

THE NIGERIAN ELECTRICITY REGULATORY COMMISSION

ORDER ON THE PROCEDURE FOR OBTAINING APPROVAL OF THE COMMISSION FOR
ASSIGNMENT/CEDING OF A LICENCE, TRANSFER OF UNDERTAKING, OR CHANGE IN
SHAREHOLDING OF LICENSED ENTITIES UNDER SECTION 69 OF THE ELECTRIC POWER
SECTOR REFORM ACT, 2005

PREAMBLE:

The Nigerian Electricity Regulatory Commission (NERC) (hereinafter referred to as "the Commission") by virtue of Section 32 (2) (d) of the Electric Power Sector Reform (EPSR) Act 2005 ("the Act") is vested with the authority to *"licence and regulate persons engaged in the generation, transmission, system operation, distribution and trading of electricity."*

Under Section 62 of the Act, any person intending to engage in the business of electricity generation, transmission, system operation, distribution or trading is required to obtain a licence from the Commission for such purpose.

A crucial milestone in the on-going reforms in the power sector is the transfer of the PHCN successor companies to private owners. The objective of this is to encourage significant and much needed private sector investment in the industry.

The legal framework for such transfer is contained in Section 69(1) of the Act provides that:

"A licensee shall not, except as provided in section 26(7), assign or cede his licence or transfer his undertaking, or any part thereof, by way of sale, mortgage, lease, exchange or otherwise without the prior consent of the Commission provided that, should the Commission determine that in any instance the circumstances so require, it may establish licence terms and conditions providing its specific or general consent for any or all of the foregoing."

Section 69(2) further provides as follows:

"No licensee shall, without the prior written consent of the Commission, acquire by purchase or otherwise, or affiliate with, the licence or undertaking of any other licensee or person that is in the business of electricity generation, transmission, system operation, distribution, or trading, other than as provided for in sections 65(2), 67(2) and 68, provided that the Commission may, as part of its consent, impose conditions such as, but not limited to, adherence to codes of conduct approved by the Commission."



Thus, in exercise of these powers pursuant to Section 69 of the EPSR Act, the Commission hereby issues an Order on the Procedure for Obtaining Approval of the Commission for Assignment/Ceding of Licences, Transfer of Undertakings, and Changes in the Shareholding of Licensed entities.

The Order stipulates the following:

- (i) The requirements for approval of Assignment/Ceding of Licences, Transfer of Undertakings, and Changes in the Shareholding of Licensed entities;
- (ii) The Know Your Licensee (KYL) Forms;
- (iii) Curriculum Vitae Forms for Executive Management Staff; and
- (iv) The Asset and Liability Declaration Form.

OBJECTIVE OF THE ORDER

Effective strategic implementation of the Electric Power Sector Reform Act (EPSRA), 2005 is critical to Nigeria's sustained socio-economic development. It is against this background that the Commission put in place frameworks to effectively regulate the NESI to avoid technical and managerial deficiencies potentially harmful to the industry.

In this regard, the Commission established the "Fit and Proper Principles" and "Assessment Criteria for Fit and Proper Persons..." for persons (corporate and natural) desiring to participate in the Nigerian electricity supply industry (NESI) for the purpose of:

- i. undertaking any regulated activity under the Act;
- ii. taking-over the activities and undertaking of a Licensee;
- iii. taking office in the executive management committee of a Licensee; or
- iv. Acquiring 5% or more equity of a Licensed entity.

These principles are contained in the Guidelines which specify the minimum conditions upon which the Commission may grant consent for the purposes stated therein.

UPON due consideration of the authority conferred on the Commission under Sections 32(2)(d), 62, and 69 of the Act, and all other powers enabling it in that behalf;

AND UPON further consideration of the need to establish principles and criteria for assessing "Fit and Proper" persons for participation in any regulated electricity business in Nigeria as stipulated in the Guidelines;

IT IS HEREBY ORDERED that all present and future applications or requests for approval of the Commission for assignment or ceding of licences, transfer of undertakings, and/or the change in shareholding of Licensed entities shall be in strict accordance with the prescribed Requirements, Guidelines, and Forms in the appendices below.

BY ORDER OF THE COMMISSION

Signed this 24th day of September, 2013



Dr. Sam Amadi
Chairman/CEO



APPENDIX 1 - REQUIREMENTS FOR TRANSFER OF A LICENCE OR ASSIGNMENT/CEDING OF AN UNDERTAKING AND CHANGE IN SHAREHOLDING

A. APPROVAL FOR TRANSFER OF A LICENCE OR ASSIGNMENT/CEDING OF AN UNDERTAKING

- i. The Licensee shall submit an application to the Commission for approval to transfer or assign its licence to a new owner. The application shall be accompanied with:
- Two resolutions; one from the Board of the Licensee authorizing the transfer of a Licence or assignment of an undertaking, and the other from the Board of the new owner accepting the transfer of a Licence or assignment of an undertaking;
 - An undertaking by the Directors of the new owner against service disruption, to honour all existing contracts executed by the Licensee, and to comply with the Terms and Conditions of the Licence;
 - Certificate of Incorporation of the new owner, if it is a corporate entity;
 - Profile of the new owner and its directors highlighting their experience in the Nigerian Electricity Market in line with KYL Forms attached to Appendix 2;
 - Proposed changes to Senior Management, if any (KYL Forms attached to Appendix 2). Note that all changes in Senior Management must be with the prior approval of the Commission;
 - The Agreement of the transfer or assignment. Note: an executed copy of which shall be submitted upon obtaining the approval of the Commission;
 - submit an Application for Amendment of a Licence; and
 - Payment of the processing fees for amendment of the Licence as stipulated in the NERC (Licence and Operating Fees) Regulations 2010.
- ii. The Licensee shall submit an **Application for Licence Form** duly completed by the new owner.
- iii. The Licensee shall pay all outstanding indebtedness owed the Commission, including Annual Operational Levies/Fees, Fines, Penalties, etc.

Prior to the grant of approval, the Commission shall engage a Solicitor to conduct a Legal Due Diligence on the new owner. Upon satisfaction of all the required conditions, the Commission shall grant approval. Once approval is granted, the Commission shall, within thirty (30) days withdraw the existing Licence from the Licensee, and issue a new Licence Certificate, and the accompanying Terms and Conditions to the new owner.



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B. APPROVAL FOR CHANGE IN SHAREHOLDING OF A LICENSED ENTITY

- i. Submit an application to the Commission for approval to change shareholding. The application shall be accompanied with:
 - Two Resolutions; one from the Board of the Licensee authorizing the transfer of shares, and the other from the Board of the proposed shareholder authorizing the transaction;
 - Certificate of Incorporation of the proposed shareholder(s) if an incorporated entity;
 - Profile of the new shareholder(s) and its directors board members (if an incorporated entity), and their experience (KYL Forms NERC form 01);
 - Proposed changes to Senior Management, if any (KYL Forms, NERC 02a). **Note that all changes in Senior Management must be with the prior approval of the Commission;**
 - Resume form containing employment and history of Head of Divisions/ Senior Management Staff (Curriculum Vitae, NERC Form 02b);
 - Asset and liability register (Declaration Form **Appendix 01**);
 - An undertaking by the directors of the new owner against service disruption, to honour all existing contracts executed by the Licensee, and to comply with the Terms and Conditions of the Licence; and
 - The Share Sale Agreement. **Note: an executed copy of which shall be submitted upon obtaining the approval of the Commission.**
- ii. The Licensee shall pay all outstanding indebtedness owed the Commission, including Annual Operational Levies/Fees, Fines and Penalties.
- iii. The licensee shall pay the sum of One Million Naira (~~#~~1,000,000.00) only to the Commission as administrative fees for processing the application.

Prior to the grant of approval, the Commission shall engage a Solicitor to conduct Legal Due Diligence on any proposed shareholder(s) that is an incorporated entity. Once the approval is granted, the Licensee shall, within thirty (30) days, submit to the Commission the following documents:

- The Certified True Copy of Form CAC 2 of the Licensee duly filed at the Corporate Affairs Commission after the sale of shares; and
- A brief profile on the new shareholding structure of the applicant.



APPENDIX 2 – FORMS

- A. KYL FORM FOR DIRECTORS/SHAREHOLDERS OF NERC LICENSEES**
- B. KYL FORM FOR EXECUTIVE MANAGEMENT STAFF OF NERC LICENSEES**
- C. CURRICULUM VITAE OF EXECUTIVE MANAGEMENT STAFF OF NERC LICENSEES**
- D. ASSET AND LIABILITY DECLARATION FORM**



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3