

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

### BACKGROUND

Subject to obtaining the prior approval of the Central Bank of Nigeria (“CBN”), section 8 of the Bank and Other Financial Institutions Act 2020 (“BOFIA”) permits foreign banks to establish representative offices in Nigeria. A bank representative office is a subsidiary of a foreign bank incorporated and domiciled in Nigeria outside its parent bank’s home country. A bank representative office does not carry out regular banking business (such as taking deposits, providing loans and overdrafts) in Nigeria. Rather, a representative office simply serves as a physical legal representative of a foreign bank in Nigeria to help;

- (a) expand the foreign bank’s business in the country,
- (b) carry out marketing and ancillary activities,
- (c) protect its legitimate interests, and
- (d) serve as a liaison between the foreign bank and its customers resident in Nigeria. A bank representative office is not a new phenomenon, and it has been a vital tool employed by international banks to help expand their business across the world including Nigeria.

Prior to October 2022, notwithstanding the presence of over five representative offices of foreign banks in Nigeria, the CBN did not have any formal regulation relating to the

licensing and regulation of bank representative offices in Nigeria. Licensing of bank representative offices by the CBN was on an adhoc basis. Now, that has changed. On 12<sup>th</sup> October 2022, the CBN released Circular No. FPR/PUB/CIR/001/059 titled "*Guidelines for the Regulation of Representative Offices of Foreign Banks in Nigeria*" (the "**Draft Guidelines**") to representative offices of foreign banks in Nigeria, stakeholders and the general public. The Draft Guidelines were issued pursuant to the provisions of section 8 of the BOFIA which prohibits foreign banks from operating branch offices or representative offices in Nigeria without the prior approval of the CBN being sought and obtained. Further to the above, the CBN has now set out in the Draft Guidelines the requirements for obtaining its approval to set up a representative office and guidance to stakeholders (such as existing representative offices and foreign banks seeking to operate such offices in Nigeria) on the operational and management terms for representative offices.

The Draft Guidelines is to be read in conjunction with the provisions of the BOFIA, the Central Bank of Nigeria Act, 2007, and other subsidiary legislation made under the relevant statutes, as well as written documents that the CBN and other regulators in the financial services sector have or will issue from time to time.

We will examine in this update the key provisions of the Draft Guidelines and discuss its potential impact on the operations of representative offices in the banking and financial services industry in Nigeria.

### **Scope of the Guidelines**

The Draft Guidelines will apply to the following categories of financial institutions:

- (a) banks licensed under any foreign law, whose registered head office is outside Nigeria;
- (b) any financial institution operating under a foreign licence that primarily accepts deposits, grants loans, or offers current and savings accounts; and
- (c) any foreign-based or foreign-owned bank or financial holding company that owns a controlling stake in one or more banks or institutions whose primary business includes receiving deposits, granting loans, and offering current and savings accounts.

Any of these categories of institutions seeking to operate a representative office in Nigeria must obtain the prior approval of the CBN.

## **Any impact on foreign banks transacting business with Nigerian residents without a representative office?**

The Draft Guidelines do not seek to restrict or regulate foreign financial institutions transacting businesses with Nigerian residents on a cross-border basis. Notwithstanding that section 8 of the BOFIA prohibits foreign banks from operating a subsidiary or representative office in Nigeria without the prior approval of the CBN, a foreign bank can do business with Nigerian residents (companies or individuals) from its base outside Nigeria. It will neither be required to incorporate as a company in Nigeria nor obtain the approval of the CBN provided that it does its business on a cross-border basis.

Regarding lending, Nigerian law does not impose any restrictions that would prevent foreign entities from lending money to Nigerian residents. To lend to a Nigerian entity on a cross-border basis from its base outside Nigeria, the foreign lender does not need to register as a bank or have a representative office in Nigeria. In other words, a foreign bank could enter into loan agreements with counterparties in Nigeria and such activity would be unregulated provided that such transaction does not, in and of itself, result in the foreign bank conducting the business of a bank in Nigeria.

## **What is an Approved Representative Office?**

Under the Draft Guidelines, an approved representative office ("ARO") of a Foreign Bank in Nigeria is defined to mean a liaison office of the foreign bank licensed by the CBN, whose sole object is to market the products and services of its foreign parent as well as serve as a liaison between its foreign parent and local banks, other financial institutions, private companies and the general public. What this means is that the principal activities of representative offices in Nigeria should be limited to marketing activities and acting as a liaison to help coordinate the exchange of information between the foreign parent bank and local institutions/customers in Nigeria. To further provide clarity, the Draft Guidelines sets out a list of permissible and non-permissible activities for an ARO in Nigeria.

### **Permissible Activities**

The CBN's permissible activities for an ARO include:

- (a) marketing the products and services of its foreign parent or its affiliate licensed and domiciled outside Nigeria;
- (b) conducting research for its foreign parent in Nigeria;

- (c) acting as a liaison between its foreign parent and Nigerian-based private institutions, local banks, and other customers;
- (d) connecting banks and other financial institutions to its foreign parent;
- (e) assisting Nigerian exporters 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;
- (f) facilitating seminars, forums and other activities within Nigeria through which its foreign parent may meet with and hold further discussions with existing or potential customers in Nigeria;
- (g) collating and distributing economic and financial information or country reports to its foreign parent for use by customers of the foreign parent, and assisting customers of the foreign parent that desire to invest in Nigeria or do business with Nigerian companies; and
- (h) connecting Nigerian exporters with potential customers in the country of operation of its parent company and assisting Nigerian exporters with finding new markets through its international offices.

### **Non-Permissible Activities**

Unlike previously when there was no clarity on the activities which representative offices cannot engage in, the Draft Guidelines has now set out what constitutes non-permissible activities. Consequently, an ARO will now be prohibited from engaging in the following activities:

- (a) providing services designated as banking business in Nigeria. Banking business is defined to mean the business of receiving deposits or current account, savings account or other similar account, paying or collecting cheques 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. An ARO will not be permitted to do any of these;
- (b) the performance of any commercial or trading activity that could result in the issuance of invoices for the services provided;
- (c) acceptance of orders on behalf of the foreign parent. An ARO can no longer accept orders from Nigerian resident customers on behalf of its parent company; and

- (d) directly engaging in any financial transaction, except transactions related to the permissible activities listed above.

The summary of the above is that an ARO is not permitted to engage in income-generating activities in Nigeria.

## Licensing Requirements

In order to obtain a licence to operate an ARO, foreign banks and financial institutions must apply to the CBN and obtain its licence. The procedure to obtain an ARO licence is in two phases which are thus:

### Phase One: Approval In Principle (“AIP”)

Before an application for an ARO licence will be considered, the home authority of the foreign bank/financial institution must have entered into a valid memorandum of understanding with the CBN. Once this has been satisfied, the applicant will apply to the CBN for an ARO licence. The application will be accompanied by the required supporting documents which include:

- a no-objection letter from the home authority consenting to the establishment of a representative office in Nigeria;
- evidence of payment of the non-refundable application fee of ₦5 million to the CBN;
- a board resolution supporting the foreign parent’s decision to invest in the equity shares of the proposed representative office;
- a detailed business plan or feasibility report which is to include among other things, the purpose of, justification for and ownership structure, of the representative office, as well as a list of branches, subsidiaries and countries in which the foreign parent operates from or has a presence in;
- a draft copy of the proposed representative office’s memorandum and articles of association;
- 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; and
- a draft shareholder’s agreement unless the proposed ARO is 100% owned by the foreign bank amongst others.

The CBN will review the application and, if satisfied, issue an AIP to enable the promoter proceed with the incorporation of the ARO.

## **Phase Two: Final Approval**

Upon the grant of the AIP, the promoters of the proposed representative office must apply to the CBN for a final licence no later than three months after the AIP has been granted. The application for the final licence is required to be accompanied with various documents including:

- evidence of payment of the non-refundable licensing fee of ₦10 million to the CBN;
- the certified true copies of the incorporation documents of the proposed ARO;
- evidence of the location of the physical office (rented or owned) for the takeoff of the business;
- the names, addresses and curricular vitae of management staff; and
- copies of offer letters and acceptance of employment in relation to members of the management team.

Following the submission of the application, the CBN will inspect the premises and facilities of the proposed representative office to examine the office building's physical structure and to meet with the board and management team. The CBN officials on inspection will need to sight the original copies of the documents submitted in support of the application for a final licence. Once the CBN is satisfied, the final licence will be issued for the ARO to commence operations.

## **Reporting and Operational Obligations**

The Draft Guidelines sets out reporting and operating obligations of an ARO. AROs are required to submit the following information and documents to the Director, Banking Supervision Department of the CBN: (a) no later than 28<sup>th</sup> February each year, a certificate from a reputable auditing company affirming that it did not accrue or earn any income throughout the year; (b) a written confirmation from the Chief Representative Officer stating that the ARO has adhered to all the provisions of the guidelines and the terms of its licence; (c) within 14 days of the end of each quarter, a quarterly report highlighting the ARO's activities, including details on credit facilities provided to Nigerian borrowers by the parent company or its affiliates; and (d) report on any instances of fraud, theft, or robbery.

The Draft Guidelines empowers the CBN to carry out a periodic risk-based review and examination of the activities of an ARO, its management and its level of compliance with the applicable laws and regulations. An ARO is required to display conspicuously within its premises, the name, contact details and logo of the foreign bank being represented in Nigeria. Furthermore, where there is any variation to the shareholding structure of an ARO that results in a change in control and/or majority ownership in its foreign parent, the CBN must be notified in writing immediately or not later than 7 days after such a change.

## Conclusion

The guidelines have provided clarity on the requirements for setting up representative offices in Nigeria and the permissible and non-permissible activities for such offices. The Draft Guidelines are a much-needed and welcome development in the Nigerian financial services industry, as it provides a huge opportunity to improve cross-border banking relations. This could potentially foster access to much-needed capital for financing critical projects in Nigeria. The issuance of the Draft Guidelines provides clarity to financial institutions in relation to the requirements for setting up and operating a representative office in Nigeria. It is hoped that the final guidelines will come into effect in the coming months.

The Draft Guidelines does not prohibit or restrict foreign financial institutions from engaging in banking and other financial transactions with counterparties in Nigeria on a crossborder basis.

Lastly, the CBN is taking comments and observations on the Draft Guidelines for a three-week period commencing from 12<sup>th</sup> October, 2022. All comments and observations are required to be sent to the Director, Financial Policy and Regulation Department, CBN via email at [fprd\\_cedg@cbn.gov.ng](mailto:fprd_cedg@cbn.gov.ng).



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