

ARTICLE SERIES

NEW CBN GUIDELINES ON TENURE OF BANK EXECUTIVES AND DIRECTORS



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INTRODUCTION

By a Circular to all Deposit Money Banks (FPR/DIR/PUB/CIR/001/070) dated February 24, 2023 ("the Circular"), the CBN has now made provision for the tenure of bank Executives, Executive Directors ("EDs"), Deputy Managing Directors ("DMDs") of deposit money banks and financial holding companies. The Circular also prescribes a cumulative tenure for EDs, DMDs, Managing Directors ("MDs")/ Chief Operating Officers ("CEOs"), and Non-Executive Directors ("NED") of deposit money banks and financial holding companies, amongst others.

The tenure of NED and CEOs of banks and financial holding companies were previously set out in the Code of Corporate Governance for Banks and Discount Houses ("the Code") issued by the Central Bank of Nigeria ("the CBN") in May 2014. However, the Code did not provide for the tenure of Executives, EDs, and DMDs.

This Article examines the regulation of the tenure of the executive management, executive directors, and non-executive directors of deposit money banks under the Circular, the position under the Code, and our comments.

Tenure of Executive Management and Non-Executive Directors under the Circular

Find below highlights of the Circular on the tenure for executive management and non-executive directors:

a) Tenure of executive directors, deputy managing directors, and managing directors: The tenure of EDs shall be in line with the terms of the director's engagement contract as approved by the bank's board of directors, subject to a maximum of ten (10) years.[1]

However, the cumulative tenure of an ED who becomes the DMD of a bank or deposit money bank shall not exceed ten (10) years.[2]

It is important to note that EDs, DMDs, and MDs who exit from the board of a bank either upon or before the expiration of their maximum tenure shall observe a cool-off period of one (1) year before being eligible for appointment to the board of any deposit money bank.[3]

b) Tenure of executives: Where an executive who is a DMD becomes the MD/CEO of a deposit money bank before the end of such executive's maximum tenure, the cumulative tenure of such executive shall not exceed twelve (12) years.[4]

c) Tenure of non-executive directors: NEDs shall serve a maximum period of twelve years in a bank, consisting of three terms of four years each[5]. This provision does not apply to Independent Non-Executive Directors ("INED").

[1]The Circular
[2]The Circular
[3]The Circular
[4]The Circular
[5]The Circular

d) Cumulative Tenure for executive directors, deputy managing directors, managing directors, and non-executive directors in the Banking Industry: The cumulative tenure of EDs, DMDs, MDs, and NEDs across the banking industry is twenty (20) years[6].

Tenure of Non-Executive Directors and Chief Operating Officers under the Code

Generally, the Code describes core corporate governance considerations such as disclosures, risk management, conflict of interest, and shareholders' and other stakeholders' rights. It also enumerates the responsibilities of the board of directors, its size and composition, separation of powers, appointment, and tenure of directors, amongst other matters.

The Circular focuses on the tenure of directors, while all other provisions of the Code will continue to apply.

Under the Code, non-executive directors of banks can hold office for a maximum terms of 12 years consisting of three terms of four years each[7]. For bank CEO's, their terms of office are determined by their engagement terms with the bank, subject to a maximum of 10 years. A CEO's tenure may consist of terms not exceeding five (5) years each. Also, a CEO who has served for a full term will not be eligible for appointment in the same capacity in the bank or its subsidiaries.[8]

IMPORTANT NOTES

a)Although the Circular does not specify the tenure for INEDs of banks, it exempts them from the requirement to serve for a maximum of twelve (12) years.

b)The Circular stipulates the tenure of company executives, EDs, and DMDs, which the Code did not provide.

c)Although the Circular retains the ten years for MDs/CEOs, it is unclear whether the tenure can be broken down into shorter terms as provided in the Code. This may be possible since the Circular contains no express prohibition.

d)The maximum tenure of three (3) terms of four (4) years each for NEDs is the same under the Circular and the Code.

e)Former EDs, DMDs, and MDs of Banks who exit their roles upon or before the expiration of their maximum term shall observe a cool-off period of one (1) year before being eligible for appointment as NED to the board of a deposit money bank. However, EDs, DMDs, MDs, and NEDs can only serve as directors in the banking industry for a maximum of twenty (20) years.

[6]The Circular

[7]Section 2.4.3 of the Code

[8]Section 2.4.5. of the Code

CONCLUSION

By the new Circular, the CBN clearly aims to strengthen governance practices in the banking industry. However, there is a need for the CBN to close the gaps created by the Circular by clarifying the tenure of INEDs and clarifying whether banks can appoint MD/CEOs for shorter terms aggregating to the ten (10) year tenure.



CONTACTS



Clementina Ramsey-Osere
crameyosere@aelex.com



Opeyemi Lawal
olawal@aelex.com

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CONTACT DETAILS

LAGOS, NIGERIA

4th Floor, Marble House
1, Kingsway Road, Falomo
Ikoyi, Lagos

Telephone: (+ 234 1) 2793367; 2793368
4736296, 4617321-3;
Facsimile: (+ 234 1) 2692072; 4617092
E-mail: lagos@aelex.com

ABUJA, NIGERIA

4th Floor,
Adamawa Plaza
1st Avenue, Off Shehu Shagari Way
Central Business Area
FCT Abuja, Nigeria

Telephone: (+234 9) 8704187, 6723568,
07098808416
Facsimile: (+234 9) 5230276
E-mail: abuja@aelex.com

PORT HARCOURT, NIGERIA

2nd Floor,
Right Wing UPDC Building
26, Aba Road
P.O. Box 12636, Port Harcourt
Rivers State, Nigeria

Telephone: (+234 84) 464514, 464515
574628, 574636
Facsimile: (+234 84) 464516, 574628
E-mail: portharcourt@aelex.com

ACCRA, GHANA

Suite CCasa Maria
28 Angola Road
Kuku Hill, Osu
Accra

Telephone: (+233-302) 224828, 224845-6
Facsimile: (+233-302) 224824
E-mail: accra@aelex.com