



## **GUIDELINES ON THE GOVERNANCE OF ADVISORY COMMITTEES OF EXPERTS FOR NON-INTEREST (ISLAMIC) FINANCIAL INSTITUTIONS IN NIGERIA**

### **1.0 INTRODUCTION**

Compliance with the principles of Islamic Commercial Jurisprudence is a critical element of non interest (Islamic) banking and finance. A framework for ensuring such compliance is therefore imperative for strengthening the regulatory and supervisory oversight of the industry and nurturing a pool of competent experts in this field.

Consequently, all institutions offering non-interest (Islamic) financial services under the purview of the Central Bank of Nigeria (CBN), herein designated as Non-Interest Financial Institutions (NIFIs) in Nigeria are hereby required to establish an advisory body as part of their governance structure to be known as “Advisory Committee of Experts” (ACE).

In recognition of the foregoing, the CBN have developed the following guidelines for the appointment, duties and responsibilities of the Advisory Committees of Experts of NIFIs.

To effectively play its role, the ACE shall operate as an independent body, with the principles of competence, integrity, confidentiality and consistency properly enshrined in its operations. It is expected that an independent ACE will engender public confidence, thereby promoting the growth and development of the industry.

### **2.0 OBJECTIVES**

This Guidelines aims to:

- (a) Set out the rules, regulations and procedures for the establishment and operations of the Advisory Committee of Experts of a NIFI;
- (b) Define the role, scope of duties and responsibilities of the Committee and its members towards the NIFI;
- (c) Define the role, scope of duties and responsibilities of the NIFI towards the ACE;
- (d) Outline the functions relating to Shariah review and audit processes and

- (e) Define the working relationship between the ACE and the CBN's Financial Regulation Advisory Council of Experts (FRACE).

### **3.0 SCOPE**

This Guidelines shall be applicable to all licensed NIFIs. The reference to NIFIs for the purpose of this Guidelines means:

- i. Full-fledged non-interest ( Islamic) bank or full-fledged non-interest ( Islamic) banking subsidiary of a Financial Holding Company (Holdco) ;
- ii. Full-fledged non-interest (Islamic) merchant bank
- iii. Full-fledged non-interest (Islamic) microfinance bank;
- iv. Non-interest ( Islamic) branch or window of a conventional bank;
- v. A development bank regulated by the CBN offering non-interest (Islamic) financial services;
- vi. A primary mortgage bank licensed by the CBN to offer non-interest ( Islamic) financial services and
- vii. A finance company licensed by the CBN to provide non-interest ( Islamic) financial services.

### **4.0 ESTABLISHMENT OF ADVISORY COMMITTEE OF EXPERTS**

All licensed NIFIs shall establish an Advisory Committee of Experts to be approved by the CBN.

### **5.0 MEMBERSHIP OF ACE**

#### **5.1 Appointment**

The Board of Directors of a NIFI shall appoint members of the ACE subject to the approval of CBN. The appointment shall be for a renewable term of four years subject to a maximum of three terms.

#### **5.2 Qualification**

##### **5.2.1 A member of ACE shall:**

- i. Be an individual and not a corporate body or institution;

- ii. At a minimum, have an academic qualification or possess necessary knowledge, expertise or experience in the sciences of Shariah with particular specialisation in the field of Islamic Commercial Jurisprudence (Fiqh al Mua'amalat).

**5.2.2** In addition to the requirement in 5.2.1 above, it is desirable for the member to possess the following:

- Skills in the philosophy of Islamic Law (Usul al Fiqh);
- Good knowledge of written and spoken Arabic as well as English Language, basic knowledge in the areas of business or finance especially Islamic Finance.

### **5.3 Composition**

**5.3.1** For the effective functioning of the ACE, its composition shall consist of a minimum of three (3) members.

**5.3.2** The ACE may engage the services of consultant(s) or officer(s) of the NIFI who have expertise in the field of business, economics, law, accounting or any other field that will assist it in making informed judgment on the compliance of banking and financial products and services to the principles of Islamic Commercial Jurisprudence. Such consultant(s)/officer(s) may attend meetings of the ACE but shall not take part or exercise voting rights in giving a Shariah legal opinion or verdict by the ACE.

### **5.4 Confirmation of Appointment of ACE Members**

A formal request for the confirmation of the appointment of members of the ACE shall be submitted to the CBN in writing. The request shall be accompanied by detailed Curriculum Vitae, as well as, copies of credentials of each nominee and a copy of the resolution of the board of directors of the NIFI approving the appointment.

### **5.5 Disqualification**

**5.5.1** Members of the ACE shall be persons of acceptable reputation, character and integrity. The CBN reserves the right to disqualify any member or proposed member who fails to meet the requirements prescribed in this Guidelines or any other requirement(s) as may be determined by the CBN from time to time

**5.5.2** No person shall be appointed or remain a member of an ACE who:-

- Is of unsound mind or as a result of ill-health is incapable of carrying out his/her duties;
- Is declared bankrupt or suspends payments or compounds with his/her creditors including his/her bankers;
- Is convicted by a court of competent jurisdiction of any offence involving dishonesty or fraud;
- Is guilty of serious misconduct in relation to his/her duties;
- Fails to attend 75% of the meetings of the ACE in a year without satisfactory excuse;
- In the case of a person possessing professional qualification, is disqualified or suspended (except on his own request) from practicing his profession in Nigeria by the order of any competent authority made in respect of the person personally.

**5.5.3** No person who has been a member of an ACE, director of or directly concerned in the management of a NIFI or any other financial institution which failed or was wound up by a court of competent jurisdiction shall, without the express authority of the CBN act or continue to act as an ACE member of any other NIFI.

**5.5.4** Any person whose appointment with a NIFI or any other financial institution has been terminated or who has been dismissed for reason of gross misconduct, fraud, dishonesty or conviction for an offence involving dishonesty or fraud shall not be appointed by any other NIFI in Nigeria as an ACE member.

**5.5.5** Where a member of an ACE becomes unfit to hold such appointment as provided in this Guidelines and/or in the letter of approval from the CBN, the NIFI shall terminate the appointment of the ACE member.

## **5.6 Resignation, Termination and Dismissal**

A NIFI shall notify the CBN with immediate effect of any resignation, termination of appointment or dismissal of a member of the ACE. The notice shall state the reason(s) for such resignation/termination or dismissal.

## **6.0 RESTRICTIONS ON ACE MEMBERSHIP**

The following restrictions shall apply in respect of the membership of an ACE:

- i No one individual shall belong to more than one ACE of financial institutions under the supervisory purview of the CBN belonging to the same category.
- ii. A member of an Advisory Committee of Experts in a bank or financial institution under the supervisory purview of the CBN shall not be a member of the Financial Regulatory Advisory Council of Experts (FRACE).
- iii A member of the ACE of a NIFI shall not be a member of the board of directors of the same institution.
- iv No member of the ACE of a NIFI shall be an executive management staff, or significant shareholder of the NIFI.

## **7.0 DUTIES AND RESPONSIBILITIES OF THE ACE**

### **7.1 It shall be the duty and responsibility of the ACE to:**

- Be accountable for all Shariah decisions, opinions and views provided by it;
- Advise the NIFI's board and management on jurisprudence-related matters so as to ensure the institution's compliance with principles of Islamic Commercial Jurisprudence at all times;
- Review and endorse policies and guidelines related to the principles underpinning non-interest (Islamic) finance. This shall include a periodic review of products and services to ensure that operational activities and transactions of the institution are made in accordance with those principles.
- Endorse and validate relevant documents for new products and services to ensure that they comply with the principles of Islamic Commercial Jurisprudence. These include:
  - i. Terms and conditions contained in forms, contracts, agreements or other legal documentation used in executing the transactions; and
  - ii. The product manual, marketing materials, sales illustrations and

brochures used to describe the product or service.

- Ensure that the necessary ex-post considerations are observed after the product offering stage, namely the internal Shariah review processes and Shariah compliance reporting. This is in order to monitor the NIFI's consistency in compliance with the principles of this model and effectively manage Shariah non-compliance risk that may arise over time.
- Assist or advise related parties to the NIFI, such as its legal counsel, external auditors or other consultants on Islamic jurisprudence-related matters upon request;
- Provide written Shariah opinion to the NIFI in respect of new products and other issues referred to it;
- Provide support to the NIFI in respect of questions or queries that may be raised regarding the compliance of its products to the principles of the model including queries from consumers of the NIFI's products
- Issue recommendations on how the NIFI could best fulfill its social role as well as promote non-interest banking and finance;
- Provide checks and balances to ensure compliance with the principles of Islamic Commercial Jurisprudence;
- Assist the internal audit of the NIFI on Shariah Compliance Audit; and
- Carry out any related duties assigned to it by the NIFI.

## **8.0 DUTIES AND RESPONSIBILITIES OF NIFIs TO THE ACE**

To ensure the smooth functioning of the ACE, a NIFI shall: -

### **(i) Refer all Islamic Commercial Jurisprudence issues to the ACE**

The NIFI shall refer all issues on Islamic Jurisprudence in its business operations to the ACE for advice and decision. The submission for advice or decision shall be made in a comprehensive manner for effective deliberation by the Committee. This shall include transaction (s) dynamics, supporting documents and other relevant information

### **(ii) Implement the ACE's advice and decision**

The NIFI shall be responsible for implementing the ACE's advice and decisions.

**(iii) Ensure that product documents are validated**

The NIFI shall obtain validation of the ACE relating to Shariah issues in all product documentations.

**(iv) Prepare a Shariah Compliance Manual**

The NIFI shall prepare a Shariah Compliance Manual which shall be endorsed by the ACE. The Manual shall provide general guidelines on the operational procedures of the ACE as well as a code of ethics and conduct for its members. The NIFI shall ensure that adequate systems are in place to monitor compliance with the code.

**(v) Provide the ACE access to all relevant documentation**

The NIFI shall provide the ACE with the necessary assistance and access to all relevant records, transactions, manuals or other information that it may require to perform its duties.

**(vi) Provide the ACE with required resources**

The NIFI shall provide the ACE with **required** financial resources, independent expert consultation, reference materials, training and development or any other support the ACE may require to perform its duty effectively.

**(vii) Remunerate the members of the ACE**

The Board of the NIFI shall determine the remuneration of ACE members. The remuneration shall be commensurate with the expected duties and functions of the Committee.

## **9.0 REPORTING RELATIONSHIP**

**9.1** The ACE shall report to the Board of Directors of the NIFI and have a dotted reporting line relationship to the MD/CEO. All cases of non-compliance with the principles of non-interest (Islamic) banking shall be recorded and reported to the Board by the ACE, and it shall recommend appropriate remedial measures. In cases where Shariah non-compliance is not

effectively or adequately addressed or no remedial measures were taken by the NIFI, the ACE shall inform the CBN.

**9.2** In the case of conflict of opinion among members of the ACE concerning a Shariah ruling, the board of directors of the NIFI shall refer the matter to the FRACE, which shall have the final authority on the matter.

## **10.0 REPORT OF THE ACE**

**10.1** The Board and Management of a NIFI shall ensure that the decisions and opinions of the ACE are documented, issued and disseminated to all stakeholders appropriately.

**10.2** The ACE shall also issue an annual report which complies with the Accounting and Auditing Organization of Islamic Financial Institutions (AAOIFI) Governance Standard (No. 1) regarding the basic elements of an ACE report. The NIFI shall also publish the ACE report in its annual financial report.

## **11.0 INDEPENDENCE OF THE ACE**

**11.1** The independence of the ACE shall be observed at all times for it to play its oversight role over the NIFI without undue influence, especially from the management of the NIFI.

**11.2** Members of the ACE shall not have such relationships with the NIFI, its related companies or officers that could interfere or be reasonably perceived to interfere with the exercise of independent judgment in the best interest of the NIFI.

**11.3** The management of a NIFI has an obligation to provide the ACE with complete, accurate and adequate information in a timely manner before all meetings and on an ongoing basis in order for the ACE to fulfill its responsibilities.

**11.4** The ACE shall have independent access to the NIFI's internal Shariah control/review officer/unit/department to check whether internal control and compliance are being appropriately followed.



## **12.0 COMPETENCE OF MEMBERS OF THE ACE**

**12.1** Members of the ACE shall at all times demonstrate the competence and ability to understand:

- the technical requirements of the business;
- the inherent risks in the business; and
- the management processes required to conduct its operations effectively with due regard to the interest of all stakeholders.

**12.2** The NIFI shall facilitate continuous professional development of members of the ACE as well as the officer(s) of the internal Shariah control/review organ of the institution.

**12.3** The NIFI shall specify and adopt a process for formal assessment of the effectiveness of the ACE and of the contribution of each ACE member to its effectiveness. The process should also identify relevant gaps to enable appropriate training and exposure for the ACE members.

## **13.0 CONFIDENTIALITY AND CONSISTENCY**

**13.1** Internal and privileged information obtained by the ACE in the course of its duties shall be kept confidential at all times and shall not be misused.

**13.2** Notwithstanding the above, the ACE shall not be liable for breaching the confidentiality and secrecy principle if the sensitive information is reported to the CBN in good faith for corrective actions, in the performance of its duty in reporting serious breaches of Shariah by the NIFI or in compliance with the order of a court of competent jurisdiction.

**13.3** The NIFI shall ensure that the ACE follows a structured process in making Shariah decisions in such a way as to ensure quality and consistency of the decisions and their proper documentation and disclosure.

**13.4** The NIFI shall ensure that the ACE adopts a well-defined and documented process for changing, amending or revising any Shariah pronouncements/resolutions issued by it. Appropriate and timely disclosure by the NIFI shall be made to all stakeholders and/or the public whenever the ACE and/or its members depart from or revise any of its Shariah pronouncements/resolutions.

## **14.0 INTERNAL SHARIAH COMPLIANCE UNIT**

**14.1** All NIFIs are required to have a dedicated Internal Shariah Compliance Unit comprising officer(s) with appropriate qualifications and experience in Islamic Commercial Jurisprudence and conventional finance to serve as the first point of reference for Shariah compliance issues. The unit may also serve as the secretariat to the ACE.

**14.2** The appointment and removal of members of the ACE secretariat shall be appropriately carried out by the management of the NIFI in consultation with the ACE.

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