



GOVERNANCE AND COMPLIANCE DIGEST

THE FUTURE OF REGULATORY COMPLIANCE FOR BUREAU DE CHANGE COMPANIES IN NIGERIA

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In International trade, goods and services are traded across national boundaries, however, the currency of one country is not acceptable in other countries as legal tender. This creates the problem of payment. Therefore, the payments for imports have to be made in currency of the exporting country in the foreign exchange market. This gives birth to the bureau de change or currency exchange business.

Bureau De Change (BDC) is defined by the Central Bank of Nigeria (CBN) manual as a retail foreign exchange dealer carrying on the business of Personal Travel Allowance (PTA), Business Travel Allowance (BTA), medical and school fees, and also to carrying on inward and outward transfer.

The primary regulatory body governing BDC operations in Nigeria is the CBN. It issues guidelines and regulations that BDCs must adhere to, aimed at ensuring transparency, stability, and integrity in the foreign exchange market. Every BDC must be a member of the Association of Bureau de change of Nigeria (ABCON)

CBN PROPOSED REGULATIONS FOR THE OPERATIONS OF BDC COMPANIES

The CBN on 23 February 2024 released an exposure draft of the Revised Regulatory and Supervisory Guidelines for Bureau De Change Operations in Nigeria (the "Draft Guidelines"). The Draft Guidelines seek to amend the extant guidelines for BDCs in Nigeria made in 2015 (the "2015 Guidelines").

We shall discuss the provisions of the Draft Guidelines while also highlighting the provisions of the subsisting 2015 guidelines below:

Prohibited Persons

The 2015 Guidelines makes no provision for ineligible promoters of BDCs companies. However, by virtue of the Draft Guidelines, CBN seeks to prohibit a total of 16 entities/persons from having ownership stake in BDCs either directly or indirectly. Commercial banks, Other Financial Institutions, Payment Service Providers and their staff, Governments at all levels as well as staff members of financial services, regulatory and supervisory agencies and Telecommunication services providers are excluded from having ownership stake in BDCs. The same goes for NGOs/corporative societies, academic or religious institutions. Also excluded is a shareholder in another BDC whether directly or indirectly, this means that no person or entity can have more than BDC License.

Categories of Licence

Unlike the 2015 Guidelines which prevent BDCs from operating branch offices and make no provision for franchise operations, the Draft Guidelines seek to introduce two (2) categories of licences for BDCs as follows: a Tier 1 BDC and a Tier 2 BDC.

A Tier 1 BDC will be authorized to operate on a national basis and can open branches and may appoint franchisees subject to the approval of the CBN while a Tier 2 BDC will only be authorized in only one state or the FCT and may have up to 3 locations with the approval of the CBN, however, it cannot appoint franchisees.

Capital Requirements

A Tier 1 BDC shall have a minimum capital requirement of N2,000,000,000,000 (Two Billion Naira), a mandatory caution deposit of N200,000,000 (Two Hundred Million Naira), a non-refundable application fee of N1, 000,000 (One Million Naira), non-refundable license fee of

N5,000,000 (Five Million Naira) and non-refundable annual license renewable fee of N5,000,000 (Five Million Naira), however this may be varied at the discretion of the CBN.

A Tier 2 BDC shall have a minimum capital requirement of N500,000,000 (Five Hundred Million Naira) a mandatory caution deposit of N50,000,000 (Fifty Million Naira), a non-refundable application fee of N250,000 (Two Hundred and Fifty Thousand Naira), non-refundable license fee of N2,000,000 (Two Million Naira) and non-refundable annual license renewable fee of N1,000,000 (One Million Naira), however this may also be varied at the discretion of the CBN.

The foregoing opposes the 2015 Guidelines which only made provision for a singular license which had a minimum capital requirement of N35,000,000 (Thirty Five Million Naira), a mandatory caution deposit of N35,000,000 (Thirty Five Million Naira), non-refundable application fee of N100,000 (One Hundred Thousand Naira), licensing fee of N1,000,000 (One Million naira) respectively, and the annual licensing renewal fee of N250,000 (Two Hundred and Fifty Thousand Naira).

Application for Licence/ Annual Renewal Requirements

The Draft Guidelines retain the two-level approval process in the 2015 Guidelines: Approval-in-Principle (AIP) and Final Approval. In addition, the grant of the Final Licence shall be in two sub-stages; namely: Provisional Approval and Final Licence.

Where the CBN is satisfied with the application for Approval-in-Principle (AIP) addressed to the Governor of the CBN and accompanied by documents listed in Appendix 1 of the Draft Guidelines, it shall issue an Approval-in-Principle (AIP) to the promoters. The AIP does not constitute an approval to commence business.

In considering an application for the AIP, the CBN shall be satisfied that the quality of the proposed management staff and the proposed shareholders have met the minimum pre-qualification criteria which includes verifying the capital contributions of the prospective shareholders and payments for the shares by the shareholders.

Not later than six months after the grant of AIP, the promoters of a proposed BDC shall submit an application for the grant of a final license to the Director, Financial Policy and Regulation Department, CBN, Abuja.

Every licence shall expire on 31 December of each year and shall be renewed within the first 31 days of the subsequent year with the annual renewal licence fee. Where any BDC licence is not renewed after expiration of the timeline, it shall be deemed to have lapsed.

Incorporation of BDCs

Where an Approval-in-Principle (AIP) has been issued to the promoters, they may initiate steps to incorporate a BDC company. The proposed BDC shall not incorporate/register with the Corporate Affairs Commission (CAC) until AIP is granted by the CBN in writing, a copy of which shall be presented to the CAC for registration.

A Tier 1 BDC is to be registered with a share capital of at least of N2,000,000,000 (Two Billion Naira) while a Tier 2 BDC is to be registered with a share capital of at least of N500,000,000 (Five Hundred Million Naira).

Corporate Governance and Compliance Requirements

The Draft Guidelines specify that the Board of BDCs must be made up of both gender in line with the Nigerian Sustainable Banking Principles. It further specifies that both Tier 1 and Tier 2 BDCs shall maintain a minimum of five (5) directors with a maximum of 9 and 7 directors for Tier 1 BDCs and Tier 2 BDCs respectively; at least 2 independent non-executive directors (INEDs) for Tier 1 BDCs and 1 for Tier 2 BDCs, however where the BDC is publicly listed, it shall comply with the applicable provisions of the Companies and Allied Matters Act 2020. Also, a Tier 1 BDC shall have an Executive Director (ED) other than the Managing Director (MD)/Chief Executive Officer (CEO) while Tier 2 may have an ED apart from the MD/CEO.

The Draft Guidelines further mandates prospective and current directors of a BDC to disclose their board memberships in other entities and makes provisions for a replacement within 90 days where an INED or Directors resign to ensure that the Board remain within the minimum requirements of Board Composition.

Permissible and Non-Permissible Activities of BDCs

Although, the 2015 Guidelines provide for non-permissible activities of BDCs, there are no express provisions on the permissible activities that licenced BDC operators can engage in. Thus, to rectify that gap, the Draft Guidelines have provided for the permissible activities of BDCs.

Under the Draft Guidelines, a BDC may acquire foreign currency from tourists, returnees from the diaspora, expatriates with foreign exchange inflows from work, travel, investment or their domiciliary accounts, international money transfer operators (IMTOs), embassies, hotels that are authorised buyers of foreign currencies, the Nigerian Foreign Exchange Market (NAFEM) and any other source that the CBN may specify.

A BDC may also sell foreign currency as for the purpose of personal travel allowance (PTA), business travel allowance (BTA), provided that a person who receives BTA on behalf of a non-individual entity shall not be entitled to PTA for the same period, payment of medical bills, payment of school fees, repurchase of unused naira from a non-resident from whom the BDC had sourced foreign currency in the course of that visit.

A BDC may open foreign currency and naira accounts with Commercial or Non-Interest Banks (CNIBS), collaborate with their banks to issue prepaid cards; and serve as cashpoints for IMTOs.

The Draft Guidelines expand the scope of activities which BDCs or their franchisees are not permitted to participate in. These activities include among others:

- a) street trading.

- b) maintaining any type of account for any member of the public, including accepting any asset for safe keeping/custody.
- c) taking deposits from or granting loans to members of the public in any currency and in any form.
- d) retail sale of foreign currencies to non-individuals except for BTA.
- e) opening or maintaining any account with any bank or financial institution outside Nigeria.
- f) acting as custodian of foreign currency on behalf of customers.
- g) granting loans and advances in any currency.

Other provisions in the Draft Guidelines include revocation of licence of BDCs, change in ownership structure, accounting and audit of financial statements.

Conclusion

The Draft Guidelines form part of CBN's unwavering effort to significantly reform the foreign exchange market in Nigeria. The Draft Guidelines, if issued in the present format, will provide more robust requirements for BDCs.

In First Fiduciary Limited, we are a team of seasoned lawyers trained to provide regulatory compliance services across various industries. At your instruction, we shall carry out incorporation, all pre and post registration process with the central bank, board evaluation, license obtention and annual renewal, compliance requirements of the CBN as well as General Advisory with regards to your BDC company.

REFERENCES

Revised BDC Circular and Guidelines-corrected-final 2015

<https://www.cbn.gov.ng/out/2015/fprd/revised%20bdc%20circular%20and%20guidelines-corrected-final%202015.pdf>

Revised Regulatory And Supervisory Guidelines For Bureau De Change Operations In Nigeria

<https://www.cbn.gov.ng/Out/2024/FPRD/Revised%20Regulatory%20and%20Supervisory%20Guidelines%20for%20Bureau%20De%20Change%20Operations%20in%20Nigeria.pdf>

Revised Regulatory And Supervisory Guidelines For Bureau De Change Operations In Nigeria

<https://jee.africa/wp-content/uploads/2024/02/Revised-Regulatory-And-Supervisory-Guidelines-For-Bureau-De-Change-Operations-In-Nigeria.pdf>

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