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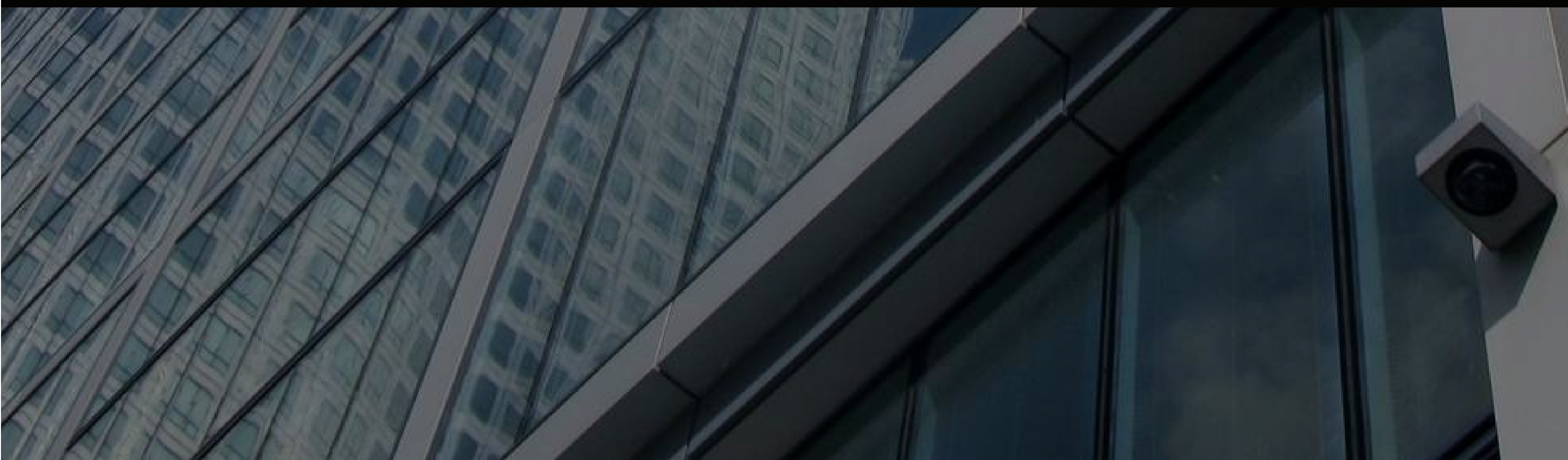
Licensing and regulation of payments service holding companies in Nigeria:

PRÉCIS OF CBN GUIDELINES 2021



The Central Bank of Nigeria (CBN), on 3rd August 2021, issued the Guidelines for Licensing and Regulation of Payments Service Holding Companies in Nigeria (the "Guidelines") which set out the requirements for the operation of payment service holding companies in Nigeria.

The Guidelines are issued further to the CBN's circular of 9th December 2020 outlining new licence categorizations for the Nigerian payments system which requires companies desirous of operating in more than one licence category to set up a Payments Service Holding Company with subsidiaries clearly delineated. According to the CBN, the arrangement, would prevent commingling of activities, facilitate management of risks and enable the CBN exercise adequate regulatory oversight on all the companies operating within the Holding Group.

The Guidelines are issued in line with the apex bank's commitment to promote an efficient and credible payments system. The affected regulated payment activities are:

Mobile Money Operations

Switching and Processing

Payment Solution Services

Any other activity as may be approved by the CBN

1.0 DEFINITION AND STRUCTURE

A payment service generally involves any service provided by a financial institution to allow one person or organization to pay another for a product or service. A holding company is a parent company or any company which holds more than half of the equity share capital of other companies or controls the composition of the board of directors of other companies.

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: (a) Mobile Money Operations (b) Switching and Processing (c) Payment Solution Services

The Structure of a PSHC includes the following:

one

It is to be non-operating, formed solely to carry out investment in its approved subsidiaries – with which it is to hold equity investment in a “parent-subsidiary” arrangement – without engaging in the day-to-day management and operations of same.

two

A PSHC is to be registered with the Corporate Affairs Commission (CAC) as a corporate body to be regulated by the CBN, and must have a board size between 5 to 10 members (or as otherwise determined by the CBN).

three

A PSHC is to operate a minimum of two subsidiaries – a Mobile Money Operator (MMO) and a Switching company. Since only two hierarchies are permitted, the subsidiary of a PSHC may be parent company to another subsidiary (an intermediate company), but the latter cannot have a subsidiary of its own

four

Subject to CBN’s approval a PSHC may acquire a controlling interest in any financial or technological company where controlling interest amounts to at least 51% of authorised share capital of the entity.

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. See Circular at https://www.cbn.gov.ng/Out/2020/CCD/Categorization%20of%20PSPs.pdf

2.0 LICENSING REQUIREMENTS

The promoters of a PSHC are required to submit a formal application for the grant of a licence. This application should be addressed to the Director, Payments System Management Department, CBN. PSHCs with already-licenced subsidiaries prior to the issuance of the Guidelines in question are exempted.
The Licensing process is in two phases: Approval-in-Principle ("AIP") and Final Licence.

2.1 Requirements for Grant of Approval-In-Principle

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.

A non-refundable application fee of N1,000,000.00 (One Million Naira only), subject to periodic revision by the CBN is required. This fee is payable electronically. Also, a no-objection letter is required from the regulatory body in the home country in the case of regulated foreign institutional investor.

An Approval in Principle (AIP) will then be granted if the CBN is satisfied with the promoters' application. It is important to note that an AIP does not authorize the promoters to commence operations or perform any of the permissible activities of a PSHC.

2.2 Requirements for Grant of Final Licence

The promoters are required not later than 6 months after obtaining the AIP, to submit an application to the CBN for the grant of a final licence.

A Non-refundable licensing fee of N5,000,000.00 (Five Million Naira only), subject to periodic revision by the CBN. This fee is also payable electronically;

The CBN shall issue the final licence where it is satisfied with the promoters' status of compliance with the conditions set out in the Guidelines.

3.0 CORPORATE GOVERNANCE

3.1. Ownership and Control

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.

• 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 CBN for cancellation.

3.2. Change in Ownership

The Guidelines provides that no PSHC's director, shareholder, agent or instrumentality of such an entity or its shareholders shall enter into an agreement or arrangement which results in a change in the control of the PSHC or the transfer of shareholding of 5% and above in the PSHC except with the prior written approval of the CBN.

4.0 APPOINTMENT OF DIRECTORS AND TOP MANAGEMENT

With reference to the CBN Corporate Governance Guidelines, relevant provisions of Company and Allied Matters Act (CAMA) and the Financial Reporting Council of Nigeria's Code of Corporate Governance, no PSHC shall appoint as director, any person, who at the relevant time is a director of any of its subsidiaries, except with the prior written approval of the CBN.

Where such an appointment is approved, the number of directors from the PSHC, at any point in time, shall not exceed 30% of the membership of each of the subsidiaries.

5.0 MINIMUM PAID-UP CAPITAL

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 shall exceed the summation of its proportionate holding in the subsidiaries. Excess capital in one subsidiary shall not be used to make up a shortfall in another subsidiary.

For example, if XYZ Holding company wholly owns the subsidiaries, that is, XYZ has at least over 50% shareholding in both ABC Company (Mobile Money Operator) and DEF Company (Switching and Processing Company), the minimum paid-up capital of XYZ Holding Company must exceed the total required minimum capital of both ABC and DEF company. If XYZ does not wholly own shareholding in ABC Company and DEF Company, the minimum paid-up capital of XYZ Holding company shall exceed the summation of its proportionate holding in ABC and DEF Company.

6.0 LIMIT ON CONTIGENTLIABILITIES

The total contingent liabilities of a PSHC on behalf of its subsidiaries shall not exceed 20% of the PSHC's shareholders' funds unharmed by losses. In other words, the liabilities guaranteed by the PSHC on their subsidiaries' behalf shall not exceed 20% of the PSHC shareholder funds not suffered by any losses.

CONCLUSION

The CBN has once again taken another action aimed at developing feasible and enabling frameworks for the development of the payment services, electronic and mobile banking architecture.

With the release of the Guidelines for the PHSCs the CBN is applying the model of separating different financial services in different subsidiaries in order to prevent the commingling of activities, facilitate the management of risks within the payment service industry, and enable adequate regulatory oversight on the activities of licensed operators. The Guidelines are intended to ensure a clear demarcation of duties of investment companies from those of their subsidiaries thereby enhancing efficiency as it allows each company within a group to focus on a specific service and make it easier for the CBN to perform its regulatory oversight functions.

> **It is important to note that an AIP does not authorize the promoters to commence operations or perform any of the permissible activities of a PSHC.**
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> Quoted from page 2, section 2.1

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