
# Powers of the Central Bank of Nigeria Vis-À-Vis Payment of Dividends to Bank Shareholders

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## Introduction

The Central Bank of Nigeria (CBN) recently issued a directive, dated 31st January 2018, barring Deposit Money Banks (DMBs) and Discount Houses (DHs) that do not meet the minimum Capital Adequacy Ratio[2] (CAR) set by the CBN from paying dividends to their shareholders. DMBs and DHs that have a Composite Risk Rating (CRR)[3] of 'High', or have Non-Performing Loans (NPL)[4] of above 10% are also barred from paying dividends to their shareholders.

Exceptions are made for DMBs and DHs that meet the minimum CAR, have a CRR of 'Above Average' or an NPL ratio of more than 5%, but less than 10%. Such DMBs or DHs can pay out 30% of their net income (profits) as dividends to their shareholders. Also, DMBs and DHs that have CAR

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[2]Capital Adequacy Ratio (CAR) is the proportion of a bank's qualifying capital or equity expressed as a proportion of its risk-weighted assets (loans). It is the proportion of a bank's own equity concerning its risk exposure. In simpler terms, it is by what percentage a bank's risk-weighted assets is higher or lower than the bank's qualifying capital. If a bank, for example, has N600 million risk-weighted assets and has a qualifying capital of N80 million, then its CAR is N80 million/N600 million which is equal to 13%. The CBN has the CAR set to 10% for banks with a national licence, 15% for banks with an international licence, and 16% for systematically important banks.

[3] (CRR) of 'High', or a non-performing loan (NPL) ratio of above 10 percent are barred from paying any dividends to their shareholders.

According to the CBN's 'Supervisory Framework for Banks and other Financial Institutions in Nigeria', the Composite Risk Rating is the Framework's "final" rating and reflects the assessment of the safety and soundness of the subject institution by the supervisor (i.e. the CBN). Its assessment includes a review of the quality, quantity, and availability of externally and internally generated capital. The Composite Risk Rating is a significant factor in determining the supervisory intervention of the CBN for the institution which will be commensurate with the risk profile of the institution informed mainly by the Composite Risk Rating.

[4] Non-performing Loans Ratio is the ratio of defaulting loans (loans under which payments of interest and principal are past due by 90 days or more) to total gross loans (total value of loan portfolio). In calculating this ratio, the loan amount recorded as non-performing includes the gross value of the loan as recorded on the balance sheet, not just the amount that is overdue.

of at least 3% above the minimum requirement, a CRR of 'Low' and an NPL ratio of more than 5%, but less than 10%, can pay out up to 75% of their profits as dividends to their shareholders. DMBs and DHs that meet the minimum capital adequacy ratio, have a CRR of 'Low' or 'Moderate', and an NPL ratio of not more than 5% have no restrictions on paying dividends based on this CBN directive. The goal of the CBN directive is to force DMBs and DHs with high risk profiles to grow their capital and build capital buffers with retained earnings instead of paying out most of their profits as dividends to their shareholders. The CBN directive affected the performance of the shares of some of the DMBs and DHs on the Nigerian Stock Exchange (NSE). It was reported that the prices of shares of many of the affected entities fell in the capital market as soon as the news of the CBN directive filtered through.

## The legal basis of the CBN directive

Section 45 of the *Central Bank of Nigeria Act 2007 (*"CBN Act"*)* [5] extensively empowers the CBN to issue directives on minimum reserve requirements for all banks. Further provisions applicable to this directive are contained in the *Banks and other Financial Institutions Act 1991*[6] ("BOFI Act"). Section 13(1) of the BOFI Act echoes the general provisions of Section 45 of the CBN Act cited above and provides:

> ***"A bank shall maintain, at all times, capital funds unimpaired by losses, in such ratios to all or any liabilities or both such assets and liabilities of the bank and all its offices in and outside Nigeria as may be specified by the Bank."***

Section 13(2) of the BOFI Act sets out provisions directly impacting on the CBN's powers to issue the directive in context herein as it provides:

> ***"Any bank which fails to observe any such specified ratios may be prohibited by the Bank from:***
>
> ***a. Advertising for or accepting new deposits***
>
> ***b. Granting credit and making investment***

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[5] Cap C4 2004

[6] As amended in 1997, 1998, 1999 and 2002, Cap B3, LFN 2004.

*c.* ***Paying cash dividends to shareholders"*** [Emphasis supplied]

Lastly, *section 17(1)(c)* of the BOFI Act provides:

***"No bank shall pay dividends on its shares until –***

***c) it has complied with any capital ratio requirement as specified by the Bank under section 13(1) of this Act."***

The provisions of the *Companies and Allied Matters Act 1990* (CAMA) corroborate the above position of the law. Section 381 of CAMA gives a company the discretion to declare dividends. The directors of a company are further empowered to decide against declaring dividends if there are reasonable grounds for believing that the company is or would be unable to pay its liabilities after the declaration of dividends.

Section 385 of CAMA also provides that when dividends are declared by a company, the dividends become special debts due to, and recoverable by the shareholders. However, in the present scenario, the DMBs and DHs have been barred by the CBN from declaring dividends; thus, the shareholders have not acquired the right to sue to recover such dividends.

## Conclusion

From the preceding, it is evident that there was a legal basis for the CBN's directive. Furthermore, the CBN's directive could be the panacea to resolving the growing rate of NPLs threatening to cause illiquidity in the banking sector.

The banking industry in Nigeria is a regulated industry and investors in the sector are presumed to be aware that the CBN, in the exercise of its regulatory powers, may issue directives that could adversely affect their investment. However, such aggrieved shareholders can exercise their right to remove the board of directors, who in the exercise of their duties, failed to meet CBN's requirements.

**If you would like to get more information on this, you may contact the Banking and Finance Practice Group of the firm through its email address: bankfin@aelex.com.**

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