchant and Non-Interest Banks in Nigeria"

in order to support economic growth and help banks meet the Federal Government's goal of achieving a US\$1 trillion economy by 2030.

Recapitalization is the process of restructuring a company's equity mixture and debt in order to stabilize the capital structure of the company and can be achieved by using different processes which are generally recognized as capital raising methods. CBN's recapitalization programme is a regulatory initiative requiring banks to review and increase their minimum paid up (common equity) capital to a specified amount according to their license category and authorization within a specific period of time.

This mandate requires commercial banks with an international license to have a minimum capital of N500,000,000,000 (Five hundred billion Naira), while banks with a national and regional license need to have a minimum capital of N200,000,000,000 (Two hundred billion Naira) and N50,000,000,000 (Fifty Billion Naira) respectively. For existing banks, the minimum capital shall comprise of paid-up capital and share premium only. For the avoidance of doubt, the new capital requirement shall be based on Shareholders' funds.

All banks are required to meet the minimum capital requirement within a period of 24 months commencing from April 1, 2024 and terminating on March 31, 2026.

For the avoidance of doubt, the new minimum capital requirement will be applicable to all new applications for banking license submitted after April 1, 2026. For promoters' who submitted their applications for banking license prior to April 1, 2026, the CBN has indicated that it will continue to process all pending applications for which capital deposit had been made and /or approval in principle (AIP) had been granted. However, promoters of such proposed banks should endeavor to make up the difference between the capital deposited with the CBN and the new capital requirement not later than 31st March, 2026.

This newsletter provides an overview of the programme's requirements, capital raising options, regulatory guidelines, expected benefits, potential risks, and concerns.





CAPITAL RAISING OPTIONS

To meet the minimum capital requirement, CBN specified three options for banks to raise their minimum capital, and strict compliance to these is compulsory, as alternative methods would be rejected. These options include and are restricted to;

1. Injection of funds through;

A. Private Placements: This involves direct issuance of bank shares to a select group of investors through a private placement memorandum.

B. Rights Issues: Banks/Holding Companies may offer new shares to already existing shareholders on a pro-rata basis, as such, enabling them to enhance their equity interest.

C. Offers for Subscription: Under this heading, banks, through the issue of a prospectus, solicits offers from the public for the sale of its shares being issued.

2. Mergers and Acquisition (M&A):

The CBN's Circular identifies mergers & acquisitions as a viable option for banks to meet the new capital requirements. Undoubtedly smaller banks that are unable to raise the required capital will resort to business combinations and mergers to comply with the Circular. Reassurance has been given by the CBN that depositors funds would be safe in M&A situations.

3. Upgrade/Downgrade of license authorization:

Banks can reduce their license authorization in order to meet the new minimum capital requirements. Banks have the option of upgrading their authorization, but the banks that would struggle with keeping up with minimum capital requirements of their license authorization level, they are advised to downgrade to a lower license authorization in order to not be wiped out and can then choose what to do in the long-run and the option of increasing their license authorization would still be open to them.

All Banks were given till 30th of April, 2024 to present their implementation plan (clearly indicating the chosen option(s) from one of the above capital-raising options as their selected strategy, to the Director, Banking Supervision Department of the CBN.

FRAMEWORK ISSUED BY SECURITIES AND EXCHANGE COMMISSION FOR RECAPITALIZATION PROGRAMME

As banks are anticipated to use the market as a leverage to obtain the necessary funds and/or engage in various business combinations, the capital market is crucial to the recapitalization program's success. As a regulatory body, the Securities and Exchange Commission's (SEC) is tasked with the duty of overseeing the growth and development of Nigeria's capital market to ensure a smooth, transparent and efficient capital raise process by the banks. In line with this duty, SEC issued a Framework on Banking sector recapitalization programme on 21st of June 2024 outlining the guidelines and procedures banks are required to follow to raise capital through rights issuance, private placements, or other approved methods during the 2024-2026 recapitalization period (the Framework).

The Framework represents a summary of documents which should be disclosed and submitted to SEC under each capital raise option in line with the Commission's current rules and regulations, which should be read in connection with the pertinent sections of the Investment and Securities Act of 2007 ("ISA"). SEC Regulations explicitly sets out provisions which prohibits the issuance of any notice or circular to the public which offer for subscription or purchase of securities in a company without the prior approval of the Commission. Part of the objectives of the Framework is to serve as a guide to Banks/ Holding Companies and Capital Market Operators in filing applications for capital raise and/or Mergers and Acquisitions and to guide in full disclosure of material facts in compliance with the ISA.

GUIDELINES ISSUED BY THE CORPORATE AFFAIRS COMMISSION ("CAC") ON RECAPITALIZATION

The Corporate Affairs Commission [CAC] based on its power in Section 8 (1)(e) of the Company and Allied Matters Act [CAMA] also recently issued guidelines ("CAC Guidelines") to aid banks in implementing the new minimum capital required by the CBN as banks would need to increase their share capital and subsequently allot such shares to intending investors. The CAC Guidelines also enlists documents to be submitted by banks opting for mergers and acquisitions in achieving their recapitalization goal.



THE ROLE OF THE FCCPC IN RELATION TO BANK MERGERS AND ACQUISITIONS

The Federal Competition and Consumer Protection Commission (the "FCCPC") is the regulatory authority responsible for, among other things, the administration and enforcement of the Federal Competition and Consumer Protection Act 2018 (the Act). The Commission contributes to the economic development of Nigeria by protecting and promoting competitive markets and enabling informed consumer choices.

Section 65 (2) of the Banks and other Financial Institutions Act 2020 states that the provisions of Sections 92(1), (2) (3) and Section 94 and 98 of the FCCPC Act 2018 shall apply to a merger, acquisition or other form of business combination which involves a bank, specialized bank or other financial institution. Under the FCCPC Act, a merger is said to occur when one or more undertakings directly or indirectly acquire or establish direct control over the whole or part of the business of another undertaking. When considering a merger or a proposed merger, the FCCPC is mandated to determine whether or not such merger is likely to substantially prevent or lessen competition by assessing various factors such as the degree of countervailing power in the market. The FCCPC Act further empowers its officer to investigate a merger and may require any undertaking to provide information in respect of the merger.

The FCCPC Act, along with subsidiary regulations such as the Notice of Threshold for Merger Notification 2019 and, the Merger Review Regulations also outline the process and approval requirements for mergers in Nigeria.

Under the Notice of Threshold for Merger Notification, the FCCPC should be duly notified before the commencement of a merger, if in the financial year preceding the merger, the combined annual turnover of the acquiring undertaking and the target undertaking equals N1,000,000,000 (One Billion Naira) or the annual turnover of the target undertaking equals or exceeds N500,000,000 (Five Hundred Million naira). When these thresholds are exceeded, the consent of the FCCPC must be procured before the merger is implemented. This means that merging banks shall not take any steps to implement a merger either prior to, or after notification until it has been approved by the FCCPC. Observing the year-end reports of banks in Nigeria, it can be observed that a significant number of banks reported profits before tax in figures ranging between ten billion to hundreds of billions of Naira. It follows that their turnovers would exceed the set threshold and any proposed merger will likely trigger the FCCPC's threshold for consent.



CONCLUSION

The Central Bank of Nigeria's (CBN) Bank Recapitalization Programme presents both advantages and challenges. On the positive side, increasing the capital base of banks enhances financial stability by providing a stronger buffer against economic shocks and potential losses. This boost in stability can elevate investor and public confidence, potentially attracting more investment and fostering economic growth through increased credit availability. Additionally, it helps banks meet regulatory standards and promotes better risk management practices, reducing systemic risk and encouraging a more competitive banking sector through consolidation. However, the programme also has drawbacks. The increased capital requirements can strain smaller banks, potentially leading to consolidation or even the exit of weaker institutions from the market. This could reduce competition and limit consumer choices. Moreover, the process of recapitalization may involve significant costs and financial adjustments, which could impact the profitability of banks in the short term. Overall, while the programme aims to create a more robust banking sector, it also poses challenges that need careful management to balance the benefits with potential downsides.

Gbenga Biobaku & Co. is a licensed Capital Market Operator and Solicitor registered with the Securities Exchange Commission. We can guide you through any aspect of the recapitalization Programme. Our expertise include: Capital raising options; Regulatory compliance; Mergers and acquisitions and Licensing and authorization.

DISCLAIMER

Nothing in this article should be construed as legal advice from any of our lawyers or the firm. The article published is a general summary of developments and principles of interest and may not apply directly to any specific circumstances. Professional advice should therefore be sought before action based on any article is taken.

For more information on the content of this article, please contact:



Adetola Lawal

Partner

alawal@gbc-law.com

GBENGA BIOBAKU & CO.

Barristers and Solicitors

11 Babafemi Osoba Crescent Off
Admiralty Road Lekki Phase1, Lagos.

+234 906 640 5839

+234 1 2717769

+234 1 2707320 (Fax)

info@gbc-law.com

<http://www.gbc-law.com>

