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CBN'S GUIDELINES FOR LICENSING AND REGULATION OF PAYMENTS SERVICE HOLDING COMPANIES IN NIGERIA

Introduction

On 9th December 2020, the Central Bank of Nigeria (CBN) approved the New License Categorisations for participants in the Nigerian payments system in line with its commitment to promote an efficient and credible payments system in the country. The framework requires companies desirous of combining activities under the Switching and Processing, Mobile Money Services (MMS), and Payment Solution Services (PSS), to set up a holding company (Holdco) known as Payment Service Holding Company (PSHC) with its subsidiaries clearly delineated to prevent commingling of activities.

The December 2020's framework was issued when there was no specific regulation applicable to the implementation of Holdco structures by Payment and Fintech companies. The primary instrument that regulated the operation of Holdcos within the financial services sector was the CBN Guidelines for Licensing and Regulation of Financial Holding Companies in Nigeria, which was issued by the CBN for banking groups handling other non-banking activities.

The CBN has now issued the Guidelines for Licensing and Regulation of Payments Service Holding Companies in Nigeria (the Guidelines) which regulates the implementation of Holdco structures by Payment and Fintech companies. The Guidelines set out permissible and non-permissible activities of PSHCs in Nigeria, requirements for the adoption and operations of PSHCs, ownership and control, licensing, and corporate governance.

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This Newsletter highlights the key provisions of the CBN's Guidelines for Licensing and Regulation of Payments Service Holding Companies in Nigeria issued on 3rd August 2021.

KEY HIGHLIGHTS OF THE GUIDELINES

Definition of PSHC

Under the Guidelines, a PSHC is a company whose principal object clause include the business of a holdco set up for the purpose of making and managing investment in two or more companies being subsidiaries holding the relevant Payment Service Providers across the MMS, Switching and Processing, and PSS.

Requirements for operations of a PSHC

The Guidelines direct companies seeking to operate more than one license category to set up a PSHC with the activities of the subsidiaries clearly delineated. The affected licensing categories for the setup of a PSHC under the guidelines are MMS, Switching and Processing, PSS, and other categories as may be approved by the CBN.

Under the Guidelines, a PSHC must inform the CBN of its readiness to commence activities and such information must be accompanied 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
- Date of Commencement of activities

Business and Incorporation

A PSHC is required to be a non-operating entity whose principal object clause include the business of a holding company set up for the purpose of making and managing investment in two or more companies being subsidiaries holding the relevant payment service provider's licence. The PSHC must be incorporated by the Corporate Affairs Commission (CAC), and licensed, supervised and regulated by the CBN.

The PSHC shall have a board of 5 – 10 members or such number as may be determined by the CBN Corporate Governance Guidelines.

Structure

For any PSHC structure to emerge, the proposed PSHC shall have not less than two subsidiaries, which includes a Mobile Money Operator (MMO) and a Switching Company.

Giving the permissible level of hierarchies, a PSHC is permitted to have two hierarchies that is a subsidiary, which is a parent of another subsidiary (intermediate company). However, the CBN may, by order, direct a PSHC to divest or excise from a subsidiary, where

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it appears that the PSHC is being run in a manner that is detrimental to the subsidiary or stability of the financial system.

The PSHC may acquire controlling stake in any financial and/or technological company, subject to the prior approval of the CBN where controlling interest represents a minimum of 51% of the share capital.

Licensing Requirements

The promoters of a PSHC shall submit a formal application addressed to the Director, Payments System Management Department, for the grant of a licence. The application shall be accompanied by the required application documents, and the licensing process shall be in two phases; Approval-in-Principle and Final License.

The application for grant of Approval-in-Principle must be accompanied with a non-refundable sum of N1,000,000 (One Million Naira) or such other amount as may be specified by the CBN, evidence of meeting with the prescribed minimum paid-up capital, detailed business plan or feasibility report, a written and duly executed undertaking by the promoters, shareholders agreement, statement of intent to invest in the PSHC to be made by each investor, technical services agreement, and a draft copy of the Company's Memorandum and Articles of Association.

Where the CBN grants the Approval-in-Principle, the Promoters shall apply for the grant of a Final License within six months of the grant of the Approval-in-Principle. The application for grant of Final License must be accompanied by a non-refundable fee of N5,000,000 (Five Million Naira), evidence of promotion or investment of a payment service company, evidence of payment of capital contribution by each shareholder, evidence of location of Head Office for the take-off of the PSHC, schedule of changes (if any) in the Board, Management, IT Infrastructure etc, evidence of ability to meet technical requirements and modern infrastructural facilities, organizational structure showing functional units, responsibilities, reporting relationships etc, board and staff training programme, and grade of heads of departments.

A Financial Holding Company, with a payment service provider as a subsidiary that had been licensed before the issuance of the Guidelines, does not need to apply for a PSHC licence.

Capital requirements

A PSHC is required to have a minimum paid-up capital, which shall exceed the sum of the minimum regulatory capital/total equity of all its subsidiaries, as may be prescribed by the CBN. This applies where the PSHC holds 100% equity in all the subsidiaries. However, where the PSHC owns less than 100% of the equity of the subsidiaries, its minimum paid-up capital must exceed the sum of its holding in the subsidiaries. The guidelines also stipulate that a PSHC's total exposure on contingent liabilities on behalf of its subsidiaries shall not exceed 20% of the PSHC's shareholders' funds unimpaired by loses.

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Corporate Governance

The board shall include, at least, one individual with requisite experience in the business of the subsidiaries within the group. Appointment to the board and management positions shall be in line with the requirements of Assessment Criteria for Approved Persons' Regime for Financial Institutions or any applicable regulation, issued by the CBN.

The PSHC shall comply with the provisions of the CBN Corporate Governance Guidelines and demonstrate evidence of existence of competent and independent board, with requisite capacity to provide oversight on internal controls and risk management practices. In addition, any regulation that prohibits the appointment of a person as a member of the Board or management of Other Financial Institutions also applies to PSHCs.

The PSHC must also comply with the provisions of the Securities and Exchange Commission (SEC) Corporate Governance Guidelines for publicly quoted companies and listed entities in Nigeria, where applicable.

Ownership and Control

The approval of the CBN is required for the acquisition of shares of 5% and above in a PSHC, or any change in ownership that results in a change in control of the PSHC. Where the shares are acquired through the secondary market, the approval of the CBN must be sought within seven days. A subsidiary is prohibited from acquiring shares in the PSHC or any of the other subsidiaries. Where a PSHC loses control of its subsidiaries, its license shall be cancelled, and it shall cease to be a PSHC.

Permissible and Non-Permissible Activities

The business of a PSHC is limited to holding equity in the subsidiaries. However, the PSHC can provide broad policy direction, shared services and/or enter into a technical or management service contract with any of its subsidiaries, with the prior written approval of the CBN in respect of human resources services, risk management services, internal control services, compliance services, information and communication technology, legal services, facilities, and any other services as may be approved by the CBN.

A PSHC is prohibited from establishing, divesting from, or closing any of its subsidiaries without the approval of the CBN. A PSHC is also prohibited from deriving income from any other sources other than the dividend from its subsidiaries, income from share services, interest from funds invested in government securities, profits from the divestment from its subsidiaries, and patents, royalties, and copyrights.

Supervision

PSHCs and their subsidiaries shall be supervised by the CBN on a consolidated basis. PSHCs shall render returns to the Payments System Management Department of the CBN every quarter, or in such frequency prescribed by the CBN.

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The returns shall include information on compliance with corporate governance guidelines, whistle blowing, assets and liabilities of the PSHC and its subsidiaries, risk management, internal control, and intra-group transactions.

Minimum Paid-Up Capital and Capital Reserves

A PSHC shall have a minimum paid-up capital which shall exceed the sum of the minimum regulatory capital/ total equity of all its subsidiaries, as may be prescribed from time to time by the Central Bank of Nigeria (where the PSHC owns 100 per cent of the subsidiaries).

Where the PSHC owns less than 100 per cent of the subsidiaries, its minimum paid-up capital shall exceed the summation of its proportionate holding in the subsidiaries.

The Guidelines forbids PSHCs from using excess capital in one subsidiary to make up a shortfall in another subsidiary. Therefore, It is the capital of the PSHC that is applicable to the subsidiaries.

Payment of Dividends

A PSHC shall not pay dividends on its shares except;

- All its 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 any capital requirements as stipulated in Section 7.1 of the Guidelines.

Acquisition of Subsidiaries

In determining the acquisition of subsidiaries, the CBN shall be satisfied that a PSHC has adequate capital resources by way of free funds to carry out the acquisition. In all cases, the consideration for the acquisition of subsidiaries shall be on cash basis only or any other arrangement proposed by the PSHC and approved by the CBN.

Conclusion

The issuance of the Guidelines is a welcome development, which will act as a guiding tool for setting up of PSHCs for the payment service sector as well as provides an opportunity for fintech companies to establish complementary payment service businesses to enhance the delivery of financial services using technology. Also, through shared services, the payment service businesses controlled by the PSHC will be able to run efficiently and take advantage of economies of scale. At the same time, the CBN through its oversight function will ensure that the activities of the respective businesses are not co-mingled.

References

https://www.proshareng.com/report/Regulators/CBN-Releases-Guidelines-for-Financial-Holding-Company-(HoldCo)-/7503

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The firm's strong reputation is founded on its unique ability to provide innovative, competent, cost-effective and well-timed solutions to complex legal issues in a manner tailored to the client's individual needs. We adopt a visionary approach to client's service which enables us to anticipate industry challenges.

We are focused on delivering excellent bespoke service to our Clients and towards achieving this objective, we configure teams according to each Client's needs in a system that ensures that personnel with specialist knowledge are always assigned to their areas of specialization.

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