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ARTICLE SERIES

ANALYSING CBN'S GUIDELINES FOR LICENSING AND REGULATING PAYMENT SERVICE HOLDING COMPANIES

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INTRODUCTION

On 3rd August 2021, the Central Bank of Nigeria (**CBN**) issued the Guidelines for Licensing and Regulation of Payments Service Holding Companies in Nigeria [1] (the “Guidelines”) which sets out the requirements for the operation of payment service holding companies in Nigeria.

The Guidelines are issued further to the CBN’s circular of 9 December 2020 outlining new licence categorisations for the Nigerian payments system [2] which requires companies desirous of operating more than one licence category to set up a Payments Service Holding Company with subsidiaries clearly delineated. This arrangement, according to the CBN would prevent commingling of activities, facilitate management of risks and enable the CBN exercise adequate regulatory oversight on all the companies operating within the Group.
In this article, we analyse the Guidelines and set out key considerations to be borne in mind by persons who intend to operate in more than one payment licence category.

WHAT IS A PAYMENTS SERVICE HOLDING COMPANY?

As defined in the Guidelines, a Payments Service Holding Company (PSHC) is a holding company set up for the purpose of making and managing equity investment in two or more companies, being its subsidiaries, which are payments service providers in the following categories:

- Mobile Money Operations
- Switching and Processing
- Payment Solution Services

A PSHC must:

- be non- operating – formed solely to hold equity investment in its separate subsidiaries in a “parent-subsidiary” arrangement;
- have, at the minimum, two subsidiaries including a mobile money operator and a switching company;
- have a board size of between 5 and 10 members including, at least, an individual with requisite experience in the business(es) of the subsidiary payments service.

[1]https://www.cbn.gov.ng/Out/2021/CCD/CIRCULAR%20AND%20GUIDELINES%20FOR%20LICENSING%20AND%20REGULATION%20OF%20PAYMENTS%20SERVICE%20HOLDING%20COMPANIES%20IN%20NIGERIA.pdf
[2]The circular can be found at https://www.cbn.gov.ng/Out/2020/CCD/Categorization%20of%20PSPs.pdf

KEY PROVISIONS OF THE GUIDELINES

Permissible Activities

A PSHC may carry out the following activities:

- Holding of equities in financial and technological subsidiaries that facilitate and/or enhance innovative digital financial services.

- Provision of broad policy direction, shared services and/or entering into technical or management service contract with any of its subsidiaries, on an arm's length basis and with the prior written approval of the CBN, in respect of the following areas:
  - Human Resources services;
  - Risk Management services;
  - Internal Control services;
  - Compliance services;
  - Information and Communication Technology;
  - Legal services; and
  - Facilities (office accommodation including electricity, security, cleaning services in that accommodation).

Non-permissible Activities

A PSHC is prohibited from undertaking the following activities:

- Establishment, divestment and closure of subsidiaries, without the prior written approval of the CBN;
- Deriving or receiving income from sources other than the following:
  - Dividend income from its subsidiaries/associates;
  - Income from shared services, where applicable;
  - Interest earned from idle funds invested in government securities or placement with licensed financial institutions;
  - Patents, royalties and copyrights;
  - Profit on divestment from subsidiaries/associates; and
  - Any other source as may be approved by the CBN.

Licensing Requirements

The promoters of a PSHC are required to submit a formal application for the grant of a licence. However, a financial holding company [3], with a payment service provider as a subsidiary, that has been licensed prior to the issuance of the Guidelines is not required to apply for a PSHC licence.

The Licensing process for PSHCs is in two phases – Approval in Principle and the Final Licence phase.

- Approval-in-Principle (AIP)

  A PSHC is not to be incorporated unless an AIP has been obtained from the CBN, a copy of which is to be presented to the Corporate Affairs Commission.

[3] A company whose principal object includes the business of a holding company set up for the purpose of making and managing equity investment in two or more companies, being its subsidiaries, engaged in the provision of financial services, one of which must be a bank.

It is important to note that an AIP does not authorise the promoters to commence operations or perform any of the permissible activities of a PSHC. Upon obtaining an AIP, the promoters may however proceed to carry out the activities that are permitted at this stage.

- **Final Licence**

  No later than six (6) months after obtaining an AIP, the promoters of a proposed PSHC are required to apply to the CBN for the grant of a final licence. The CBN shall issue the final licence where it is satisfied with the promoters'status of compliance with the conditions stated in the Guidelines, as well as their organisational, security, infrastructural, risk management and internal control arrangements.

  PSHC licences are granted for an indefinite period or such period as the CBN deems necessary and are not transferable.

Requirements for commencement of operations

Before a PSHC can commence operations, it must notify the CBN and provide it with the following:

- Shareholders' Register;
- Share certificate issued to each investor;
- Enterprise Risk Management Framework
- Internal Control Policy;
- Minutes of pre-commencement board meeting;
- Opening statement of affairs signed by directors and auditors; and
- Date of commencement of activities.

Minimum Paid-Up Capital and Capital Reserves

Where a PSHC wholly owns the subsidiaries, its minimum paid-up capital must exceed the total required minimum capital of all its subsidiaries. However, where the PSHC owns less than 100%of the subsidiaries, its minimum paid-up capital must exceed the totality of its proportionate holding in the subsidiaries.

Ownership and Control [4]

In respect of ownership and control, the Guidelines provide that:

- The prior approval of the CBN must be obtained in respect of any change in ownership which results in change in control of the PSHC or the transfer of shareholding of 5% and above in the PSHC.

- Subsidiaries of a PSHC are prohibited from acquiring shares in the PSHC and other subsidiaries of their parent PSHC.

[4] Control is the direct or indirect authority to influence or direct the management and policies of an entity whether through ownership, voting rights or by contract.

- Where a PSHC loses control of either its switching and processing subsidiary or mobile money subsidiary for a period exceeding six (6) consecutive months, the PSHC shall cease to be a PSHC and must return its licence to the CBN for cancellation.

- Where a PSHC with only two subsidiaries, loses its controlling interest in either of the subsidiaries, for a period exceeding six (6) consecutive months, the PSHC shall cease to be a PSHC and must return its licence to the to the CBN for cancellation.

Excise of Subsidiary from a Payments Service Holding Company

Where the CBN is of the opinion that a PSHC is being run in a manner that is detrimental to its subsidiaries and/or stability of the financial system, it may direct the PSHC to divest from its subsidiaries.

Payment of Dividends

PSHCs are not permitted to distribute dividends unless:

- All operational, preliminary and organisational expenses, losses incurred and other capitalised expenses, not represented by tangible assets (excluding goodwill), have been completely written off.

- Adequate provisions have been made to the satisfaction of the CBN for actual and contingent losses.

- It has complied with the capital requirements stipulated in the Guidelines.

CONCLUSION

The PSHC structure creates a system of checks and balances as it ensures that no single company is able to provide mobile money operations, switching and processing services and payment solution services. This in turn enhances efficiency as it allows each company within a group to focus on a specific service and makes it easier for the CBN to perform its regulatory oversight functions.

The issuance of the Guidelines is in line with the CBN's commitment to promote an efficient and credible payments system and is, indeed, a welcome development.

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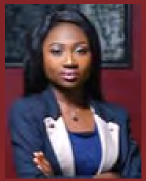
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