

NIGERIAN ELECTRICITY REGULATORY COMMISSION

GUIDELINES AND ASSESSMENT CRITERIA FOR FIT AND PROPER PERSONS FOR CORPORATE AND INDIVIDUAL PARTICIPATION IN REGULATED ELECTRICITY UNDERTAKINGS

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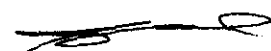
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GUIDELINES FOR THE DETERMINATION OF FIT AND PROPER ENTITIES AND PERSONS ENGAGING IN ELECTRICITY UNDERTAKINGS IN THE NIGERIAN ELECTRICITY SUPPLY INDUSTRY (NESI)

1.0 INTRODUCTION

The comprehensive and effective implementation of the Electric Power Sector Reform Act (EPSR Act), 2005 is critical to Nigeria's sustained socio-economic growth. It is thus necessary to ensure that the Nigerian Electricity Regulatory Commission (NERC) effectively regulates the Nigerian Electricity Supply Industry (NESI) so as to avoid technical and managerial pitfalls that are capable of adversely affecting the sector.

In pursuit of the Commission's statutory mandate to license and regulate persons desirous of doing business in the NESI as well as setting the conditions upon which the transfer or assignment of licenses would be approved, the Commission is determined to establish the principles and criteria by which corporate and natural persons will be assessed as "fit and proper" to:

- i. Undertake any aspect of regulated electricity business;
- ii. Take any directorship or executive management position in an electricity licensee; or
- iii. Take more than 5% equity in an electricity licensee.

This is pursuant to Section 96(2)(i) which empowers the Commission to make provisions for the *"regulation of licensee investments, assets and properties, and the interest in such assets and properties, in connection with the electricity industry"*.

1.1. OBJECTIVE

These Guidelines provide the minimum conditions for assessing the capacity of corporate and individual persons as "fit and proper" to engage in any aspect of electricity business licensed by NERC under EPSR Act, 2005 or to occupy directorship or management positions in any licensed electricity entity.



1.2 SCOPE

These Guidelines apply to all persons as stated in Section 62 of the EPSR Act 2005 desirous of engaging in the business of generation, distribution, transmission or trading in electricity.

The Guidelines are divided into two parts. The First Part sets the Fit and Proper Requirements

for individuals seeking to take up directorship or executive management positions in the licensed entities while the Second Part prescribes the general assessment criteria for corporate entities desirous of undertaking a regulated electricity business

1.3 DEFINITIONS

In these Guidelines, the following terms shall have the meaning assigned to them herein:

“Fitness” refers to the competence of the Board, directors, Management and operational positions and the capacity of nominated individuals to fulfill the responsibilities of their positions;

“Propriety” refers to the integrity and suitability requirements for the position.

For the purposes of these Guidelines, a corporate entity or individual is deemed to be **“fit and proper”** if having regard to the criteria stipulated herein, such entity or individual is suitable to effectively, efficiently and honestly carry out the regulated activities of a licensed entity in accordance with the provisions of the EPSR Act 2005 or to perform the tasks or roles of a director or executive management in a regulated entity.

An Independent director for the purposes of these Guidelines is a non-executive who is free from any business or other association – including those that arise out of any shareholding, involvement in past or present management or as a supplier, customer or adviser that could materially interfere with the exercise of their independent judgment in the Company.



PART I

2.0 CRITERIA FOR ASSESSING PROPRIETY

2.1 PROVISIONS IN THE COMPANIES AND ALLIED MATTERS ACT

In determining an individual applicant's suitability for the position of a Director, the provision of Section 20 of Companies and Allied Matters Act (CAMA) 1990 shall be taken into consideration.

S. 20 of the CAMA 1990 provides among other things that such persons shall:

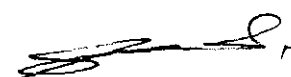
- i. Not be less than 18yrs of age
- ii. Must not be of unsound mind,
- iii. Must not have a previous criminal conviction
- iv. Must not be an undischarged bankrupt or have history of bankruptcy and be creditworthy

2.2 ADDITIONAL CRITERIA

In addition to the provisions of CAMA, regard would be had to the following considerations:

Whether:

- (I) The appointment would result in a conflict of interest with another electricity business in which he has or represents an interest; or
- (II) The applicant or any business in which he has or represents a controlling interest in which he exercises significant influence has been disciplined, suspended by a regulatory or professional body publicly or privately or otherwise sanctioned by a court or tribunal ; or
- (III) The person has been dismissed, directed to resign or has resigned from employment or from a position of trust, fiduciary appointment or similar position on account of dishonesty and or lack of integrity; or
- (IV) The person deliberately misled or attempted to mislead by act or omission a client, the company and/or the regulators; or



- (V) The person deliberately falsified documents to mislead a client, the company and/or regulators; or
- (VI) The person had deliberately failed to disclose the existence of falsified documents; or
- (VII) The person has deliberately prepared inaccurate or inappropriate records or returns; or
- (VIII) The person has been found to have violated health and safety standards set by a relevant regulatory authority.

2.3 CRITERIA FOR ASSESSING FITNESS: Competence and Capability

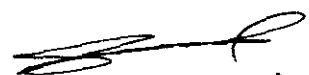
To assess competence of candidates for Board and Management positions, their capacity to fulfill the responsibilities of their positions and their ability to understand the technical requirements of the electricity business in which they have indicated interest, the Commission shall take into account all relevant considerations, including but not limited to factors listed against each of the positions in Schedules 1-3 of this Guidelines.

For a change in the position of director, such a director shall not take office until certified by the Commission to be fit and proper.

PART II

3.0 GENERAL GUIDELINES FOR PARTICIPANTS IN THE NIGERIAN ELECTRICITY SUPPLY INDUSTRY (NESI)

The following are the required competencies for corporate entities desirous of engaging in electricity business and individuals holding key management positions.



3.1 CORPORATE PERSONS

Technical capacity

- i. Corporate Experience: (for example, size of plant operated, Loss of Load probability undertaken, Customer Base, Aggregate Technical Commercial & Collection (ATC&C) loss reduction, etc.)
- ii. Must have a comprehensive and realistic long-term Investment plan

Financial capacity

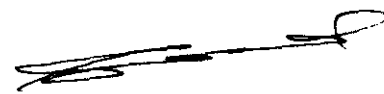
- i. Sources of Funding: Share capital contribution- foreign or local must be verifiable, free from encumbrances and not of illicit sources.

Applicant must show capability to raise required funds to finance project.

- ii. financing plan must be realistic and consistent with expansion/investment plans
- iii. return on equity and liquidity: Existing corporate applicants must demonstrate positive return on equity and favourable liquidity ratios.

Legal and Regulatory

- i. Legal status of applicant:
 - Entity must provide the certificate of incorporation along with Memorandum and Articles of Association showing that the entity is incorporated to undertake electricity business;
 - Must provide a list of all its affiliates being companies in which it holds 10% shares and above;
 - Must not have any history of regulatory non-compliance
- ii. Sustainability – to establish the sustainability of the business, the applicant must produce evidence of the following Agreements: Technical Services Agreement (TSA), Share Purchase Agreement (SPA), Letters of Intent- evidence of joint submission.
- iii. Corporate Governance Considerations:
 - Shareholding structure-Affiliates/conflict of interest situations: Affiliates must not be engaged in other aspects of electricity undertakings except

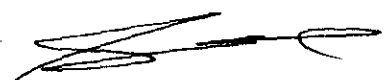


the one for which it was issued a licence unless otherwise approved by the Commission.

- Framework of the Board:
 - Tenure: Executive Board members shall have a minimum tenure of 5 years renewable for another term of 5 years only.
 - Non Executive Board members shall not be restricted to a definite number of years.
 - Minimum number of Board members shall be 5 out of which 1 shall be an independent Director.
 - Educational Qualification: Executive directors shall meet minimum qualification indicated in Schedules 1 and 2 while non-executive directors must either have a minimum qualification of a university degree in any discipline and 5 years relevant experience.
 - Mandatory Training: Directors shall undergo annual training relevant to their duties as directors and to the sectors in which their companies are licensed.
- Operation by Committees: In line with best practice, the company must have in place the Committees listed in Schedule 3 of these Guidelines as well as any other Committees the entity may deem necessary.
Appointment of Statutory Auditors:

In addition to the provisions under CAMA, the following shall also apply:

- Tenure – External auditors of licensees must not be engaged for a consecutive tenure exceeding 5 years
- Conduct of Audit: Any officer or director of a licensee, or any other person acting under the direction thereof, who fraudulently influences, coerces, manipulates, or misleads any independent accountant engaged in the performance of an audit of the financial statements of the licensee for the purpose of rendering such financial statements materially misleading commits an offence punishable under the EPSR Act 2005.



iv. Competition Consideration:

A vital consideration for the purposes of determining fitness and propriety of the corporate entity is whether its entry would not result in an undue acquisition of market power.

3.2 INDIVIDUALS

To be eligible as a member of management of any electricity company in the NESI, the individual must comply with the following requirements:

- i. Shall submit to the Commission reference letters from 2 Referees, one from last place of work from a person not below the level of a Director or equivalent and the other from any reputable person who is qualified to attest to the applicant's character
- ii. Shall undergo comprehensive Security checks by the relevant security agencies.

If for any reason the private interests of a member of management of any electricity company in the NESI come into conflict with his functions as a member, he/she shall forthwith disclose the fact to the company

4.0 FITNESS REQUIREMENTS FOR EXECUTIVE MANAGEMENT FOR GENERATION, DISTRIBUTION AND TRANSMISSION COMPANIES

The fitness requirements for management positions for generation, distribution and transmission companies are specified in Schedule 1 to these Guidelines.

5.0 FITNESS REQUIREMENTS FOR TRADING COMPANIES

The fitness requirements for management positions for generation, distribution and transmission companies are specified in Schedule 2 to these Guidelines.

6.0 SIGNIFICANT SHAREHOLDERS FOR LICENSED ENTITIES

Any investor with shareholding of more than 5% in any electricity business in Nigeria shall:

A handwritten signature in black ink, consisting of several overlapping loops and a final flourish that ends in a small circle with the number 9 written above it.

- Have financial resources sufficient to meet commitments on a continuing basis;
- Fulfill all the conditions in the propriety principles; and
- Provide three reference letters from individuals of reputable standing in the society.

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SCHEDULE 1

Criteria for Executive Management of Generation, Transmission & Distribution Companies

	Description of position	Criteria	Generation	Transmission	Distribution
1	MD / CEO	Education	University degree; or the equivalent in any area or discipline	University degree; or the equivalent in any area or discipline	University degree; or the equivalent in any area or discipline
		Professional qualification	Registered or Registrable with a relevant professional body in Nigeria in area of profession is an added advantage	Registered or Registrable with a relevant professional body in Nigeria in area of profession is an added advantage	Registered or Registrable with a relevant professional body in Nigeria in area of profession is an added advantage
		Key management experience	15 years minimum experience in management level	15 years minimum experience in management level	15 years minimum experience in management level
2	Executive Director Finance or its equivalent	Education	University degree in Economics, Accounting, Finance	University degree in Economics, Accounting, Finance, Business Administration	University degree in Economics, Accounting, Finance, Business Administration
		Professional qualification	ICAN or any relevant professional qualification where applicable	ICAN or any relevant professional qualification where applicable	ICAN or any relevant professional qualification where applicable
		Key management experience In Finance	12 years minimum Post Professional Qualification	12 years minimum Post Professional Qualification	12 years minimum Post Professional Qualification
3	Executive Director Administration or its equivalent	Education	Any degree in Management	Any degree in Management	Any degree in Management
		Professional Qualification	Any professional qualification in Management recognised in Nigeria will be an -	-	-



			advantage		
		Key Management Experience in electricity Sector (years)	12 years minimum Post Professional Qualification	12 years minimum Post Professional Qualification	12 years minimum Post Professional Qualification
4 A	Lead, Technical Engineering (Mechanical, Electrical, Civil as applicable)	Education	University degree in relevant engineering discipline	-	University degree in relevant engineering discipline
		Professional qualification	COREN or equivalent	-	COREN or equivalent
		Key management experience in electricity sector (years)	12 years minimum Post Professional Qualification	-	12 years minimum Post Professional Qualification
4 a	CEO Transmission Company of Nigeria (TCN)	Education	-	University degree in relevant engineering discipline	
		Professional qualification	-	COREN or equivalent	
		Key management experience in electricity sector (years)	-	12 years minimum Post Professional Qualification	
b	Executive Director	Education		University degree in relevant engineering	


	Transmission Service Provider (TSP) or its equivalent			discipline	
		Professional Qualification		COREN or equivalent	
		Key management experience in Transmission Systems Operations(y ears)		12 years minimum Post Professional Qualification	
c	Executive Director System Operations (SO) or its equivalent	Education	-	University degree in engineering.	-
		Professional qualification	-	COREN or equivalent	-
		Key management experience in Systems Operations(y ears)	-	12 years minimum Post Professional Qualification	-
d	Executive Director Market Operations (MO) or its equivalent	Education	-	University degree in any relevant field.	-
		Professional qualification	-		-
		Key management experience in Market Operations (years)	-	12years minimum Post Professional Qualification	-



SCHEDULE 1

Criteria for Executive Management of Generation, Transmission & Distribution Companies (Cont.)

	Description of position	Criteria	Generation	Transmission	Distribution
4	General Counsel / Legal Adviser	Education	University degree in Law	University degree in Law	University degree in Law
		Professional qualification	Called to bar in Nigeria	Called to bar in Nigeria	Called to bar in Nigeria
		Key management experience in Corporate Law Counsel	12 Years post call to Bar	12 Years post call to Bar	12 Years post call to Bar
5	Lead, Regulatory Affairs	Education	University degree in any profession but with experience and training in regulatory affairs.	University degree in any profession but with experience and training in regulatory affairs.	University degree in any profession but with experience and training in regulatory affairs.
		Professional qualification	Professional certificate where applicable	Professional certificate where applicable	professional certificate where applicable
		Key management experience in Regulatory Affairs in any reputable establishment.	12 years minimum Post Professional Qualification	12 years minimum Post Professional Qualification	12 years minimum Post Professional Qualification
6	Lead, Health, Safety & Environment	Education	University degree in relevant field	University degree in relevant field	University degree in relevant field
		Professional qualification	Professional training in HS&E.	Professional training in HS&E.	Professional training in HS&E.
		Key	12 years	12 years	12 years





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		management	experience in	HS&E	minimum Post	minimum Post	Professional	Professional	Qualification	Qualification
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SCHEDULE 2

Criteria for Executive Management of Trading Companies

	Description of position	Education	Professional qualification	Key management experience (Years)
1	MD / CEO	University degree; or the equivalent	Registrable with a relevant professional body in Nigeria is an added advantage	15 years minimum Post Professional Qualification
2	Head, Finance & Administration	University degree in Economics, Accounting, Finance	ICAN	12 years minimum Post Professional Qualification
3	General Counsel / Legal Adviser	University degree in Law	Called to bar in Nigeria	12 years minimum Post Professional Qualification
4	Head, Procurement and Contract Management	University degree in Engineering, Economics or Finance	Any relevant professional qualification	12 years minimum Post Professional Qualification
5	Head, Regulatory Affairs	University degree in Economics, Statistics, Finance, Law or Engineering	Professional designation in Accounting is desirable	12 years minimum Post Professional Qualification

It is recommended that small licensees may consider a merger of the offices of the General Counsel (Legal Adviser) and Head, Regulatory Affairs.

SCHEDULE 3

Mandatory Board Committees

The following shall be Mandatory Committees of the Boards of Generation, Distribution and Transition Companies without prejudice to their power to establish other committees as they may deem necessary.

1) Audit and Finance Committee:

The Audit and Finance Committee's overall purpose is to enhance confidence in the integrity of the company's processes and procedures relating to internal control and corporate reporting.

The Function of the Audit and Finance Committee shall be:

- a) To review financial reporting process, recommend to the board the appointment and provide oversight for the work of the external auditor
- b) To make recommendations to the Board concerning the revenue requirement of the Company
- c) To review the company's investment plans and make recommendations to the Board
- d) Risk Assessment and Management,
- e) To review the effectiveness of the company's internal financial controls and audit functions
- f) To Review arrangements by which staff of the company may, in confidence, raise concerns about possible improprieties in financial and non financial matters,
- g) To review compliance with internal processes and procedures
- h) To ensure statutory compliance with the provisions of the CAMA 1990 as necessary

2. Corporate Governance and Regulatory Affairs Committee:

The functions of the Corporate Governance and Regulatory Affairs Committee shall be:

- a) To advise the Board on the provisions of all relevant extant Nigerian laws, NERC's Regulations Orders, codes and Standards;



- b) To ensure compliance with NERC's Extant Regulations, Orders, Codes and Standards;
- c) To monitor regulatory developments and advise the board on same;
- d) To assist the Board of Directors in fulfilling their responsibilities to Shareholders, SEC and NSE in relevant cases;
- e) To review the company's disclosure and insider trading policies and similar policies and practices as deemed necessary;
- f) To assess the effectiveness of the Board as a whole (including any Committees thereto);
- g) To consider issues related to management succession;
- h) To assess the performance of the CEO;
- i) To Periodically assess the Company's governance;
- j) To consider and make recommendations on nominations for appointment to the Board where applicable;
- k) To induct and provide support for new Directors and facilitate continuing education for existing director.

3. Health Safety and Environment Committee

- i. Update the Company on current issues in Health and Safety in the electricity sector;**
- ii. Ensure compliance with NERC's Health and Safety Code as well as other relevant codes of the Commission**

For Trading Companies

The establishment of a Health and Safety Committee shall not be mandatory for Trading Companies.

These Guidelines and Assessment Criteria for Fit and Proper Persons for Corporate and Individual Participation in Regulated Electricity Undertakings including the Schedules were approved at the 16th Formal Meeting of the Commission of 2012 held on December 19, 2012.



**Dr. Sam Amadi
Chairman/CEO**