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## **SHARED SERVICES AGREEMENTS, THE BANKS AND OTHER FINANCIAL INSTITUTIONS**

by Timilehin Ojo

Several corporate agreements exist which may be entered into in furtherance of business, such as the loan agreement, non-compete agreement, joint venture agreement, company stock purchase agreement, financing agreement amongst others, the Shared Services Agreement is one used to form a market-based relationship/partnership between members of a group.

A Shared Services Agreement is of a nature whereby a party to the agreement provide services required by all parties or the other party to the agreement, thereby attendant cost, from personnel to facility to equipment to expertise, is shared amongst the benefiting parties to the agreement.

A Shared Services Agreement can be used to share administrative personal, equipment and facilities between organizations. The use of Shared Services Agreements are attributable to operational efficiencies - which results to cost efficiency by preventing duplication of functions of personnel and infrastructure by the parties involved in the agreement while enjoying the best quality of specialization which otherwise would have required huge cost, maintenance of individual identity - parties to such agreement can hold on to its identity and control as they stay as independent entities, foundation for a long lasting and beneficial business relationship - the Share Services Agreement can serve as a means to understand each organization without losing on the business side, alternative to mergers, among others. The nature and application of a Shared Services Agreement in practice can lead to a complicated governance structure, tool for tax shield and other financial obligations by the organizations concerned.

The Central Bank of Nigeria (CBN) by a Circular issued on 26 May 2021 in an attempt to regulate the contractual relationship of Banks and Other Financial Institutions in Nigeria with regards to Shared Services Agreements has now put forth a Guideline to regulate Share Services Agreements of organizations that fall within the concerned category. Full compliance with this Guideline is expected from all concerned organizations from 1 June 2022. The rationale for the issuance of the Guideline by the CBN can be summarized to be the absence of standards, which have resulted to uneven management of shared services with attendant concern on governance, financial and tax management practices.

The Guideline focus in on banks with foreign parents and banks within the non-financial holding company structure (HoldCo) and their parent company or other entities in the group. A financial holding company is non-operating where it exists solely to carry out investment in approved subsidiaries without engaging in the day-to-day management of same. The Guideline shall specifically apply to Commercial banks, Merchant banks, Financial Holding Companies, Other Financial Institutions, Payment Services Banks such as Hope PSB, Moneymaster PSB and 9 PSB, and Other payment services as licensed by the CBN as long as the financial institution is either a parent company or a subsidiary company operating in Nigeria and licensed by the CBN[1].

The Guidelines has streamlined the services that can be covered under a Shared Services Agreement for the concerned entities, while stating general principles to guide transfer pricing as well as reporting requirements.

Share Services Agreement by a financial institution with its parent company under the guideline may only be in respect of the following services; Human Resources Services, Risk Management Services, Internal Control Services, Compliance Services, Marketing and Corporate communications, Information and Communication Technology, Legal Services, Facilities, and any other services as may be approved by the CBN with time.[2] The services listed above can only be subject of a Shared Service Agreement on the approval of the CBN. It is also a requirement that the recipient entity does not have the expertise and capacity to carry out the required services.

While it may be argued that by the position of the Guideline, it has restricted areas that financial institutions as parties in Nigeria, can have a Shared Services Agreement with, that will not be entirely correct. The Guideline is only stating that any other services provided outside the express mention in item 5.1 shall not be charged to the recipient entity, in effect, it will be charged to the providing entity/provider company.

In acquisition of technology on behalf of foreign subsidiaries, Financial Institutions are required to allocate the associated cost based on the actual volume and complexity of services consumed by the subsidiary, but with caution to the local regulation of the host countries.[3] For Financial Institutions with foreign parents in the case of technology transfer, the agreement is required to expressly convey rights for the beneficial use of the technology to the local Financial Institution. [4]The Board of relevant Financial Institutions is charged with the responsibility of ensuring compliance with relevant laws and existence of appropriate governance structure [5].The Board of the recipient entity is further saddled with the responsibility of the viability of the agreement, commissioning of independent consultant, informing the board of the provider company of any issues or significant deviation, amongst others[6].

It is important to note the provision of clauses that must be contained in a standard Shared Services Agreement at the minimum[7]. The clauses are, Commencement Clause, Agreement to Provide Services, Scope of services, Applicable costing methods, Compensation and Cost Sharing, Reporting and Timing of Payments, Standards for Performance of Service, Access to Employees and Information, Confidentiality, Notices, Force Majeure, Indemnification, Duration, Termination (Termination for cause and Termination for convenience), Dispute resolution mechanism/procedure, Governing Law, Capacity building, and General Provisions.

Financial institutions are required to disclose on their annual report and website, the services shared within the group and the importance to their institution. Shared Services Agreements involving foreign parents and their Nigerian subsidiaries are required to include capacity building, where applicable.[8] The provider company is burdened with the responsibility of payment of salary and allowances of staff used to provide shared services to other entities in a group.[9]

The corporate structure of Shared Services Agreements is such that raises some tax concerns, as taxable companies and persons are involved in such arrangement. The Income Tax (Transfer Pricing) Regulations, 2018 issued by the Federal Inland Revenue Service is the relevant guide on this subject. The Guideline have provided the available transfer pricing methods that may be adopted to include; Comparable Uncontrolled Price (CUP) method, Resale Price method, Cost Plus method, Transactional Net Margin method, Transactional Profit Split method, any other method which may be approved by the CBN[10]. Further to this, the documentation of the transaction between parties to the Shared Services Agreement are required to be recorded as if they were between unrelated parties. They are required to be done not by mere journal entries or set-off against any other inter-company account, and shall include contracts, invoices, bills or other similar documents. [11]

Such Shared Services Agreements entered by parties are required to be approved by the CBN[12]. with the CBN playing other regulatory roles such as approval of independent consultants review of fees and services rendered, yearly review of the agreement, and the independent review to be submitted not later than 31 January, of each accounting year.[13]

Failure to comply with the Guideline is stated to be an offence punishable under Section 96 of the BOFIA as well as administrative sanctions.[14].

No doubt, a main aim of the Guideline is to protect benefiting entities under Shared Service Agreement. It is indeed laudable for the CBN to move towards ensuring standard in the way activities are conducted. While standard is being targeted by the regulatory bodies, entities and organizations must be corporative of the efforts made by the regulatory bodies for the success of the scheme in the long run.

## REFERENCES

- [1] By the provision of item 2 the Guideline
- [2] Item 5.1
- [3] Item 5.2
- [4] Item 5.3
- [5] Item 6.1
- [6] Item 6.5, 6.6, & 6.7
- [7] Item 6.4
- [8] Item 6.11
- [9] Item 6.12
- [10] Section 5 of the Income Tax (Transfer Pricing) Regulations, 2018
- [11] Item 7.2 (ii)
- [12] Item 8.1
- [13] Item 8
- [14] Item 9

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