Memorandum of Understanding

Between

The Central Bank of Nigeria

And

The Banking Commission of Central Africa (COBAC)

On Cooperation and Collaboration in the Regulation and Supervision of Financial Institutions

Abuja, 19 August 2016

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I. PREAMBLE

The Central Bank of Nigeria (CBN), a statutory body established under the Central Bank of Nigeria Act, 2007 having its headquarters is at Plot 33, Abubakar Tafawa Balewa Way, Central Business District, Cadastral Zone, Abuja, the Federal Capital Territory of Nigeria and the Banking Commission of Central Africa, also a statutory body headquartered at avenue Jean Paul II P.O Box 2180, Libreville The Republic of Gabon, the authorities responsible for the supervision of financial institutions in their respective jurisdictions.

A. **Recognizing** the importance of the preservation of security and the viability of financial institutions in their respective areas of jurisdiction;

B. **Concerned with** ensuring the stability of their respective financial systems;

C. **Being committed** to the principles of effective and consolidated supervision and also the cooperation between the supervisory authorities;

D. **Being aware** of the fact that a financial institution licensed in an area of competence may perform part of its business activities in another zone of competence through an agency, subsidiary or branch;

E. **Eager** to develop and promote bilateral relations in the field of banking supervision and/or other financial institutions as well as the implementation of supervision and cross-border cooperation;

F. **Agree** to hereby establish the terms and conditions facilitating the accomplishment of their respective missions and to promote safe and viable financial institutions.

II. GENERAL PRESENTATION

The CBN was established under the law of the Central Bank of Nigeria Act 2007, with the mandate to ensure monetary and price stability, issue legal tender currency in Nigeria, maintain external reserves to safeguard the international value of the legal tender currency, promote a sound financial system in Nigeria and act as banker and provide economic and financial advice to the Federal Government.

The COBAC was established by the Convention of 16 October 1990. The COBAC is responsible for ensuring compliance by the credit institutions in the legislative and regulatory provisions enacted by the authorities, by the Bank or by itself and which apply to them, and possibly punish the deficiencies. In particular, it monitors the

conditions of credit institutions operating, ensures the quality of their financial situation and ensures compliance with the ethical rules of the profession. Its area of jurisdiction covers six Central African countries, namely, Cameroon, the Central African Republic, the Republic of Congo, Gabon, Equatorial Guinea and Chad.

ARTICLE (1) DEFINITIONS

1. In this MOU, except as otherwise required or suggested by the context, the following expressions mean:

1.1 **'Authority'**, means the CBN or COBAC;

1.2 **« Governing Laws »**,means any act, regulation, directive, guidance, instruction, indication, prudential standard or similar limitation in Nigeria or in the CEMAC to financial institutions that are the subject of supervision on the part of the authorities, and where the context so permits, laws incorporate any rule, policy, standard or policy developed by one or both authorities;

1.3 **'Banking activities'**, mean such banking activities as defined by the respective laws of each authority;

1.4 **'Cross-border establishment'**, means any agency, joint venture subsidiary, financial institution or entity of a bank supervised by an authority (welcoming authority) which raises the need for supervision on consolidated basis or across the group by the other authority (home/origin authority);

1.5 **"Director"** means any member of the Board of Directors of an entity which carries out banking activities and requiring an approval granted for this purpose by one of the authorities;

1.6 **"Director General"** means any official at the highest level of the branch of a bank or a financial institution (whether or not he/she is an administrator) approved by the competent authorities and effectively leading the Bank or financial institution;

1.7 **'High level official"**, means any senior officer, any Director, any head of Department or any responsible who reports directly to the Board of directors or Executive Director ;

1.8 **"Financial institution"** means all institutions licensed or subject to, regulated or supervised by the authorities to the extent permitted by the laws and practices in their respective areas of competence. It may include a Bank, financial institution, a microfinance establishment and financial holding company ;

1.9 **'Authority of the country of origin'** means the authority of the country in which a financial institution is domiciled or of which depends on its parent

authority which is responsible for the overall supervision of the said financial institution;

1.10 **'Authority of the host country'**, means the authority charged to exercise control of subsidiaries or branches of the financial institutions located in another jurisdiction, that under the authority of the country of origin;

1.11 **'Dominant/important majority shareholder'**, shall be understood any such person as defined under the respective laws of each authority;

1.12 **'Person'** shall mean any physical person, any person, any partnership, or any unincorporated association ;

1.13 **'Requested authority'** means the authority to which a request is made in accordance with the provisions of this memorandum of agreement; and

1.14 **Applicant authority'** means the authority seeking information in the context of this MoU;

1.15 " **College of supervisors"** means Exchange forum for, cooperation and consultation composed of the authority of origin and the host authorities having jurisdictions over their respective and significant entities belonging to a cross-border banking group;

1.16**"Jurisdiction'** means geographical space in which a party exercises jurisdiction;

1.17 "**Subsidiary**" means subject establishment of which more than half of the share capital is owned by another subject institution or a holding company or controlled, in law or in fact, is vested in one other subject or a holding;

1.18 "Branch": **means** structure created by a subject institution and subject to the control of the home authority, without legal personality but with some management autonomy.

ARTICLE (2):PURPOSE AND PRINCIPLES

2.1 The purpose of this MoU is to establish an official basis of cooperation, particularly in the context of the exchange of information, assistance in investigations, the taking of coercive measures and the application of prudential standards, particularly:

(i) To promote the safety and soundness of financial institutions of the respective (authorities) jurisdictions, and in particular in the context of cross-border institutions; and
(ii) Ensure compliance with the governing laws.

2.2 This MoU is a statement of intent. It is not legally binding on the parties. Therefore, this MoU:

(i) Does not change or replace any of the Governing laws;
(ii) Does not create any legally binding obligation or executory force; and
(iii) Does not affect any provisions adopted within the framework of other MoU.

2.3 This MoU describes the preferred way for an authority to require the assistance of another authority. However, the said MOU does not prevent any of the authorities to take further action under national or international law applicable to achieve the same goal. However, before taking further action, the authority which proposes to take action is required to notify the other authority.

ARTICLE (3): EXCHANGE OF INFORMATION, DOCUMENTATION ANDAUTHORIZED USE OF INFORMATION

3.1 The parties may transmit, receive or exchange all information and documentation that they consider useful for the exercise of their respective missions, in the creation and monitoring of institutions subject to their respective jurisdictions, in accordance with approved texts.

i) The exchange of information and documentation may focus on:

- ✓ Balance sheet commitments and off-balance sheet reporting institutions, particularly those benefiting from the guarantees and safeguards against the parent companies , as well as the beneficiaries of those commitments;
- ✓ Confidential information (of good repute, financial standing and competence) relating to officers, directors or major shareholders of the reporting institutions established in Nigeria or in CEMAC;
- ✓ The individual situation of an institution in Nigeria or in the CEMAC;

- ✓ The main shareholders of a financial institution subject to the Central Bank of Nigeria or COBAC ;
- ✓ Periodic/thematic publications as well as studies and specific analyses.

ii) The authorities can exchange freely, documents of non-confidential nature for internal or external use.

iii) Data of a sensitive or confidential nature can be released, subject to compliance with the rules relating to professional secrecy.

iv) Requests for information and documentation shall be in writing and must indicate the nature and the list of information sought, the degree of urgency, as well as the factors which motivated requests.

v) The requested authority shall take all appropriate steps to respond expeditiously to requests for information and documentation.

vi) As part of the written request by the originating authority to exercise consolidated supervision of a subject institution, the home authority provides all information required on the subject establishment and, where appropriate, all branches, subsidiaries or other entities of the same group located within its jurisdiction.

3.2 The applicant authority shall use the information provided in the context of this MOU only for purposes of such supervision specified in the request and to the extent permitted by law. The applicant authority shall comply with any conditions imposed by the requested authority.

3.3 Any information provided without a request for prior assistance from an authority, in accordance with the provisions of paragraph 6 (on the voluntary provision of information) or article 7 (provision of information in a timely manner) should not be used for purposes other than such supervision as specified by the authority providing the information.

ARTICLE (4): PROVISION OF NON-REQUESTED INFORMATION

4.1 One of the authorities may provide or arrange for the provision of information to the other authority voluntarily even when no request has been made. These include:

(i) Information that would assist the other Authority to promote the safe and viable operation of a financial institution; and

(ii) Information on the major changes involved in the regulatory framework, in the structure, missions or the policies of the authority, in particular when it comes to changes that have a significant bearing on the activities of a cross-border entity or may affect the ability to supervise this entity.

4.2 Each authority is required to provide relevant information to the other authority of any event or circumstance that could have a negative impact important cross-border entity's activities in the area of jurisdiction of the other authority, or likely to affect the ability of the other authority to effectively supervise cross-border entity.

4.3 Each authority is required to inform the other authority of any important corrective or coercive measures taken against a cross-border entity in its area of jurisdiction, against an administrator, Director, or shareholder. The said authority is required to give, to the extent possible, prior notification of such actions to the other authority.

ARTICLE (5) GRANTING OF APPROVALS

5.1 The home authority shall refer to his counterpart to obtain its consent or notice of no objection, together with any information likely to enlighten his opinion in the context of the examination of an application:

(i) Establishment of a branch or a subsidiary of a credit institution subject to the control of the originating authority, or
(ii) Acquisition of at least one-tenth of the capital or the voting rights of an entity located in its jurisdiction by an institution subject to the control of the originator;
(iii) Accreditation as leader or administrator.

5.2 In the context of the issuance of approvals for banking activities, the authorities will take into account the following considerations:

(i) In the case where a financial institution registered in one of the countries made a request for approval or authorization for the opening of a cross-border entity to the authority of another country, the authority receiving the request shall examine that request in accordance with the procedures and time limits laid down by law and/or national; banking regulations;
(ii) The authority receiving an application shall notify the other authority details of the request and obtain the permission of the other authority to carry out the assessment of the application;
(iii) To the extent permitted by their respective national laws, the authorities will share information about skills and probity of any directors, officers and shareholders of a cross-border entity; and
(iv) Each authority is required to notify the other authority, in writing about any decision to grant approval or authorization to any financial institution for the opening of a cross-border entity.

However, the demand and supply of these information does not exempt any authority of its responsibility to carry out investigations entrusted to it.

ARTICLE (6) DOCUMENT INSPECTION

6.1 For the purposes of the surveillance of cross-border credit institutions, the parties agree to:

(i) Provide each other relevant information, with regard to the significant developments or particular concerns relating to the activities of the establishment concerned;
(ii) Respond to requests for information on their respective regulatory devices and inquire about essential or major changes, especially those with a significant impact on the activities of cross-border institutions ;
(iii) Inform each other of the significant administrative penalties imposed or other disciplinary proceedings against a cross-border institution. Prior notification shall be made to the extent possible and subject to applicable laws;
(iv) Facilitate the transmission of any other relevant information that may be required as part of the process of banking supervision.

6.2 The originating authority may, on its own initiative, invite the other authority to take part in any college of banking supervisors of a cross-border credit institution.

6.3 Each authority will inform and consult his counterpart as soon as he/she will be aware of information likely to significantly affect the situation of an institution located within its jurisdiction.

6.4 According to the regulations in place, the authority of the country of origin may request the parent to provide reports of the supervising mission or reports of prudential supervision concerning the cross border entity, branch, or agency for the purposes of the audit of accounts.

ARTICLE (7) ON-SITE INSPECTION

7.1 The authorities recognize that cooperation is particularly useful for the on-site inspection of the conduct of cross-border entities\. In this perspective, the authorities agree that:

(i) Each authority shall notify its counterpart of its annual audit program concerning the institutions established in its jurisdiction and with capitalistic links or others with institutions under the control of the other authority.
(ii) An authority may, at the request of his counterpart, only for, or with, carry out checks in establishments within its jurisdiction having capitalistic ties or other with an institution subject to the applicant authority. In this case, a copy of the inspection report shall be communicated, as soon as possible, to the applicant authority.

(iii) In the case of joint control, the terms of preparation, and of conduct of joint audit engagements as well as finalization and validation of the inspection reports are fixed prior to start-up of such missions. Subsequent to the audit, the parties shall mutually address a copy of the reports and final letters forwarded to the establishment.

(iv) They shall inform each other of the subsequent decisions with respect to the institutions concerned and ensure implementation.

ARTICLE (8) ASSISTANCE IN THE PROCESS OF RESTRUCTURING

8.1 The authorities should:

(i) provide assistance in cases of restructuring in case a party requires such assistance. This assistance could be the transfer of money by a correspondent bank, operating in the area of jurisdiction of the other party, to the Bank that is the subject of restructuring procedure, or the provision of assistance in the return of other assets; and

(ii) In a situation where the process of restructuring would involve a financial institution located in the area of jurisdiction of the two parties, the parties must ensure the safeguarding of the rights of resident creditors in the respective country of the party subject to compliance with the legal framework of the host State.

ARTICLE (9) PROCEDURES RELATING TO APPLICATIONS

9.1 Requests for information regarding supervision or relating to any other form of assistance are, generally speaking, in writing and its working language. However, in an emergency, the competent authority's applications may be sent by e-mail to the requested authority. Facilitating assistance, the applicant authority shall specify in a written request, where appropriate, the following:

(i) The nature of the information or assistance sought (for example, the identity of the persons, the specific questions to ask, etc.)

(ii) If the information provided by the applicant authority is a confirmation or demand for verification, specifying the nature;

(iii) The purpose for which the information is sought or the request for assistance is made ;

(iv) If the requested authority fulfils some of the certain conditions in the use of confidential information;

(v) If it is necessary to obtain the consent of the authority requested prior to the disclosure of information received from it to a third party and in this case, the purposes of such disclosure;

(vi) If the request for assistance is intended to introduce a measure of relief or enforcement, action the topics set out below under the heading "Additional Procedures for implementation"; and enforcement

(vii) Any other relevant matters raised by the applicant authority or required by the governing laws and applicable to the requested authority.

ARTICLE (10) STUDY OF REQUESTS FOR ASSISTANCE

10.1 Each request for assistance will be considered by the authority requested on a case by case basis to determine if the assistance can be provided in accordance with the provisions of this MOU and in compliance with the governing laws.

10.2 The requested authority reserves the right to impose conditions for the use of the information provided. When it cannot be fully or partly met, the requested authority is required:

(i) To provide, in writing, the reasons for which it is not able to give a favourable response to the application;
(ii) To suggest a modification of the application that can enable it to respond fully or in part to the request for assistance; and
(iii) To consider other forms of possible assistance that can be provided by itself or by any other authority of its jurisdiction.

10.3 To consider other forms of possible assistance that can be provided by itself or by any other authority in its area of competence:

(i) determine whether the application complies with the provisions of this MOU;
(ii) If providing this assistance it must implement the regulatory provisions which are not provided for within its jurisdiction;
(iii) if the provision of this assistance is so tedious that it could hinder the normal functioning of its services;
(iv) If the provision of such assistance may interfere with an ongoing investigation or be detrimental to the performance of its statutory tasks;
(v) If this could go against the general or national interest of the requested authority;
(vi) take into account the provisions of paragraph 18 below entitled "Additional Procedures on the application of laws" in cases where the request for assistance would involve binding corrective measures or relief; and

(vii) all other issues outlined by the governing laws in the area of competence of the requested authority (in particular those related to privacy, data protection, privacy and fairness of procedures).

(vii) Where permitted by the legal framework and the confidentiality provisions, the authorities of the country of origin and the host country will endeavour to provide the above information within a reasonable time. Where the requested authority is not able to provide the information required in a timely manner, the applicant authority reserves the right to take measures required to safeguard, if necessary, the local financial market.

ARTICLE (12) EXPENDITURE

12.1 Authorities will support, on terms to be defined jointly, all expenses that could result in a request for information.

ARTICLE (13) CONFIDENTIALITY

13.1 As part of this MOU, the Authorities agree that they cannot disclose information except those authorized by law.

13.2 In all cases, the Requesting Authority agrees to keep confidential, in limits authorized by law, any information obtained under this Memorandum of Understanding.

13.3 One authority may receive a request from a third party (including a regulation or supervision authority) to obtain confidential information provided pursuant to this memorandum of understanding and may deem appropriate or prudent to transmit such information to such third parties. However, before communicating such information to this third party (including a regulatory or supervisory authority), the Authority must notify and get the permission of the authority that originally communicated the information, that authority can set conditions for disclosure of information, including the obligation of the third party to keep such information confidential.

13.4 Where an authority is constrained by the law or a request enforceable as a court order, to disclose information received pursuant to this memorandum of understanding, the obliged Authority shall notify as soon as possible the Authority that originally provided the information. If the request is made by the Authority that initially provided the information, the other authority, to the extent possible, could avail themselves of the privileges or appropriate legal exemptions to this information or otherwise strive to preserve the confidentiality of the information.

ARTICLE (14) EXCHANGE OF EXPERIENCE AND DEVELOPMENT OF COOPERATION

14.1 The parties agree to promote the exchange of experience between them in all matters of common interest, in any form they deem appropriate, particularly in the context of annual bilateral meetings and seminars.

14.2 The authorities agree, as much as possible, to create opportunities for Exchange of experiences between their staff responsible for banking supervision, including through joint inspections, training and other activities that promote good practices of supervision.

The parties may develop their cooperation in various forms including working together on:

- the situation of the CBN and the CEMAC banking systems;
- the evolution of accounting and prudential regulations;
- rating systems of the credit institutions in their respective jurisdictions;
- the measures of prevention and risk management;;
- control of the bank holding companies;
- the supervision on consolidated basis of financial conglomerates;
- control of market activities;
- the fight against money-laundering and the financing of terrorism ;
- the development of information systems;
- the supervision of microfinance institutions;
- the deposit-guarantee systems;
- issues related to financial stability;
- aspects relating to competition within the banking system;
- the data protection personal;
- the protection of consumers of banking services;
- other topics of common interest.

ARTICLE (15) DURATION, AMENDMENTS AND TERMINATION

15.1 This MoU signed by both authorities will remain valid until terminated by one of the authorities whom shall notify the other authority in writing 30 days in advance. However, the provisions set out under the heading 'Confidentiality' or the measures of the framework of this Agreement shall remain applicable even after its termination.

The authorities will regularly examine the agreement of this Memorandum of understanding and consult when mutually needed to improve its implementation, amendments, relax or waive one of its clauses or add attachments as they deem necessary, and resolve all issues of interest.

When the implementation of a request for assistance is likely to violate the governing texts in the territories of the two authorities, they determine best way for each of the authorities to give its assistance..

15.2 Any dispute or controversies arising from the implementation or application of this MOU will require negotiation, in order to arrive at an amicable settlement

In the event of persistent difficulty to implement this MOU, the parties agree to review the situation and decide, if applicable, its modification, either the suspension of all or part of its provisions.

IMPLEMENTATION OF THE CONVENTION

The Director of the Department of Banking Supervision of the Bank Central of Nigeria and the Secretary General of the COBAC, are, within their respective areas, are responsible for the implementation of this MOU.

Signed by the authorities:

For the CBN:

The Governor,

GODWIN EMEFIELE, CON

Governor, BCN

Date of signature: 19 August, 2016

For the COBAC:

The President of the Banking Commission of Central Africa

Lucas ABAGA NCHAMA

Governor, BEAC

Date of signature: 19 August, 2016

Appendix 1

The procedures of corrective, Preventive, or coercive action

(A) Other details to be included in requests for assistance

1. If a request for such assistance as described in this memorandum of understanding is a corrective, preventive or coercive measure, whether active or proposed, the applicant authority shall specify in the request, the following details:

   (i) A description of the conditions or practices giving rise to the request;

   (ii) The details of the governing laws whereby corrective, preventive or coercive measures were undertaken or will be undertaken;

   (iii) The link between the governing laws and the regulatory tasks of the applicant authority; and

   (iv) The relevance of the assistance requested from the governing laws.

(B) Other reasons for denial of application

2. If a request for assistance, such that described in this MOU, focuses on corrective, preventive, coercive, actual or planned measures, the authority requested, in deciding to implement scheduled entirely or in part, reserves the right to consider if the implementation of the application would lead pursuit of someone or disciplinary coercive measures or other similar measures against a person who the opinion of the requested authority has already been called to address the alleged violation or fault which is the subject of the application .

(C) Demands for participation in interviews

3. If, following a request of the applicant authority, the requested authority is conducting the interrogation of a person; the requested authority may allow a representative of the applicant authority to participate in this interview and to ask questions, provided that the request has been formulated in strict compliance with the governing laws in the requested authority.

(D) Joint missions

4. The authorities acknowledge that, subject to the confidentiality procedures, an inquiry triggered by suspicions of violations of the laws of the two countries can be more effective if it is carried out by a joint investigation involving the representatives of the two authorities.

5. The authority requesting a joint investigation shall inform the other authority of the context underlying the request for joint investigation and brings to his knowledge the objectives, resources, and the approximate length of the joint investigation proposed. Each Authority advises the other as soon as possible of its readiness to participate in the joint investigation proposed.

6. If the authorities agree to conduct a joint investigation, a preliminary action plan must be prepared, laying down, inter alia, the objectives, expected results, resources needed, the approximate time, provisions relating to funding, advertising and the record, the management of the joint investigation and the allocation of responsibilities.

(E) Preservation of the rights of persons

7. Any person who provides the solicited authority; testimony, information, evidence or documents following a request in accordance with this memorandum of understanding or the governing laws , enjoys all the rights and protections that it are recognized by the laws of the jurisdiction of the authority requested. If the person concerned wishes to invoke other rights and privileges under the laws of the jurisdiction of the applicant authority, the two authorities shall consult to determine the best way to proceed.

Signed by the authorities:

For the CBN:	**For the COBAC:**
GODWIN EMEFIELE, CON	**Lucas ABAGA NCHAMA**
Governor, CBN	**Governor, BEAC**
Signature Date: 19 August, 2016	**Signature Date: 19 August, 2016**

Appendix 2

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