PenCom

GUIDELINES ON SIGNIFICANT CROSS-SHAREHOLDING IN LICENSED PENSION FUND OPERATORS

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National Pension Commission

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1.0. Introduction

1.1 These Guidelines on Significant Cross-Shareholding (**the Guidelines**) in and among Licensed Pension Fund Operators (LPFOs) are issued pursuant to Section 115 and all other enabling provisions of the Pension Reform Act (PRA) 2014.

1.2 Definitions of Terms

i. **Acting-in-Concert - means** any coordinated action or arrangement between two or more Persons pursuant to an agreement or understanding (whether express or implied).

ii. **Effective Date** - The provisions of these Guidelines shall be deemed effective as of the date of issuance

iii. **LPFO** - means Licensed Pension Fund Operators by the Commission.

iv. **Person** - means any natural person, or any juristic person incorporated in Nigeria or otherwise recognised under the laws of Nigeria or any other jurisdiction.

v. **Related Person -** means, as applicable, any Person that:

(a) is a spouse, civil partner, parent, sibling, child or dependent;

(b) is a trustee of a trust under which a Person is a settlor, beneficiary, or has power to appoint or remove trustees;

(c) is a partner in a firm in which a Person is also a partner or exercises substantial influence;

(d) acts as a nominee or on behalf of a Person in exercising voting or shareholder rights in a company;

(e) is a director or key management personnel in a company, nominated by, appointed by, or accustomed to act in accordance with the instructions of a Person;

(f) is directly or indirectly controlled by, under common control with, or a subsidiary of a Person;

(g) holds a Significant Shareholding in the Person or vice-versa;

(h) is an affiliate or joint venture partner of the Person; or

(i) is accustomed to acting-in-concert with the Person on matters of corporate governance.

vi. **Significant Cross-Shareholding"**

1) A situation in which a Significant Shareholder in a LPFO, thereafter:

a) acquires, or seeks to acquire a Significant Shareholding in another LPFO; or

b) Otherwise, becomes legally entitled, whether directly or indirectly, to hold such Significant Shareholding in another pension entity, by means including but not limited to the conversion of debt to equity, operation of law such as transmission on death, or any other form of vesting.

2) A situation arising from mergers and acquisitions outside the pension sector, which led to individuals or entities holding equities of 5% or more in multiple LPFOs.

vii. **Significant Shareholding** - means an equity interest, held directly or indirectly, amounting to 5% or more of the issued share capital of an entity, together with the corresponding voting rights attached to such shares or such other threshold as may be prescribed by the Commission from time to time.

viii. **Significant Shareholder -** means any Person or entity that holds a Significant Shareholding in LPFO.

2.0. Objectives of the Guidelines

2.1 These Guidelines on Significant Cross-Shareholding in LPFOs are issued by the National Pension Commission (the Commission) to:

i. **Promote Transparency:** Ensure openness in the ownership and control structures of LPFOs to foster trust and accountability within the pension industry.

ii. **Mitigate Conflicts of Interest:** Prevent situations where cross-shareholding could compromise the independence, objectivity, or fiduciary responsibilities of LPFOs

iii. **Strengthen Corporate Governance:** Support sound governance practices by eliminating undue influence or control across LPFOs through significant cross-shareholding.

iv. **Ensure Regulatory Compliance:** Provide a clear framework for identifying, disclosing, and addressing instances of significant cross-shareholding in line with statutory provisions.

v. **Protect Pension Assets:** Safeguard the interests of Retirement Savings Account (RSA) holders by maintaining the integrity and independence of pension fund management and custody functions.

3.0 Legal Framework

3.1 These Guidelines derive authority from the following the Pension Reform Act, 2014 (PRA 2014), specifically:

i. **Section 115:** Empowers the Commission to make rules, regulations, or guidelines for giving full effect to the Act.
ii. **Section 90:** Grants the Commission the power to impose additional restrictions for the protection of pension assets.
iii. **Section 66(3):** Requires annual disclosure of significant shareholders and related persons in audited financial statements submitted to the Commission,
iv. **Sections 99–100:** Provide for offences and sanctions, including fines, imprisonment, and licence revocation for violations related to governance and investment of pension assets.

4.0 Restriction on Significant Cross-Shareholding

4.1 No Person shall hold, or continue to hold, or otherwise enter into any arrangement or agreement that would result in holding or continuing to hold a Significant Cross-Shareholding.

4.2 For the purpose of determining whether a Person holds a Significant Cross-Shareholding, the Commission may aggregate the shareholdings of such Person with those of its Related Persons.

4.3 The restriction on Significant Cross Shareholding applies regardless of how the stake is acquired, whether through mergers, acquisitions within or outside the pension sector, direct investment, new licensing, or other means whatsoever. The goal is to ensure that no shareholder or applicant company holds a direct or indirect ownership/shareholding of 5% or more in more than one LPFO. This includes affiliates, holding companies, subsidiaries, related parties of the shareholder, as well as its directors, employees, spouses, and family members of the shareholder or the new applicant company.

5.0 Transitionary Provisions

5.1 Any Person who on the Effective Date, holds a Significant Cross-Shareholding shall, within [six (6) months] from the Effective Date divest such portion of its shareholding as is necessary to comply with the restriction on Significant Cross-Shareholding as provided in these Guidelines.

5.2 Any Person who, by operation of law, after the Effective Date, comes to hold a Significant Cross-Shareholding, shall within [six (6) months] from such vesting, divest such portion of its shareholding as is necessary to comply with the restriction on Significant Cross-Shareholding as provided in these Guidelines.

6.0 General Disclosure Requirements

6.0 In complying with its obligation under Section 66(3) of PRA 2014 to submit audited financial statements to the Commission, each LPFO shall include, as part of such submission, a disclosure of all Significant Shareholders and Related Persons.

7.1 Enforcement and Sanctions

7.2 Any agreement or arrangement resulting in a Significant Cross-Shareholding shall be void and ineffectual, and any shares purportedly acquired or held in contravention of these Guidelines shall confer no rights or privileges, including without limitation, voting rights, dividends, or participation in the governance of the Pension Entity.

7.3 The LPFO in which such shares are purported to be held shall not recognize or record such shares in favour of the Significant Shareholder.

7.4 Appropriate administrative penalties shall be imposed for violation of the provisions of these Guidelines in line with the Commission's Framework for Regime of Sanctions and Penalties.

8.0 Effective Date

8.1 The provisions of these Guidelines shall be deemed effective as of the date of issuance.

9.0 Miscellaneous

9.1 These Guidelines supersede and replace in their entirety all previous instruments issued by the Commission relating to the same subject matter.

10.0 Review and Enquiries

10.1 These Guidelines shall be reviewed by the Commission from time to time.

10.2 All enquiries regarding these Guidelines shall be directed to:

The Director, Surveillance Department
National Pension Commission,
174, Adetokunbo Ademola Crescent,
Wuse II, Abuja, Nigeria.
Email: info@pencom.gov.ng
Tel: +234-9460-3930