

# BANKING REGULATIONS NEWSLETTER

FOR THE 1ST QUARTER, 2023

## PROHIBITION OF INVESTMENT IN FUNDS MANAGED BY UNINSURED ENTITIES

The Central Bank of Nigeria (“CBN”) by a letter dated 9th January 2023, observed that several institutions in the Other Financial Institutions (“OFIs”) sub-sector, have large assets invested in various funds managed by uninsured entities, and often disguised as placement/investments in Banks and OFIs. The continuous investment by these OFIs with uninsured entities have undoubtedly put depositors’ funds at risk, consequently prompting the intervention of the CBN.

In keeping with its mandate to regulate the activities of Banks and OFIs, the CBN directed the OFIs to divest of such investment which have been made with the uninsured entities and liquidate same within a 90-day window, sequel to the issuance of this letter.

We commend CBN’s intervention in this regard and do hope that the OFIs would comply accordingly in a bid to ensure that depositors fund is duly protected.



## GUIDANCE ON ULTIMATE BENEFICIAL OWNERSHIP OF LEGAL PERSONS AND LEGAL ARRANGEMENTS

### INTRODUCTION

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Given the growing use of corporate vehicles, such as companies, trusts, foundations and other types of legal persons and legal arrangements by criminals, to cover up and convert the proceeds of crime, global standards (Financial Action Task Force (FATF) demand that countries “ensure adequate, accurate and timely information on” beneficial ownership is accessible to prevent corporate vehicles from being abused in the financial system.

The Central Bank of Nigeria (“the CBN”) in 2022 issued the CBN Anti-Money Laundering, Combating the Financing of Terrorism and Countering Proliferation Financing (CBN AML/CFT/CPF) of Weapons of Mass Destruction in Financial Institution Regulation (“the Regulation”). The Regulation requires financial institutions to understand the structure of legal persons and legal arrangements; and to promptly undertake customer due diligence aimed at mitigating anti-money laundering, combating the financing of terrorism and countering proliferation financing of weapons of mass destruction risks which exists in financial institutions (FIs).

It is in furtherance of the above that the CBN released a Circular dated 12th January 2023, titled “Guidance on Ultimate Beneficial Ownership of Legal Persons and Legal Arrangements” (“the Circular”) which complements the CBN Anti-Money Laundering provisions, while reinforcing global standards.

### **OBJECTIVE(S) OF THE CIRCULAR**

The Objective of the Circular is to assist Financial Institutions (FI's) in identifying and verifying the beneficial owners of legal persons and legal arrangements in line with extant AML/CFT/CPF laws and regulations.

The Circular is, however, not exhaustive and will be amended as necessary. It should therefore be read and applied in line with the relevant provisions of extant laws and regulations on AML/CFT and CPF.

### **WHO IS A BENEFICIAL OWNER (BO) ?**

The Circular defines a BO as a natural person(s) who ultimately controls or owns a customer and/or the natural person on whose behalf a transaction is being conducted. This extends to the person(s) who exercises ultimate effective control over a legal person or legal arrangement.

### **APPLICABILITY OF THE CIRCULAR**

The Circular applies to FIs under the regulatory purview of the Central Bank of Nigeria.

### **KEY HIGHLIGHTS OF THE CIRCULAR**

The Circular has listed determinants which are indicative of the beneficial owner of a legal person (s) or legal arrangement.

## **BENEFICIAL OWNER (BO) REFERS TO THE NATURAL PERSON(S) AS:**

- i. **One who ultimately owns** - holds at least 5% of the issued shares in the legal person either directly or indirectly
  - ii. **One on whose behalf a transaction is being conducted;** and/or
  - iii. **One who exercises ultimate effective control over a legal person or legal arrangement** – who exercises significant influence or control, directly or indirectly, over the legal person.
- Furthermore, in order to determine persons who are beneficial owners, FIs are required to use these source documents:
- i. Particulars of Shareholders;
  - ii. Certificate of Incorporation;
  - iii. Resolutions;
  - iv. Memorandum and Articles of Association;
  - v. Minutes of meetings;
  - vi. Bye-laws;
  - vii. Annual returns/financial statements;
  - viii. Charters;
  - ix. Constitutions;
  - x. Trust deeds and trust registration documents.

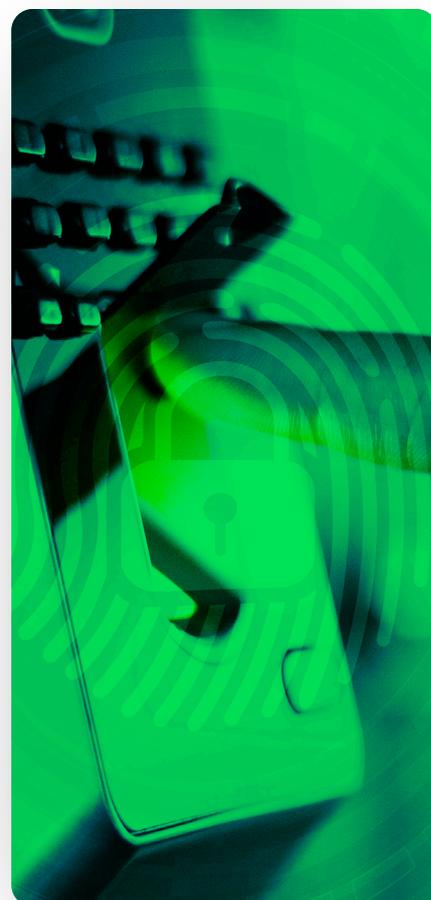
Furthermore, in order to determine persons who are beneficial owners, FIs

## **IDENTIFICATION AND VERIFICATION OF BENEFICIAL OWNERS**

In addition, they are required to consult public registers at the Corporate Affairs Commission and other publicly available sources such as the internet, print, electronic and social media.

From all the above, FIs are required and encouraged to differentiate between legal ownership and effective control in determining who is a beneficial owner.

FIs are enjoined to carry out customer due diligence on all its customers when identifying and verifying a beneficial owner, most especially at the onboarding stage, based on the risk assessment of the customer and verify the information of the beneficial owner. They are advised to follow the three-steps



cascade approach as gleaned from Regulation 21 of CBN AML/CFT/CPF :

- i. Identify and verify natural persons, where they exist, that they have ultimate controlling ownership interest in a legal person) bearing in mind that ownership of the legal person could be so spread that no natural person or group of persons may be exercising control of the legal person through ownership.
- ii. In the event of doubt as to the persons with the controlling ownership interest as beneficial owners or where no natural person exerts control through ownership interests, identify and verify the natural persons; and where they exist, exercising control of the legal person. or arrangement through other means.
- iii. Where no natural person is identified, FI's should take steps to identify and verify the identity of the natural person who holds senior management position in the legal person.

In the case of legal arrangements, FI's should identify and verify the trustee, the settlor, the beneficiaries or class of beneficiaries, the protector where they exist, and any other natural person(s) exercising ultimate or effective control over the legal arrangement.

## **RED FLAGS FOR IDENTIFICATION OF BENEFICIAL OWNERS**

In identifying beneficial owner(s), the CBN have indicated some red flags which are possible smokescreens of a beneficial owner:

- i. Any nominee agreement that shows who really exercises control in a shareholder arrangement;
- ii. Documentary evidence that the natural person has the power to appoint senior management;
- iii. Documentary evidence of the exercise of dominant influence over the transactions of the legal entities/arrangements;
- iv. Documentary evidence that a natural person is able to exercise dominant influence over a legal person;
- v. A shareholders' agreement which shows that a natural person is able to control the shares of more than one shareholder, effectively giving control;
- vi. An extract of a shareholder registry showing ownership; and
- vii. Documentary evidence (for example, an employment contract) that a director or employee is able to influence a legal person.

## **RISK MANAGEMENT SYSTEM AND ASSESSMENT OF A BENEFICIAL OWNER**

FI's are required to established certain measures of risk management and assessment of beneficial owners:

- i. Establish AML/CFT/CPF internal policies to extenuate identified risks by a beneficial owner;
- ii. Apply risk-approach in identification and verification of a beneficial owner;
- iii. Devise mechanisms to determine whether a beneficial owner is a politically exposed person or family member or close associate of a politically exposed person and where a BO falls within any of these categories, FI's must take additional measures to manage the risks. Such steps can include getting a senior management clearance before establishing or continuing with the customer relationship;
- iv. Reports of customer due diligence (CDD) on beneficial owner(s) that pose higher risk should be filed with the Nigerian Financial Intelligence Unit.

## **CREATION OF BENEFICIAL OWNERSHIP REGISTER**

A beneficial owner register of legal persons and legal arrangements should be created using information collected from the sources hitherto mentioned or from due diligence exercises and must be updated annually, and periodically reviewed especially when there are changes.

FI's are required to report discrepancies between a beneficial owner's information held in their records and that which is held in the public register. Such reports are to be sent to the Corporate Affairs Commission through <https://forms.office.com/r/Gs8UprwEdT> and via email to [psc-verification@cac.gov.ng](mailto:psc-verification@cac.gov.ng).

## **ACCESS TO INFORMATION BY COMPETENT AUTHORITIES**

FI's are required to provide, on request, information about BO's to CBN and other competent authorities.

In the same vein, FI's are required to render periodic returns on their customers to CBN, including details of the beneficial owner(s) of legal persons and legal arrangements.

## **RECORD KEEPING**

In keeping with global best practices, records of beneficial owner(s) are required to be kept by FI's in electronic or written form, for at least five (5) years following the termination of the business relationship, or after the date of the occasional transaction. Such information is required to be reviewed from time to time to ensure it is up-to-date and relevant.

## **CONCLUSION**

The use of corporate vehicles to facilitate criminal activities has significantly been on the increase. To this end, the CBN issued the above circular to assist FI's in determining natural person(s) with significant control over Legal person(s) or Legal arrangements. It is hoped that the circular will serve as a veritable tool to checkmate the use of corporate vehicles as a means of warehousing the proceeds of crime.

## CENTRAL BANK LAUNCHES CASH SWAP PROGRAMME IN RURAL/UNDERSERVED AREAS

Following the Naira Redesign Policy issued by the Central Bank of Nigeria (CBN), a lot of persons living in the hinterlands had difficulty accessing the new notes and most could not directly access the new notes through the automated teller machines (ATM) of different banks. Consequently, the CBN released a Circular dated 20th January 2023, to all Deposit Money Banks (DMBs), Mobile Money Operators (MMOs), Super Agents and Agents, as a way to maximize the channels of distribution of the new notes.

### APPLICABILITY

The Circular defines persons in rural areas and persons who have limited access to formal financial services as affected persons; and DMBs and super agents as the partners.

### THE PROGRAMME

The initiative which took effect on January 23, 2023, will allow the affected persons to exchange their old notes for the redesigned notes and denominations lower than N200, which are still legal tender.

Agents are licensed to exchange up to a maximum of N10,000 per person, and anything exceeding this limit would be treated as a cash-in deposit to the bank account or electronic wallet of the affected person, in line with the cashless policy of the CBN. The acceptable form of identification (BVN, NIN, voter's card) of the affected person should be captured as part of the transaction.



In a bid to promote financial inclusion, the service is also available to persons who do not have bank accounts. Agents may, on request, instantly open an electronic wallet or bank account, leveraging on the CBN's Tiered KYC Framework. Agents are also encouraged to sensitize customers regarding opening bank accounts/wallets and the various channels for conducting electronic transactions.

Designated agents are required to collect the new notes from the DMBs in line with the CBN Revised Cash Withdrawal Limit Policy. For the cash swap, agents are permitted to charge cash-out fees and nothing more.

Weekly returns shall be rendered by agents to their respective DMBs which shall in turn, render same to the CBN. Every DMB, MMO and Super agents are responsible and will be held accountable for the agent's adherence to the directives of this Programme.



## **RE: CHANGES TO THE ISIL (DA'ESH) & AL-QAIDA SANCTIONS LIST AND TO THE UNITED NATIONS SECURITY COUNCIL CONSOLIDATED LIST**

In line with the United National Security Council (UNSC) decision pursuant to paragraph 2 and 4 of resolution 2368 (2017), wherein Abdul Rehman Makki was listed as being associated with ISIL (Da'esh) or Al-Qaida and therefore, added to the ISIL (Da'esh) and Al-Qaida Sanction List of individuals and entities that are subject to freezing of assets, travel ban and arms embargo (as set out in paragraph 1 of security council resolution 2610 (2021), the Central Bank of Nigeria, (CBN) on 2nd February 2023, released a circular directed to banks, other Financial Institutions( OFIs ), and Payment Service Providers.

The CBN, further to Section 6 of *CBN Anti-Money Laundering/Combating Financing of Terrorism Regulations, 2022* and Section 4.3 of the *CBN Guidelines on Targeted Financial Sanctions Related to Terrorism and Terrorism Financing 2022* directs all FI's to immediately:

- i. Screen their customer database for any business relationship with the designated individual and file a report to the Nigerian Financial Intelligence Unit (NFIU); and
- ii. Update their sanctions screening list to reflect the recent change in the United Nations Security Council Consolidated Lists.

## **DEPLOYMENT OF THE PRE-SHIPMENT AGENTS (PIA) PORTAL ON STAKEHOLDER VERIFICATION PORTAL (SVP)**

The Central Bank of Nigeria (CBN) released a circular directed to all Pre-Shipment Agents, Monitoring and Evaluation Agents, Authorised Dealers, Nigeria Customs Services, Exporters, and the General Public (the Circular) on February 15, 2023.

### **HIGHLIGHTS**

The Circular directs all authorised dealers to ensure that the processing of Pre-Shipment Certificate of Inspection/Clean Certificate of Inspection (PCIs/CCIs) by Pre-Shipment Inspection Agents (PIAs) are done electronically on the Stakeholder Verification Portal.

Exporters are enjoined to complete the Request for Information (RFI) form in line with extant regulations via a link generated and sent via email by the Stakeholder Verification Portal. In the same vein, they are required to pay the Nigerian Export Supervision Scheme (NESS) levy advised by PIAs on the PCI/CCI documents.

Consequently, with effect from 1st March 2023, all e-NXPs (Electronic Nigerian Export Proceed Form) will be accompanied by electronic PCIs/CCIs. Similarly, all NXP forms which have been established before 1st March 2023 for which shipment has not been undertaken nor CCI issued, shall also be accompanied by electronic PCIs/CCIs.

### **OPERATIONAL GUIDELINES FOR OPEN BANKING IN NIGERIA**

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### **WHAT IS OPEN BANKING?**

Open banking is a banking practice that affords third-party financial service providers open access to consumer banking transactions, and other financial data from banks and non-bank financial institutions through the use of application programming interfaces (APIs). Open banking allows the networking of accounts and

data across institutions for use by consumers, financial institutions, and third-party service providers. Open banking is becoming a major source of innovation that is poised to reshape the banking industry.

## SCOPE OF THE GUIDELINES

The Guidelines shall apply to banking and other related financial services as categorised under the Regulatory Framework for Open Banking in Nigeria.

## KEY PARTICIPANTS

Organisations in possession of customer data that can be shared with other entities in the financial and other related sectors, can participate in the open banking system, and depending on the services being rendered, may be categorised as:

- 1. Application Programming Interface (API) Provider (AP)** refers to participants that use API to provide data or service to another participant. This can be a licensed financial institution and service provider, Fast Moving Consumer Goods (FMCG) Company or other retailers, etc.
- 2. API Consumer(AC)** : refers to participants that use API released by API Providers, to access data or service. This can be a licensed financial institution and service provider, FMCG company or other retailers, etc.
- 3. Customer:** refers to the data owner whose consent is required for the

release of data for the purpose of accessing financial services.

## CREATION OF OPEN BANKING REGISTRY (OBR)

The Guidelines made provision for an Open Banking Registry (OBR) to serve as a repository of APIs and for housing the details of participants in the open banking system. The responsibility for providing and maintaining this OBR rests with the CBN and it is to be maintained for the following reasons:

- i. Ensure transparency in the operation of Open Banking.
- ii. Provide regulatory oversight over the participants.
- iii. Ensure that only registered institutions operate within the open banking ecosystem.

The OBR shall also be a public repository for details of registered participants. Each participant shall be identified by its CAC business registration number, which shall be the unique key across the OBR system.

The OBR, by the Guidelines, is expected to maintain an API interface, defined within these guidelines, which shall serve as the primary means through which API providers manage the registration of their API consumers.

## **DATA GOVERNANCE AND CONSENT MANAGEMENT**

Participants in the system are regulated by the CBN. In addition, they are expected to comply with all the extant laws relating to data protection, consumer rights and fair practices.

Consent of the customer is required for the provision of open banking products and services.

## **RESPONSIBILITIES OF API PROVIDERS AND CONSUMERS**

The Guidelines spell out the responsibilities of API Providers and Consumers which are categorised as follows: (i) Access Rules, (ii) Availability and Performance, (iii) Key Performance Indicators (KPIs), (iv) Business Continuity, (v) Problem Management, (vi) Interface Requirements, (vii) Change and Communication Management (viii) Reporting, (ix) Anti-Competition Practices.

## **DATA AND INFORMATION TREATMENT**

All API Providers and Consumers must develop a robust data governance policy which shall incorporate the following: (i) Data Ethics, (ii) Data Privacy (iii) Information Security, (iii) Rendition of Returns, (iv) Anti-Money Laundering and Combating the Financing of Terrorism, (v) Testing, (vi) Business Continuity and Disaster Recovery.

The Guidelines mandates all APs and ACs to develop a data breach policy and procedure.

APs, ACs and other registered participants are expected to develop an incident management procedure that includes data incidents.

## **INFORMATION SHARING FRAMEWORK**

The Guidelines stipulate conditions precedent which must be observed by the participants in the sharing of customer information.

APs can share customer information with ACs only upon the presentation and authentication of a valid proof of consent. The Guidelines further provides important details which must be



contained in the consent to ensure its validity.

Where customer information is to be disclosed to an outsourced service provider, the Guidelines stipulate that the CBN's approval must be secured before disclosure.

The AP shall verify every consent received from a customer prior to sharing information with an AC. The Guidelines further prescribes obligations placed on the AP to enable the flow of information with the AC.

## **RISK ASSESSMENT REPORTING AND RISK MANAGEMENT COMMITTEE FOR PARTICIPANTS**

The Guidelines makes it mandatory for APs and ACs to establish a regular reporting mechanism which would provide competent authorities with updated assessments of security risks and measures taken to curbs the risks. Every participant is expected to have a risk management committee of at least three members of senior management cadre whose responsibilities amongst others, shall include periodic consideration of factors such as reputation, customer protection, legal issues, controls, and security measures for computer systems, networks, data centres, operations and backup facilities, and development of risk management reports.

## **CYBERSECURITY BREACH INCIDENT REPORTING**

There is an obligation on the participants to implement adequate security measures and incident management procedures which must include reporting any such incident to the authorities.

## **INCIDENT REPORTING PORTAL**

There shall be an incident reporting portal to enable easy and quick reporting of incidents relating to participants, the system, operation, and any other incident as the CBN shall determine from time to time.

## **INTELLECTUAL PROPERTY PRESERVATION**

The Guidelines provides for the protection of all protectable intellectual property rights of all participants in the system. All ownership rights in any open data or other information shall always remain with the Party or Participant from which such open data or other information originated, whether the open data or other information is in human or machine-readable form.

Participants shall also be allowed to grant royalty-free license for their intellectual property in aggregated data, for use by other participants, subject to the satisfaction of the consent requirement.

## **DISPUTE RESOLUTION MECHANISM**

In the event of any dispute arising from the use of the system, the financial industry dispute resolution process shall apply.

The participants are required to establish procedures for handling customer complaints and resolving disputes, as well as appropriate liability models and redress mechanisms approved by the CBN.

Participants are required to notify a customer upon the receipt of a complaint which must be resolved within 24 hours.

## **CONCLUSION**

Open Banking has increasingly gained prominence in contemporary banking services. The intrusion of technology in modern day banking has paved the way for stakeholders to drive financial inclusion in the banking ecosystem.

Open Banking has been adopted in different jurisdictions to ease the provision of banking services to customers of Banks. In the United Kingdom, open banking is regulated through the Payment Services Directive (“the PSD2”).

The PSD2, however, came into force in different EU member states through the Payment Services Regulations (PSRs). Open banking is regulated in the UK by the Financial Conduct Authority (FCA), using these PSRs. The PSD2 and the resulting PSRs gave customers the right to ask third party providers to make payments on their behalf (Payment Initiation Services or PIS) and access their financial data (Account Information Services or AIS). Through the PSRs, payment service providers, including banks, can open their systems to third party providers, at the request of customers. This has, to a large extent, created the legal and regulatory framework for open banking.

On a related note, other countries have adopted open banking models. In Australia, it is known as “New Payments Platform”, “Unified Payments Interface” in India and “Open API Framework” in Hong Kong. In the US and New Zealand, it’s more informally simply known as ‘Open Banking’.

We further note that the Guidelines is reticent on sanctions for non-compliance. It is recommended that the CBN should address this to ensure that participants who fail to adhere to the letter and spirit of the Guidelines are adequately penalised.

We commend the giant step taken by the CBN to continuously improve financial stability in the Banking Sector. It is hoped that the above Guidelines will enhance competition and innovation amongst participants in the banking system.

## **■ CBN REGULATORY FRAMEWORK FOR AGENT BANKING**

The Central Bank of Nigeria (“CBN”) by a circular dated 9th March 2023 issued the Regulatory Framework for Agent Banking (“the Guidelines”). The Guidelines is a product of the review of Regulatory Framework for Licensing Super-Agents in Nigeria and Guidelines for Regulation of Agent Banking and Agent Banking Relationships in Nigeria. These Guidelines had hitherto provided a guide for agent banking in Nigeria, aimed towards driving financial inclusion in the banking ecosystem.

### **WHAT IS AGENT BANKING?**

The Central Bank of Nigeria (“CBN”) by a circular dated 9th March 2023 issued the Regulatory Framework for Agent Banking (“the Guidelines”). The Guidelines is a product of the review of Regulatory Framework for Licensing Super-Agents in Nigeria and Guidelines for Regulation of Agent Banking and Agent Banking Relationships in Nigeria. These Guidelines had hitherto provided a guide for agent banking in Nigeria, aimed towards driving financial inclusion in the banking ecosystem.

### **SCOPE OF THE GUIDELINES**

The Guidelines applies to the operation of agent banking in Nigeria as well as the licensing of super agents in Nigeria.

### **OBJECTIVES OF THE GUIDELINES**

The Guidelines is aimed at providing not just the minimum standards and requirement for the operation of agent banking in Nigeria, but also the roles and responsibilities of stakeholders participating in Agent Banking.

### **APPLICABILITY**

The Guidelines allows only licensed financial institutions that wish to participate in agent banking to apply to the CBN for approval, using the various information and documents as stipulated by CBN.

## **AGENT STRUCTURE UNDER THE GUIDELINES**

The allowable agent structure that financial institutions are permitted to choose from and supply their details include:

- i. **Super-Agents:** These are agent networks licensed by CBN, that shall establish a collection of outlets or franchises within its wide network of outlets that shall be under its supervision and control.
- ii. **Sole-Agent:** A sole agent is an agent who does not delegate powers to other agents but shall assume the agent banking relationship/responsibility by himself.
- iii. **Sub-Agents:** These are networks of agents that shall be under the direct control of a super-agent or agent as may be provided in the agent banking contract.

Financial Institutions (FIs) shall clearly state the agent structure adopted and provide the following information: (i) Name(s) of agent(s), (ii) Physical location(s) of agents, (iii) Postal address and telephone numbers, (iv) Terms of engagement, itemizing all commercial activities that the agent is currently engaged in, and all proposed responsibilities.

FIs shall require all agents to submit updated information annually or as soon as any change occurs.

## **REQUIREMENTS FOR AGENT BANKING CONTRACT**

According to the Guidelines, the agent banking contract to be executed between the principal and agent/super-agent shall, amongst other things, contain at the minimum, the following:

- i. Reference to the FI's full liability with respect to customers, and it shall clearly specify the obligations of both the FI and the agent.
- ii. The principal's responsibility for the onboarding of all agents to its agent banking platform and its duty to approve all agents' sign-up.
- iii. All activities that the agent shall be enabled to conduct on its behalf or limitations on any such activities in the SLA, in line with the permissible activities for agent banking.
- iv. Explicit statement of all fees and charges in respect of the agent banking arrangement.
- v. Explicit statement that FIs and their agents shall fully comply with AML/CFT/CPF and Know Your Customer (KYC) requirements.
- vi. Dispute resolution clauses.

## **RESPONSIBILITY OF FIS REGARDING AGENTS ACTIONS AND OMISSIONS**

The FI shall be responsible for all actions and/or omissions of its agent, notwithstanding anything contained in the contract to the contrary, provided they relate to agent banking services or matters connected therein.

The agent shall be under obligation to deliver transaction support documents to the principal.

### **ELIGIBILITY FOR BECOMING AN AGENT.**

The Guidelines provides the following conditions that must be met in order to qualify to become an Agent:

- i. The applicant must have been in legitimate commercial activity for at least twelve (12) months immediately preceding the date of the application to become an agent;
- ii. An entity shall not be eligible for appointment as an agent if the carrying out of agent banking business by the entity shall contravene any written law, regulation or the objects of the entity.

The following entities that meet the requirements and are not prohibited by any legislation from carrying on profit making business are eligible for appointment as agents under the Guidelines: (a) Limited Liability Companies, (b) Trusts, (c) Educational Institutions, (d) Sole Proprietorships, (e) Partnerships, (f) Public Entities, (g) Cooperative Societies and any other entity which the CBN may prescribe.

### **ROLES AND RESPONSIBILITIES OF FINANCIAL INSTITUTIONS**

In line with the Guidelines, FIs have the following non-exhaustive roles to play:

- a. Obtain approval of both their Board of Directors and the CBN for agent banking.
- b. Develop relevant and appropriate documents for agent banking.
- c. Have oversight over the activities of the agent.
- d. Formulate policies and procedures to be implemented in order to secure information, communications and technology and data.
- e. Conduct regular and periodic reviews of agents' transactions and activities.
- f. Manage the agent banking business.
- g. Provide agents with regulations and risk management policy documents needed for efficient business transactions.

## **PERMISSIBLE AND PROHIBITED ACTIVITIES**

Some of the permissible activities which can be performed by an agent include:

- a. Cash deposits and withdrawals within permissible limits.
- b. Cash payment.
- c. Balance inquiry.
- d. Bills payment.
- e. Generation and issuance of mini statement.
- f. Cash disbursement and cash repayment of loans.
- g. Funds transfer services (local money value transfer).

Some of the prohibited activities include:

- a. Giving guarantees.
- b. Charging customer fees outside the regulated fees schedule.
- c. Offering banking services of its own accord.
- d. Operating or carrying out any transaction where there is communication failure with the financial institution.
- e. Carrying out a transaction where a receipt or acknowledgement cannot be generated.
- f. Transacting in foreign currency.

## **POWERS OF CBN OVER AGENTS AND SUPER AGENTS**

The Guidelines permits the CBN to exercise powers over agents and Super Agents in the following manner:

- i. Request for information from agents at any time as it may deem necessary.
- ii. Carry out spot checks or scheduled inspection of the books and premises of agents.
- iii. Direct an agent to take actions or desist from conducts as the CBN may deem necessary, for the safety and soundness of the financial system.
- iv. Direct the termination of the agency contract between an agent and an FI.
- v. Direct an FI to take such actions against or on behalf of an agent, as the CBN may find appropriate.
- vi. Direct an FI to take such remedial action arising from the conduct of an agent as it may deem fit.

## **POWERS OF CBN OVER AGENTS AND SUPER AGENTS**

Financial institutions are required to publish a list of their agents on their website and annual reports. This list can also be published on any other publication as a financial institution deems fit. The list of agents shall be disseminated to all the FI's branches and may also be disseminated to its agents.

## **ANTI-MONEY LAUNDERING AND COMBATING OF TERRORISM FINANCING REQUIREMENTS**

FIs shall train their agents on anti-money laundering (AML) and combating of financing of terrorism (CFT) countering proliferation financing (CPF) requirements.

### **CONSUMER PROTECTION MEASURES**

Financial institutions are required to establish appropriate consumer protection mechanisms to safeguard their customers from fraud, data breach and general loss of service. In the same vein, dispute resolution mechanisms should be established in line with extant legislation to resolve disputes between customers and the financial institution. The Guidelines prescribe minimum consumer protection measures to be observed by financial institutions and agents.

### **RENDERING OF RETURNS BY FIS**

Financial institutions are required to make monthly returns on: (i) the nature, value, and volume of transactions, (ii) Incidents of fraud, theft, or robbery, (iii) the nature and number of customer complaints and remedial measures taken, (iv) Any other returns that the CBN may request from a financial institution.

Financial institutions along with their annual reports and accounts, are required to include reports of agent banking operations activities.

### **APPLICATION FOR SUPER-AGENT LICENSE**

Application to become a licensed Super-Agent is made to the CBN with the necessary information as the apex bank may require from time to time, along with

the documents required for application.

For an institution to be eligible for a Super-Agent license, it must have at least 50 agents, a minimum of 50million naira of shareholders funds unimpaired by losses and shall obtain a reference letter from a financial institution.

### **PARTIES TO AGENT BANKING TRANSACTION**

The Parties contemplated in an agent banking transaction include:

- a. Agent
- b. Acquirer
- c. Issuer
- d. Super-Agent
- e. Nigerian Inter-Bank Settlement System

### **CBN SANCTIONS OVER AGENTS AND SUPER AGENTS**

The sanctions which the CBN can employ against any FI, its Board of Directors, officers, or agents for contravening the provisions of the Guidelines include:

- a. Withholding corporate approvals
- b. Revocation of agent banking approval
- c. Termination of agent banking contract
- d. Financial penalties
- e. Prohibition from contracting new agents
- f. Prohibition from engaging in any further agent banking business.

# GUIDELINES FOR CHANGE OF OPERATING LICENCES FOR BANKS AND OTHER FINANCIAL INSTITUTIONS

The Central Bank of Nigeria (CBN) by a circular dated 28th March 2023 issued an exposure draft Guidelines for Change of Operating Licences for Banks and Other Financial Institutions (“**Guidelines**”) as part of its duty as a licensing and regulatory body for banks and other financial institutions in Nigeria.

The Guidelines provides the procedure for a bank or other financial institution (OFI) desirous of changing its licence type through conversion, re-categorization, and re-designation. In the same vein, the Guidelines further set out the need for banks and OFI to comply with the relevant licensing requirements under various regulatory guidelines.

## APPLICABILITY

The Guidelines apply to commercial banks, merchant banks, non-interest banks, microfinance Banks, primary mortgage banks, payment service banks and any other institution that the CBN may, from time to time, designate.

## ELIGIBILITY CRITERIA

According to the Guidelines, for a bank or other financial institutions to be eligible, the following must be considered:

- a. The institution must have no supervisory report adverse to its application.
- b. The institution must be under the supervisory purview of the CBN.
- c. Where the institution is making an application for conversion, it must have been in operation for at least five years.
- d. Any other condition stipulated by the CBN from time to time.

## LICENSING APPLICATION

The Guidelines provides that Applications for change of license shall be in two phases: (1) **Approval-in-Principle** (AIP);

and (2) **Final Approval**. Each of the application phases shall be accompanied by the submission of requisite documents as provided under the Guidelines.

It is pertinent to note that prior to the issuance of a Final Approval, the CBN shall conduct an inspection of the premises and facilities, to ascertain their suitability or otherwise, and confirm the authenticity of all relevant documents submitted by the bank or OFI where applicable.

## STATUTORY COMPLIANCE

The Guidelines provides that Banks and OFIs that have applied and gotten approval for change of licence, are required to comply with the provisions of the CBN Guidelines on Corporate Governance and the Nigeria Code of Corporate Governance 2018, Anti-Money Laundering and Combating Terrorism Financing Guidelines, amongst other relevant laws.

## CONCLUSION

The Guidelines will put to rest the incessant demands by banks and other financial institutions which seek to change their license under the applicable CBN Guidelines. Further to this, it is also essential for banks and other financial institutions to comply with the requirements as clearly set out under these Guidelines, as CBN reserves the right to decline approval where the requirements are not met.

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