GRF DALLEY & PARTNERS

CORPORATE GOVERNANCE IN PAYMENT SERVICE HOLDING COMPANIES UNDER THE GUIDELINES FOR LICENSING AND REGULATION OF PAYMENTS SERVICE HOLDING COMPANIES IN NIGERIA

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The Central Bank of Nigeria (CBN) recently required companies intending to offer Switching and Processing services and Mobile Money Services to establish a Payments Service Holding Company. To this end, the CBN released the Guidelines for Licensing and Regulation of Payments Service Holding Companies in Nigeria. The Payments Service Holding Company holds equity in subsidiary companies and as such provides them with support needed to overcome adverse financial situations.

What is a Payment Service Holding Company (PSHC)?

The Guidelines define a Payment Service Holding Company (PSHC) as a company whose principal object clause includes the business of a holding company set up for the purposes of making and managing equity investment in a minimum of two (2) companies.[1] These companies are subsidiaries of the PSHC and are Payment Service Providers (PSP) across the following identified categories:

1. Mobile Money Operations;
2. Switching and Processing;
3. Payment Solution Services.

[1] Paragraph 2.1 of the Guidelines

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The Guidelines go further to state the purpose of a PSHC. By virtue of Paragraph 2.2.1 of the Guidelines, a PSHC is non-operating and exists for the purpose of carrying out investment in approved subsidiaries and as such it is not to have any involvement in the day-to-day management of its subsidiaries.

Are there specific requirements on the constitution of the Board of Directors of a PSHC under the Guidelines?

Under the Guidelines, a PSHC shall have between five (5) and ten (10) people on its Board of Directors. However, this number can also be determined by applicable Central Bank of Nigeria (CBN) Corporate Governance Guidelines.[2]

A PSHC is mandated to ensure that at least one individual with experience in the business of the PSHC's subsidiary companies is included on the Board of Directors.

How are appointments to the Board of Directors of a PSHC to be handled?

With respect to Board appointments, Paragraph 4.0(b) of the Guidelines requires that appointment to the Board and management positions be in line with the requirements of Assessment Criteria for Approved Persons' Regime for Financial Institutions, or any other applicable regulation as issued by the CBN from time to time.

The Guidelines go further to state that Regulations governing the disqualification of Board and management applicable to Other Financial Institutions (OFIs) are also applicable to PSHCs.

Is a PSHC expected to have risk management practices?

Yes, a PSHC is expected to have risk management practices and must demonstrate that it has a competent and independent Board of Directors with requisite capacity to provide oversight on internal controls and risk management practices.

[2] Paragraph 2.2.2 of the Guidelines

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What other guidelines are PSHCs expected to comply with?

A PSHC must register with the Corporate Affairs Commission (CAC) and its activities are licensed, supervised and regulated by the CBN.

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

In addition to this, a PSHC must make its audited financial statements available on its website.

Ownership and Control in a PSHC

In the event whereby there is a shareholding of 5 percent and above in a PSHC or any change in ownership which results in the change and control of the PSHC, the Guidelines under Paragraph 4.1(a) require that the approval of the CBN must first be sought and obtained. If shares are acquired through the secondary market, the PSHC must apply for approval from the CBN within seven (7) days of the acquisition.

The following agreements cannot be entered into without the prior written approval of the CBN:

1. Sale, disposal or transfer howsoever of the whole or any part of the business of the PSHC;
2. Issuance of new shares;
3. Amalgamation or merger or takeover of the PSHC with any other person;
4. Reconstruction of the PSHC; or
5. Employment of a management agent or agreement to be management by or to transfer its business to any such agent.[3]

Should a PSHC lose control in any of its two (2) subsidiaries (in the case of a PSHC with more than two (2) subsidiaries) or in either of its subsidiaries (in the case of a PSHC with only two (2) subsidiaries) for a period exceeding six (6) consecutive months, the PSHC must return its licence to the CBN for cancellation and as such ceases to be a PSHC.

[3] Paragraph 4.2 of the Guidelines

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The PSHC shall subsequently divest from its subsidiary or subsidiaries within six (6) months or any other timeframe as specified by the CBN. Such subsidiary or subsidiaries can continue operations as an independent entity.

Can a subsidiary acquire shares in its parent PSHC?

No, subsidiaries are not permitted to acquire shares in the parent PSHC. In the same vein, they are also not permitted to acquire shares of other subsidiaries of their parent PSHC.

Remarks

The Central Bank of Nigeria in its circular dated 3rd of August 2021 required relevant stakeholders to ensure strict compliance with the Guidelines in line with its duty to promote a credible payments system. Adherence to the corporate governance guidelines would contribute to improved business performance and continuity.

For questions and further information, contact:

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