



GUIDELINES ON SHARIAH GOVERNANCE FOR NON-INTEREST FINANCIAL INSTITUTIONS IN NIGERIA

1. INTRODUCTION

Compliance with Shariah principles is a critical element of non interest banking and finance. A shariah review and advisory framework is imperative in ensuring such compliance. An effective Shariah framework will harmonise the Shariah interpretations, strengthen the regulatory and supervisory oversight of the industry and nurture a pool of competent Shariah advisers.

Consequently, all non-interest banks and other financial institutions under the purview of the Central Bank of Nigeria (CBN), herein designated as Non-Interest Financial Institutions (NIFIs) in Nigeria are required to establish a Shariah advisory body as part of their governance structure to be known as "Shariah Advisory Committee" (SAC).

In recognition of the foregoing, the CBN has developed the following guidelines for the appointment, duties and responsibilities of the Shariah advisory committees of NIFIs.

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

2. OBJECTIVES

These Guidelines aim to:

- (a) set out the rules, regulations and procedures in the establishment of a Shariah Advisory Committee of a NIFI;
- (b) define the role, scope of duties and responsibilities of the Committee and its members;
- (c) outline the functions relating to Shariah review and audit processes; and
- (d) define relationship and working arrangement between the Committee and the CBN Shariah Council (CSC).

3. SCOPE OF APPLICATION

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

- i. Full-fledged non-interest deposit money bank or subsidiary;
- ii. Full-fledged non-interest microfinance bank or subsidiary;
- iii. A non-interest branch or window of a conventional bank or financial institution.
- iv. A development finance institution registered with the CBN to offer non-interest financial services, either full-fledged, or as a subsidiary;
- v. A primary mortgage institution registered with the CBN to offer non-interest financial services either full-fledged, or as a subsidiary; and
- vi. A finance company registered with the CBN to provide non-interest financial services, either full-fledged, or as a subsidiary.

4. ESTABLISHMENT OF SHARIAH ADVISORY COMMITTEE (SAC)

All licensed NIFIs shall establish a Shariah Advisory Committee (SAC) to be approved by the CBN.

5. MEMBERSHIP OF SAC

5.1 Appointment

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

5.2 Qualification

- A member of the SAC shall be an individual and not a company, institution or body;
- The proposed member of the SAC shall at a minimum, have an academic qualification or possess necessary knowledge, expertise or experience in the sciences of the Shariah with particular specialisation in the field of Islamic Transactions/Commercial Jurisprudence (Fiqh al Mua'amalat); and
- It is highly desirable for the member to have:
 - skills in the philosophy of Islamic Law (Usul al Fiqh),
 - good knowledge of written Arabic,
 - ability to speak in both Arabic and English, and
 - exposure in the areas of business or finance especially Islamic Finance.

5.3 Composition

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

5.3.2 The SAC may engage the services of consultants who have expertise in the field of business, economics, law, accounting or any other field that will assist it in making informed judgement on the Shariah compliance of banking and financial products and services. Such consultants may attend meetings of the SAC but shall not take part or exercise voting rights in giving a Shariah legal opinion or verdict by the SAC.

5.4 Application Procedures

The application for the appointment or reappointment of members of the SAC shall be submitted to the CBN in writing. The application shall be accompanied by detailed Curriculum Vitae of the nominee and a resolution of the board of directors of the NIFI approving the appointment.

5.5 Disqualification

5.5.1 The members of the Shariah committee shall be persons of acceptable reputation, character and integrity. The CBN reserves the right to disqualify any member who fails to meet the requirements.

5.5.2 No person shall be appointed or remain a member of a SAC who:-

- is of unsound mind or as a result of ill-health is incapable of carrying out his/her duties; or
- is declared bankrupt or suspends payments or compounds with his/her creditors including his/her bankers; or

- is convicted of any offence involving dishonesty or fraud; or
- is guilty of serious misconduct in relation to his/her duties; or
- fails to attend 75% of the meetings of the SAC in a year without satisfactory excuse.
- in the case of a person possessed of 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 a SAC, director of or directly concerned in the management of a NIFI which failed or was wound up by the Federal High Court shall, without the express authority of the CBN act or continue to act as a SAC member of any other NIFI.

5.5.4 Any person whose appointment with a NIFI 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.

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

5.6 Resignation, Termination and Dismissal

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

6. RESTRICTIONS ON SAC MEMBERSHIP

The following restrictions shall apply in respect of the membership of a SAC:

- i No one individual shall belong to more than one SAC of financial institutions belonging to the same category.
- ii. A member of the CBN Shariah Advisory Council (CSC) shall not be a member of a Shariah advisory committee in a bank or financial institution under the regulatory purview of the CBN.
- iii A member of the SAC shall not be a member of the board of directors of the institution.
- iv No member of the SAC of a NIFI shall be a director or executive management staff, or significant shareholder of the NIFI.

7.0 DUTIES AND RESPONSIBILITIES OF THE SAC

7.1 It shall be the duty and responsibility of the SAC to:

- be responsible and accountable for all Shariah decisions, opinions and views provided by them.
- advise the NIFI's board and management on Shariah matters so as to ensure the institution's compliance with Shariah principles at all times.
- review and endorse Shariah related policies and guidelines. 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 the principles of the Shariah.
- endorse and validate relevant documents for new products and services to ensure that they comply with the Shariah. 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 Shariah compliance and effectively manage Shariah compliance risk that may arise over time.
- assist or advise related parties to the NIFI, such as its legal counsel, auditors or other consultants on Shariah 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 Shariah compliance of its 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 Shariah principles.
- assist the internal audit of the NIFI on Shariah compliance audit.
- carry out any other duties assigned to it by the board of the NIFI.

8.0 DUTIES AND RESPONSIBILITIES OF NIFIs

To ensure the smooth running of the SAC, a NIFI shall: -

(i) refer all Shariah issues to the SAC

The NIFI shall refer all Shariah issues in its business operations to the SAC 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 explaining the process involved, documents to be used and other necessary information.

(ii) implement the SAC's advice and decision

The NIFI shall be responsible for implementing the SAC's advice and decision.

(iii) ensure that product documents are validated

The NIFI shall obtain validation of the SAC 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 SAC. The Manual shall provide a general guideline on the operational procedures of the SAC 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 SAC access to all relevant documents

The NIFI shall provide the SAC 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 SAC with sufficient resources

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

(vii) remunerate the members of the SAC

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

9.0 REPORTING RELATIONSHIP

9.1 The SAC shall directly report to the Board of Directors of the NIFI and have a dotted line reporting relationship to the MD/CEO. All cases of non-compliance with the Shariah shall be recorded and reported to the Board by the SAC, 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 SAC shall inform the CBN.

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

10.0 REPORT OF THE SAC

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

10.2 The SAC shall also issue an annual report which complies with the AAOIFI Governance Standard (No. 1) regarding the basic elements of a SAC report. The NIFI shall also publish the SAC report in its annual financial report.

11.0 INDEPENDENCE OF THE SAC

11.1 The independence of the SAC 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 SAC 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 by the SAC.

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

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

12.0 COMPETENCE OF MEMBERS OF THE SAC

12.1 Members of the SAC 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 SAC 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 SAC and of the contribution of each SAC member to its effectiveness. The process should also identify relevant gaps to enable appropriate training and exposure for the SAC members.

13.0 CONFIDENTIALITY AND CONSISTENCY

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

13.2 Notwithstanding the above, the SAC 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 the Shariah by the NIFI or in compliance with the order of a court of competent jurisdiction.

13.3 The NIFI shall ensure that the SAC 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 SAC adopts a specified process for changing, amending or revising any Shariah pronouncements/resolutions issued by it. Appropriate and timely disclosure shall be made to all stakeholders and/or the public whenever the SAC 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 Shariah 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 SAC.

14.2 The appointment and removal of members of the secretariat shall be appropriately carried out in consultation with the SAC.

**FINANCIAL POLICY & REGULATION DEPARTMENT
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