1. **Is there a regulatory regime applicable to mergers and similar transactions?**

   Yes, mergers and acquisitions are governed by Sections 76-80, Title IX Merger and Consolidation of the Corporation Code.

   Additionally, it is important to note that Article 186 of the Revised Penal Code proscribes against monopolies and combinations in restraint of trade. As such, mergers must not have anti-competitive effects.

2. **Identify Applicable National Regulatory Agency/Agencies.**

   Under the Corporation Code, the Securities and Exchange Commission (SEC) is deemed as the national regulatory agency for mergers and acquisitions.

   Mergers require SEC approval, as provided in Sec 79 of the Corporation Code. The merger is effective only upon the issuance of the certificate of merger by the SEC, subject to its determination that the merger is not inconsistent with existing laws and the Corporation Code.

   Provided further, that in the case of merger of banks or banking institutions, building and loan associations, trust companies, insurance companies, public utilities, educational institutions and other special corporations governed by special laws, the favorable recommendation of the appropriate government agency shall first be obtained.
3. Is there a supranational regulatory agency (e.g., the European Commission) that has, or may have exclusive competence? If so, indicate.

None.

4. Are there pre-merger filing requirements; if so, where are they published?

Sec 79 of the Corporation Code provides that the articles of merger signed and executed by each corporation party to the merger or consolidation must be submitted to the SEC for approval.

The articles of merger or consolidation must set forth the following:
   a) The plan of the merger or the plan of consolidation;
   b) As to stock corporations, the number of shares outstanding, or in the case of non-stock corporations, the number of members; and
   c) As to each corporation, the number of shares or members voting for and against such plan, respectively.

5. What kinds of transactions are "caught" by the national rules? (Identify any notable exceptions)

All mergers and consolidations are covered. Sec 76 of the Corporation Code refers to two or more corporations merging into a single corporation which shall be one of the constituent corporations as a merger, while two or more corporations consolidating into a single corporation as a consolidation.

6. Is there a "size of transaction" threshold?

No.

7. Is there a "size or turnover of the parties" test; if so, what is it and how are size and turnover to be calculated?

No.

8. Is geographic scope/national market effect of transaction an issue with respect to filing or approval requirements? If so, specify.

No.

9. Is the filing voluntary or mandatory? What are the penalties for non-compliance?

It is mandatory to file the articles of merger with the SEC. it should be accompanied by a favorable recommendation of the government agency concerned if the corporations involved are banks, insurance companies, building and loan associations, trust companies, public utilities, educational institutions and other special corporations . Non-compliance is penalized by fines and sanctions.
10. **Time in which a filing must be made.**

No. The only time limit required is the notice period, which may be personal or by registered mail, that must be given to all stockholders or members, which must be at least 2 weeks prior to the date of the meeting where the stockholders must vote and approve the merger.

11. **Form and Content of Initial Filing.**

There is no specific form required, but Sec. 76 of the Corporation Code requires that the plan of merger must contain the following:

- Names of the corporations proposing the merger
- a) Terms of the merger and the mode of carrying it into effect
- b) Statement of the changes, if any, in the articles of incorporation of the surviving corporation in case of merger
- c) Any other provisions with regard to the proposed merger that is necessary

12. **Are filing fees required?**

Yes, as per SEC Memorandum Circular No. 9, dated 20 May 2004, a filing fee of 1/5 of 1% of the equity of the absorbed corporation/s but not less than P3,000.00. But in case of a simultaneous filing of application for increase of authorized capital stock by the surviving corporation, a filing fee for increase in capital stock or the filing fee of merger, whichever is higher.

For increase in capital stock:
- Corporation with par value – 1/5 of 1% of the increase in capital stock or the subscription price of the subscribed capital stock whichever is higher
- Corporation without par value - 1/5 of 1% of the increase in capital stock computed at P100.00 per share or the subscription price of the subscribed capital stock whichever is higher but not less than P1,000.00

13. **Is There An Automatic Waiting Period? If so, specify.**

None.

14. **Are There Time Limits Within Which The Regulatory Agency Must Act? Can they be shortened by the parties or be extended by the regulatory agency?**

None.

15. **What is the substantive test for clearance?**

The Plan of Merger must be approved by the majority vote of each of the Boards of the concerned corporations at a separate meeting. It must then be submitted for approval of the stockholders/members of each corporations at a separate corporate
meetings. Also, an affirmative vote of 2/3 of the outstanding capital stock in case of stock corporation, or 2/3 of the members of a non-stock corporation is required.

16. What are the common Post-Filing Procedures: Requests for further information, etc?

There are no usual procedures, other than possible notice to interested parties that the corporations have merged.

17. Describe the sanctions for not filing or filing and incorrect/incomplete notification.

Section 79 of the Corporation Code provides that if the Securities and Exchange Commission has reason to believe that the proposed merger or consolidation is inconsistent with the provisions of the Corporation Code or existing laws, it shall not issue the certificate of merger and it shall set a hearing to give the corporations concerned the opportunity to be heard. Written notice of the date, time and place of hearing shall be given to each constituent corporation at least two weeks before said hearing.

18. Describe the procedures if the agency wants to challenge the transaction?

If after investigation, the Securities and Exchange Commission has reason to believe that the proposed merger is contrary to or inconsistent with the provisions of the Corporation Code or existing laws, it shall set a hearing to give the corporations concerned the opportunity to be heard. A written notice will be given at least two weeks before the hearing.

19. Describe the penalties applicable to the implementation of a merger before clearance or of a prohibited merger?

The provisions of the Corporation Code, the Securities Regulation Code and the Civil Code govern the merger and acquisition transactions. Section 54 of R.A. 8799, the Securities Regulation Code, provide for the administrative sanctions for violations of the Code. These include fines and sanctions against the corporations and the violating officers.

20. Describe, briefly, your assessment of the regulatory agency's current attitudes/activities.

The SEC is currently ambivalent to the process.

21. Other Important Information: