

## **MANAGEMENT AND TECHNICAL SERVICES AGREEMENT GUIDELINES**

### **1.0 Preamble**

These guidelines are issued under the provisions of Section 71(3) of the Banking Act 2009 and shall govern the relationship between subsidiary banks in The Gambia and their parents. And where appropriate these guidelines apply to banks that are not subsidiaries.

### **2.0 Nature of Relationship**

The parent company shall act at all times as a source of financial and managerial strength to the subsidiary bank. To that end, all transactions between the parent and subsidiary shall be on an arm's length basis.

### **3.0 Arm's-Length Transactions:**

Transactions between a subsidiary bank and its parent and/or other companies affiliated with the parent organisation shall be consistent with safe and sound banking practices. Accordingly, all transactions shall be at a minimum the same as those offered to non-affiliated companies. This ensures that both parties in the deal act independently and are not subject to any pressure or duress from the other party.

### **4.0 Services Rendered By Parent:**

The parent organisation has the right to utilize resources within the organisation or retain any company to provide a service to the subsidiary. However, the cost of the service or product must

commensurate with the market value in the local market. Invoices should be sufficiently detailed so that an audit trail is created. If the product/service is not available locally, the cost of such product/service in the parent's market or the market from where the product or service is derived may suffice. The parent organisation shall not charge a fixed percentage of pre-tax profit without providing adequate justification and obtaining the prior approval of the Central Bank of The Gambia (CBG).

5.0 **Services Rendered by the Subsidiary:**

The subsidiary has the same obligations as detailed in paragraph 4 when providing services to an affiliate or the parent organisation. In a situation where the bank subsidiary provides services to the parent company or an affiliated company, the parent company or the affiliate shall bear the cost.

6.0 **Cost Pooling and Apportionment:**

Certain costs are pooled for all affiliated companies. Under such circumstances, the parent shall provide detailed documentation on how the cost is derived to ensure that the subsidiary is not overcharged.

7.0 **Salaries and Other Benefits:**

The parent company may pay expatriates whatever it deems appropriate provided that there shall be no claim for reimbursement from the subsidiary. The subsidiary shall be responsible for the payment of salaries to its staff and those on secondment from the affiliates, but

not more than the subsidiary can bear. The parent organisation is entitled to supplement local pay and bonuses. Salary, bonuses and allowances shall be subject to the appropriate tax laws of The Gambia.

#### 8.0 **Pre-Incorporation Expenses:**

Pre-incorporation expenses are costs incurred prior to the issuance of a banking licence. Such expenses may be capitalized and amortized over a maximum of seven (7) years subject to approval by the CBG. Pre-incorporating expenditure shall only be recognised if: (i) it is directly related to the establishment of the bank; (ii) is reasonable and does not exceed 25 percent of the start-up capital; and (iii) is approved by the Board of Directors of the subsidiary bank.

#### 9.0 **Board Composition and Appointment of Senior Management:**

The appointment of members of Board and senior managers shall be in accordance with Section 31 of the Banking Act 2009. Gambian nationals or foreign nationals legally resident in The Gambia shall form the majority in the Board.

Senior managers comprise the Managing Director, Executive Director, General Manager, Financial Controller, Company Secretary or any other deemed to hold a position of influence. Expatriate staff shall be limited to three except: (i) If the newly established subsidiary obtains special dispensation from the CBG; and (ii) Provide an acceptable plan on how it intends to recruit and train local staff to take over from expatriate staff.

Managing Directors/Chief Executive Officers shall be appointed for a maximum period of four years. Appointments are renewable subject to the approval of the CBG.

10.0 **Indemnities**

Management and technical services agreements shall be subject to the laws of The Gambia without exemption.

11.0 **Review of Technical and Management Service Agreements by the CBG**

Technical and Management Service Agreements shall be submitted to the CBG for review annually. The CBG shall require the parent and the subsidiary to jointly develop a plan to address and correct practices deemed “abusive” and not to the interest of the subsidiary.

12.0 **Disclosure:**

Banks are required to disclose all payments in respect of Technical Service Agreements in their financial statements.

13.0 **Penalties:**

Failure to comply with the provisions of these guidelines shall be punishable by: (i) a fine of D1000 per day until such time that the “abusive” practice(s) are addressed and (ii) require the parent institution to repatriate the funds paid by the subsidiary.

14.0 **Effective Date:**

This Revised Guidelines shall come into force on May 1, 2011 and supersede the first version issued in August 2010.

MAY, 2011

## **GLOSSARY OF TERMS**

For the purpose of these guidelines, the following shall mean:

- I. **Parent Company:** Is a company that owns enough voting stock in another firm to control management and operations by influencing or electing its board of directors; the second company being deemed as a subsidiary of the parent company. A subsidiary is also an affiliate company.
- II. **Affiliated Companies:** Companies are affiliated when one company owns less than a majority of the voting stock usually less than 50% but exercises significant influence.
- III. **Services Rendered:** Is work done that can be proven to contribute to the efficient running of the institution.
- IV. **Expatriate:** A person who has citizenship in at least one country, but who is living and gainfully employed in another country.
- V. **Secondment:** Temporal transfer to another job or post within the same organisation, say, from the parent company to subsidiary.
- VI. **Abusive Practices:** Practices or actions by the parent or affiliated companies that are detrimental to efficient running of the subsidiary.
- VII. **Position of Influence:** Power to control or direct the affairs of the organisation.