



# Exploring the Corporate Affairs Commission's Comprehensive Guidelines for Banking Sector Recapitalization



## Introduction

On 29th July, 2024, the Corporate Affairs Commission (the “CAC”), exercising its authority under Section 8 (1) (e) of the Companies and Allied Matters Act (CAMA) 2020, issued new Guidelines to facilitate the recapitalization efforts of banks to assist them in the ongoing recapitalization.

This development follows a significant directive from the Central Bank of Nigeria (“CBN”) on 28th March, 2024, which raised the minimum capital requirements for Nigerian banks thereby necessitating an increase in their capital base. The CBN set new thresholds including N500 billion for commercial banks with international authorization, N200 billion for those with national authorization, and N50 billion for regional banks. Also, merchant banks must maintain a minimum capital of N50 billion, while non-interest banks with national and regional authorizations are required to meet N20 billion and N10 billion capital bases, respectively.

To help banks meet these requirements by the 31st March, 2026 deadline, the CBN outlined several capital generation strategies, including mergers and acquisitions, rights issues, private placements, and subscription offers.

Subsequently, on 21st June, 2024, the Securities and Exchange Commission (“SEC”), the regulatory body in charge of monitoring capital market operations in Nigeria introduced a framework aimed at ensuring transparency and efficiency in the capital-raising process, aligning with the CBN’s recapitalization directive.

This article delves into the Guidelines of the CAC on the recapitalization of the banking sector and the critical steps that banks, as well as financial institutions in Nigeria, must take to successfully raise capital during the 2024 - 2026 recapitalization period.

# THE CORPORATE AFFAIRS COMMISSION ON BANK RECAPITALIZATION

Nigeria's banking industry has undergone multiple recapitalisations over the years. A notable instance was in 2005 when banks were required to raise their minimum capital from N2 billion to N25 billion. This move was part of broader efforts to make Nigerian banks more globally competitive and financially stable. The 2005 recapitalization led to a significant reduction in the number of banks to 25 banks, through mergers, acquisitions, and the liquidation of weaker institutions, ultimately resulting in a more resilient banking sector. However, implementing these regulations often faced challenges, such as difficulties in raising capital within the specified timelines, compliance with regulatory requirements, and market uncertainties. These challenges underscore the importance of clear and comprehensive guidance from regulatory bodies to ensure a smooth and effective recapitalization process.

Recently, the persistent macroeconomic shocks and challenges both domestically and internationally have necessitated further actions to strengthen the financial sector.

As part of the Federal Government's broader economic goals, including its ambition to achieve a US\$1 trillion economy by 2030, the CBN mandated a new recapitalization program. This program is designed to enhance the asset base of banks, enabling them to better support economic growth and withstand economic pressures.

The CAC which oversees the formation, registration, and administration of corporations in Nigeria plays a critical role in the recapitalization process. The CAC's responsibilities include ensuring compliance with corporate governance standards, approving an increase in share capital, overseeing the filing of necessary documents related to the recapitalization process, verification of statutory compliance, and promoting an efficient regulatory environment. Therefore, the issuance of specific guidelines for banking sector recapitalization demonstrates the CAC's commitment to strengthening the banking environment and while interest of all stakeholders involved in the process.

## AN EXAMINATION OF THE CAC'S GUIDELINE

The Guidelines outline the documentary and procedural requirements for various aspects of recapitalization, including new incorporations, increases in share capital through private placements, rights issues, offers for subscription, and mergers. Notably, the guidelines specify that no additional filings are required when upgrading or downgrading license authorizations.

For new incorporations, the required documentation includes an approved name reservation or availability, approval-in-principle from the relevant sector regulator, a completed online incorporation form, payment of stamp duty, and filing fees corresponding to the chosen license category.

This process applies in scenarios such as the creation of a new legal entity following the merger of two or more banks, the formation of a new holding company to oversee merged entities, or reorganization efforts that involve establishing a new corporate structure. If an application meets all the requirements listed in the Commission's Operations Checklists, which can be accessed via the CAC's website, a certificate of incorporation will be issued within 24 (twenty-four) hours.

Regarding increases in share capital through private placements, rights issues, or offers for subscription, the Guidelines detail the necessary documentation and requirements for issuing a certificate of increase. Specifically, a notice of the regulatory approval must be filed in compliance with Sections 127 (3), (4), and (5) of CAMA. Additionally, annual returns and up-to-date information on persons with significant control must be submitted. A certificate of increase will be granted within 24 (twenty-four) hours of receiving the regulatory approval.

Also, In the case of mergers in a scenario where two banks are merging to meet the minimum share capital requirements, the Guidelines require several documents including a duly signed special resolution for the merger from each of the merging company, a scheme of merger approved by the SEC, a certified true copy of the court order authorizing the extraordinary general meetings (EGMs) of the merging companies, proof of publication of the court-ordered meetings in two newspapers and the Federal Gazette, and a certified true copy of the court order sanctioning the scheme of merger. Annual returns and up-to-date information on persons with significant control of the merging companies must be filed as required.

Notably, the Guideline provides that all inquiries and complaints on the guidelines and applications submitted in pursuance of the recapitalization exercise should be addressed to [bankrecapitalization@cac.gov.ng](mailto:bankrecapitalization@cac.gov.ng)

## Conclusion

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As Nigeria moves toward a more dynamic economic environment, adherence to these guidelines on bank recapitalization is a pivotal step towards ensuring long-term financial growth, retaining public trust, and eventually contributing to the country's overall economic progress. CAC in its strides has ensured that seamless incorporation and implementation of the recapitalisation exercise is achieved. These guidelines will assist banks in navigating the complexities related to compliance ensure alignment with national regulatory requirements and represent a commitment to enhancing corporate governance, investor confidence, and risk mitigation strategies.

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