



Central Bank Of Nigeria

Financial Policy and Regulation Department
Central Business District, Cadastral Zone,
P.M.B 0187, Garki, Abuja
Telephone: +234 (0) 9 462 37401
E-mail: fprd@cbn.gov.ng
Website: www.cbn.gov.ng

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CIRCULAR TO REPRESENTATIVE OFFICES OF FOREIGN BANKS IN NIGERIA, STAKEHOLDERS AND THE GENERAL PUBLIC

GUIDELINES FOR THE REGULATION OF REPRESENTATIVE OFFICES OF FOREIGN BANKS IN NIGERIA – EXPOSURE DRAFT

The Central Bank of Nigeria (CBN) is empowered by Section 8 of the Banks and Other Financial Institutions Act 2020 (BOFIA) to mandate foreign bank to seek prior approval of the CBN before they can operate in Nigeria. This provision, coupled with requests from foreign banks, law firms, financial consultants, among others, on the requirements for operating representative offices of foreign banks in Nigeria, has made it pertinent to develop Guidelines prescribing the regulatory requirements.

Accordingly, the draft Guidelines has been developed to provide guidance to stakeholders, particularly foreign banks, seeking to operate in Nigeria.

An exposure draft of the Guidelines is hereby issued for comments and observations. The document may be accessed from the Bank's website, www.cbn.gov.ng.

Your comments should be addressed to the Director, Financial Policy and Regulation Department, CBN, with soft copies sent via email to fprd_cedg@cbn.gov.ng within three (3) weeks from the date of this circular, please.

A handwritten signature in blue ink, appearing to read 'Chibuzo A. Efofi', written over a horizontal line.

CHIBUZO A. EFOFI

DIRECTOR, FINANCIAL POLICY AND REGULATION DEPARTMENT



CENTRAL BANK OF NIGERIA

GUIDELINES FOR THE REGULATION OF REPRESENTATIVE OFFICES OF FOREIGN BANKS IN NIGERIA

October 2022

DEFINITION OF TERMS

For clarity, the following terms and definitions shall be used in the applicable sections of this Guidelines:

“Banking Business” means the business of receiving deposits or current account, savings account or other similar account, paying or collecting cheque drawn by or paid in by customers, provision of finance or such other business as the CBN Governor may, by order published in the Gazette, designate a banking business.

“CBN” represents the Central Bank of Nigeria.

“Foreign Bank” means a bank licensed under any foreign law, whose registered head office is outside Nigeria.

“Financial Institution” for the purpose of this guidelines, a financial institution refers to a licensed company engaged in the provision of financial services to the general public.

“Financial Holding Company” means a holding company set up for the purpose of making and managing (for its own account) equity investment in two or more companies, being its subsidiaries, engaged in the provision of financial services, one of which must be a bank.

“Financial Transaction” relates to any activity that culminates in payment for goods and services.

TABLE OF CONTENTS

Definition of Terms

Legal provisions

- 1.0 Introduction
- 1.1 Scope/Applicability of the Guidelines
- 1.2 Related legal instruments and policy documents
- 2.0 Definition of a Foreign Representative Office
- 3.0 Permissible and Non-Permissible Activities
 - 3.1 Permissible Activities
 - 3.2 Non-Permissible Activities
- 4.0 Licensing Requirements
 - 4.1 Documentation Requirements
 - 4.2 Corporate Governance
 - 4.3 Assessment Criteria
- 5.0 Reporting and Operational Requirements
 - 5.1 Reporting Requirements
 - 5.2 Operational Requirements
 - 5.3 Other Matters

These revised guidelines are issued by the Central Bank of Nigeria [hereinafter referred to as “the CBN” or “the Bank”] in exercise of the powers conferred on it by the Central Bank of Nigeria Act CAP C4 LFN 2010 and the Banks and Other Financial Institutions Act LFN 2020 [hereinafter referred to as “BOFIA”].

EXPOSURE DRAFT

1.0 INTRODUCTION

Representative Offices of foreign banks serve an important purpose of showcasing the brand and services of its parent company. It can also stimulate foreign direct investment to the host country by connecting capital to various investment opportunities.

It is in view of these that the Central Bank of Nigeria issues this guidelines, to specify the requirements for the licensing and operations of approved representative offices of foreign banks in Nigeria.

This Guidelines, issued in exercise of the powers conferred on the CBN under the Central Bank of Nigeria Act, 2007 (CBN Act) and the Banks and Other Financial Institutions Act, Laws of the Federation of Nigeria, 2020 (BOFIA), complements the CBN's Regulation on the Scope of Banking Activities and Ancillary Matters, No. 3, 2010. It covers the scope and applicability of the guidelines, permissible and non-permissible activities for representative offices as well as its licensing, governance, reporting and operational requirements.

1.1 SCOPE AND APPLICABILITY OF THE GUIDELINES

This guidelines shall apply to the following categories of institutions:

- (a) A bank licensed under any foreign law, whose registered head office is outside Nigeria.
- (b) Any financial institution licensed under foreign law, whose primary business includes the receipt of deposits, granting of loans and/or provision of current and savings accounts.
- (c) Any foreign-owned operating bank/financial holding company that is foreign-based, that owns controlling interest in one or more banks or institutions whose primary business includes the receipt of deposits, granting of loans and provision of current and savings accounts.

1.2 RELATED LEGAL INSTRUMENTS AND POLICY DOCUMENTS

The Guidelines shall be read in conjunction with the provisions of the CBN Act, the BOFIA, other subsidiary legislations made under the Acts, as well as written directives, notices, circulars, frameworks and other guidelines that the CBN and other regulators in the financial services sector have issued or may issue from time to time.

2.0 DEFINITION OF AN APPROVED REPRESENTATIVE OFFICE

For the purpose of this guidelines, an approved Representative Office of a Foreign Bank in Nigeria is a liaison office of the foreign bank licensed by the Central Bank of Nigeria, whose sole object is to market the products and services of its foreign parent as well as serve as liaison between its foreign parent and local banks, other financial institutions, private companies and the general public.

An approved representative office is barred from carrying out banking business or any other regulated activity in Nigeria.

3.0 PERMISSIBLE AND NON-PERMISSIBLE ACTIVITIES

3.1 PERMISSIBLE ACTIVITIES

Approved Representative Offices are permitted to carry out the following activities:

- (i) Marketing the products and services of its foreign parent or an affiliate of the foreign parent licensed and domiciled outside Nigeria.
- (ii) Carrying out research activities in Nigeria on behalf of the foreign parent.
- (iii) Serving as a liaison between the foreign parent and local banks, private institutions within Nigeria and other customers of the foreign parent based in Nigeria.
- (iv) Pursue business opportunities for the foreign parent or affiliated institutions regarding the availing and/or syndication of foreign currency denominated loans.
- (v) Connect banks and other financial institutions to its foreign parent.
- (vi) Assist exporters in Nigeria with information related to the laws and markets of target countries in which the foreign parent or any of the Group's affiliates has a subsidiary.
- (vii) Facilitating seminars, forums and other activities within Nigeria through which a foreign parent may meet with and hold further discussions with existing or potential customers in Nigeria.
- (viii) Collate and distribute economic and financial information or country reports to its foreign parent for use by customers of the foreign parent; and assist customers of the foreign parents that desire to invest in Nigeria or do business with Nigerian companies.
- (ix) Connect exporters in Nigeria with potential customers in jurisdictions where the parent company operates; and assist Nigerian exporters with finding

new markets through its international offices.

3.2 NON-PERMISSIBLE ACTIVITIES

Approved Representative Offices shall not engage in the following services/activities:

- (i) Provision of services designated in Nigeria as banking business.
- (ii) Provision of any commercial or trading activity that may lead to the issuance of invoices for services rendered.
- (iii) Acceptance of orders on behalf of the foreign parent.
- (iv) Engage directly in any financial transaction, save for those transactions that are related to (3.1) above.

4.0 LICENSING REQUIREMENTS

4.1 Requirements for Approval-in-Principle (AIP) of a Representative Office

Foreign banks and other financial institutions seeking to establish an approved representative office in Nigeria shall submit a formal application to the Governor of the Central Bank of Nigeria, accompanied with the following:

- (a) The home supervisory authority must have a valid Memorandum of Understanding with the CBN before an application for a Representative Office can be entertained.
- (b) No objection letter (or approval) from the home supervisory authority, conveying its consent for the establishment of the representative office.
- (c) Evidence of payment of non-refundable application fee of ₦5,000,000 to the Central Bank of Nigeria.
- (d) Board resolution supporting the foreign parent's decision to invest in the equity shares of the proposed representative office.
- (e) Evidence of name reservation with the Corporate Affairs Commission (CAC).
- (f) The promoters of the proposed Representative Office shall be required to attend an interview session and make a presentation (with its logo, branding, etc) to the CBN.
- (g) Detailed business plan or feasibility report which shall, at a minimum, include:

- (i) The purpose of establishing the Representative Office;
 - (ii) Justification for the application;
 - (iii) Ownership structure of the foreign parent in a tabular form indicating the name of proposed investor(s), profession/business and percentage shareholdings;
 - (iv) Current organogram, business lines and historical background of the foreign parent.
 - (v) List of branches, subsidiaries and countries in which the foreign parent operates from or has a presence.
- (h) Organizational structure of the Representative Office, showing functional units, responsibilities, reporting relationships and grade of heads of departments/units.
- (i) Names, addresses, curriculum vitae, means of identification, BVN (if applicable), tax clearance certificate and police clearance of proposed directors.
 - (j) Schedule of services to be rendered.
 - (k) Annual financial statements of the foreign parent for a period of five years.
 - (l) Sources of funding for the Representative Office's operations and five years financial projection.
- (m) Details of information technology requirements and facilities.
- (n) Draft copy of the representative office's Memorandum and Articles of Association (MEMART). At a minimum, the MEMART shall contain the following information:
- (i) Proposed name of the representative office.
 - (ii) Objects clause.
 - (iii) Subscribers to the MEMART.
 - (iv) Procedure for amendment.
 - (v) Procedure for share transfer/disposal.
 - (vi) Appointment of directors.

- (o) A written and duly executed undertaking/statement by the foreign parent that its representative office shall comply with all applicable laws, rules and regulations of Nigeria.
- (p) Draft Shareholders Agreement, unless it is 100% owned by the foreign parent bank.

4.2 Requirements for Final Approval of a Representative Office

Not later than three (3) months after obtaining the AIP, the promoters of a proposed representative office shall submit application for the grant of a final license to the CBN. The application shall be accompanied by the following:

- (i) Evidence of payment of non-refundable licensing fee of ₦10,000,000 to the Central Bank of Nigeria.
- (ii) Certified true copy (CTC) of Certificate of Incorporation of the business.
- (iii) CTC of MEMART.
- (iv) CTC of Form CAC 1.1.
- (v) Evidence of location of the Office (rented or owned) for the take-off of the business.
- (vi) Names, addresses and curricular vitae of Management staff.
- (vii) Schedule of changes, if any, in the Board and Shareholding after the grant of AIP.
- (viii) Copies of letters of offer and acceptance of employment in respect of the management team.

4.3 Conduct of Pre-Licencing Inspection

As a requirement for the grant of final licence, the CBN shall conduct an inspection of the premises and facilities of the proposed representative office to, amongst others:

- (i) Check the physical structure of the office building and infrastructure provided for take-off of the office.
- (ii) Sight the original copies of the documents submitted in support of the application for license.

- (iii) Meet with the Board and Management team whose CVs had earlier been submitted to the CBN.

4.4 Post-commencement Requirements

An approved representative office shall:

- (i) Comply with all guidelines and regulations issued by the CBN and other sector regulators.
- (ii) Maintain adequate accounting system and keep records that capture information which reflect its financial state of affairs.
- (iii) Always comply with the requirements incidental to its authorization.

4.5 Financial Requirements

- a. The financial requirements for Representative Offices in Nigeria are as follows:

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Non-refundable Application fee	5,000,000
Non-refundable Licensing fee	10,000,000

- b. The fees prescribed above may be reviewed from time to time by the CBN.

5.0 REPORTING AND OPERATIONAL REQUIREMENTS

5.1 Reporting requirements

- (a) Approved Representative Offices are required to submit the following information and documents to the Director, Banking Supervision Department of the Central Bank of Nigeria:
 - (i) A certificate from a recognized audit firm affirming that during the year no income was earned or accrued to the Nigeria office. Such certificate shall be submitted not later than 28 February of each year.
 - (ii) A written confirmation by the Chief Representative that the approved Representative Office has complied with all the requirements in its approval document and this policy document.

- (iii) A quarterly report which summarizes the activities undertaken by the representative office, including information on credit facilities granted by its parent or its related parties to Nigerian borrowers. Such report should be submitted within 14 days from the end of the quarter. A nil return should be submitted where there are no activities.
- (iv) The Bank shall have the power to request any information from or issue instructions to a Representative Office at any time it may deem necessary.
- (v) A Representative Office shall submit information in such form and medium as may be prescribed by the Bank from time to time.
- (vi) A Representative Office shall forthwith inform the Bank of any incidents of fraud, theft or robbery.

5.2 Operational Requirements

- (a) A Representative Office shall use the parent's name only in conjunction with the description "representative office" in its documents and correspondences, including office signage, letterheads and business cards.
- (b) A Representative Office shall obtain the CBN's prior clearance for employment of its prospective employees and top Management staff.
- (c) A Representative Office shall inform the Bank of its proposed hours of business.
- (d) No Representative Office shall be relocated or closed without the prior written approval of the Bank.
- (e) Any proposal to close a Representative Office must be advised to the Bank at least three months before such closure.
- (f) Adequate notice of the relocation or closure of the Representative Office shall be given to members of the public for a period of not less than one month prior to the date of relocation and two months before

closure.

- (g) The Bank must be informed immediately of any change in the arrangements for the foreign bank's oversight of its Representative Office in Nigeria.
- (h) A Representative Office shall immediately or in any other case within seven (7) days notify the Bank in writing if there is any variation to the shareholding structure that changes the control and/or majority ownership in its parent foreign institution.

5.3 Other Matters

(a) Powers to Supervise

- (i) The CBN shall have free, full, unfettered and timely access to the internal systems, documents, reports, records, staff and premises of the representative office and shall exercise such powers as it may deem necessary.
- (ii) The CBN may cause an examination of the operations and affairs of the representative office to be made by its officers or such other duly qualified person as it may appoint, to assess whether the representative office is complying with the banking laws and any guidelines or instructions issued by the Bank.

(b) Disclosures

A Representative Office shall display the following information in a conspicuous place on its premises:

- (i) The name, contact details and logo of the foreign bank it is representing.
- (ii) Its authorization to operate a Representative Office as issued by the CBN.
- (iii) An authenticated copy of the consent letter from the home country supervisory authority approving the establishment of the Representative Office in Nigeria.

- (iv) An authenticated copy of the foreign bank's valid license to conduct banking business as issued by the home country supervisor.
- (v) A list of the services offered by the Representative Office.

(c) Examination

- (i) The examination of a Representative Office, to be carried out periodically and risk-based, would include but not limited to:
 - a review of the activities conducted.
 - a general assessment of its management and supervision.
 - a review of whether the office is complying with applicable laws and regulations, including any conditions placed on its operations or activities as part of the Bank's approval of its establishment.
- (ii) In addition, Management accounts are to be reviewed by examiners to reveal, amongst other items, the number of individuals employed by the office and its expenses for the relevant period.
- (iii) A brief examination report shall be prepared highlighting any significant supervisory concerns. A brief letter to management of the Representative Office would be sufficient.