

Newsletter November 2010

***New CBN Regulations:
Implications for Foreign
Banking Establishments in
Nigeria****Content:**Background**Foreign Banking Establishments
in Nigeria**Foreign-owned Banks under the
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Aina Blankson LP recently published its October 2010 newsletter titled "the Future of Nigerian Banking System: Separate Structures and Holding Company Arrangement." Since the publication it has received several comments and queries regarding some of the issues of concern to the public, especially those in the banking sector. This newsletter addresses some of the concerns raised, with particular focus on the place of "foreign-owned banks" or banks with foreign affiliations in Nigeria under the recent Central Bank of Nigeria (CBN) regulatory requirement.

Background

The recent CBN Regulations¹ repealed the operation of the Universal Banking (UB) model in Nigeria, and required banks to obtain separate licenses permissible under the Banks and Other Financial Institutions Act (BOFIA),² to operate as commercial banks (which may be regional, national or international), merchant banks or specialized institutions.

The key pillars of this regulatory requirement are as follows:

- Banks would be licensed to operate as solely commercial banks, in which case they would be licensed as:
 - a) regional banks (operating within a minimum of six or maximum of twelve contiguous states in Nigeria and not more than two Geo-Political Zones, as well as within the Federal Capital;
 - b) National banks with operations within every state of Nigeria; or

¹ CBN Regulation Nos. 1, 2, & 3 2010;
www.cenbank.org

² Cap B 3 Laws of the Federation 2004



- c) International banks with operations in every state, as well as offshore operations in any country of choice with the approval of CBN and in compliance with regulatory requirements of host country.
- Banks may also apply for licenses to operate as merchant banks, in which case they would be required to undertake the banking activities specified in Regulation No. 2, 2010.
- Banks may also obtain licenses to operate as specialized institutions, such as non-interest banks (regional or national), primary mortgage institutions, microfinance banks, development banks and discount Houses.

Foreign banking establishments in Nigeria

There are a number of ways a banking institution may operate a banking business in another country outside its country of primary operation. A banking institution may open a branch in another country, which branch forms an integral part of the foreign parent bank. It may also form a subsidiary. Such subsidiaries are legally independent institutions incorporated in the country of operation and controlled by a foreign parent bank. Foreign banking institutions may also form a joint venture, which is also a legally independent bank incorporated in a country of operation and controlled by two or more parent institutions, most of which are foreign, but not necessarily banks. Foreign banking institutions also operate representative offices or agencies, or participate in less direct ways by purchasing controlling or

less than a controlling interest in a country's banking institution.

Foreign banks are allowed to operate branches or representative offices in Nigeria with the approval of CBN.³ Presently, foreign banking organizations operate a variety of banking institutions in Nigeria as subsidiaries or with representative offices. Some foreign banks have also merged with local banks in Nigeria, and maintain a greater percentage of the holdings in the Nigerian operation. These banks play an integral role in the Nigerian financial system and are mostly supervised and regulated by the CBN.

For the purpose of this paper we refer to a bank incorporated in Nigeria, the parent of which is incorporated outside Nigeria as foreign-owned.

Foreign-owned banks under the new CBN Regulations

As noted above, under the new Regulations, banks are required to restructure their operations to form regional, national or international commercial banks, or merchant banks where they want to engage in proprietary trading and other asset management activities. They may also operate specialized institutions as specified. There is no mention of foreign-owned banks in any of the Regulations, giving an indication that their fates have been sealed with those of local banks. This appears to be the most obvious conclusion, as the CBN at the end of each Regulation⁴ defined a "bank" as an entity licensed to engage in banking business by the CBN

³ Section 8(1) BOFIA

⁴ CBN Regulation Nos. 1(section 8) and 2 (section 6)



pursuant to BOFIA. Most of these foreign-owned banks are licensed to engage in banking business in Nigeria by the CBN pursuant to BOFIA. It would appear that they are caught by the recent regulatory requirement to structure their operations to fit into the specified categories. This argument appears to be supported by section 8(2) of BOFIA, which specifically states that:

"The Bank (in this case the CBN) may, subject to such conditions as it may impose, from time to time, grant to any bank registered in Nigeria or a foreign bank a license to undertake off-shore banking business from Nigeria."

Given that one of the recent requirements of the CBN is for banks to operate as international commercial banks with offshore operations in countries of choice, it would appear that the recent regulatory requirement applies to foreign-owned banks as well as locals.

Conclusion

Unless the CBN gives a contrary indication, it would appear that foreign-owned banks are expected to restructure their operations to fit into the categories of banks specified in the recent Regulations. We envisage that some of the foreign-owned banks would opt for Regional or National banking licenses.

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