

## **Persons with Significant Control**

### **Practical Learning for Corporate Governance Practitioners and Students: Case Study of FBNH Plc**

It is no longer news that Femi Otedola, a Nigerian billionaire businessman, has acquired five per cent stake in First Bank of Nigeria, making him one of the bank's largest shareholders.

A widely circulated statement by The Nigerian Exchange Limited, NGX, has confirmed that it received information concerning the transactions of the shares transacted by Otedola. The confirmation was said to be contained in a statement signed by Seye Kosoko, Company Secretary of FBNH Plc stating as follows:

*"We refer to our communication to the market dated October 22, 2021 on the above subject wherein we stated that we would inform the public of any substantial acquisition, upon receipt of notification from the shareholder. This morning, October 23, 2021, FBN Holdings Plc received a notification from APT Securities and Funds Limited, that their Client, Mr. Otedola Olufemi Peter and his nominee, Calvados Global Services Limited have acquired a total of 1,818,551,625 units of shares from the Company's issued share capital of 35,895,292,791. Based on the foregoing, the equity stake of Mr. Otedola Olufemi Peter and his nominee in the Company is now 5.07 per cent."*

Congratulations Mr Femi Otedola!

Since this news broke out, I received calls from students preparing for the Institute of Chartered Secretaries and Administrators of Nigeria (ICSAN) qualifying exams, company secretaries and fellow corporate governance practitioners, with regards to the significance of that public information for good corporate governance, person with significant control, substantial shareholding and reporting requirements, particularly in Nigeria.

My discussions have centered around the facts that firstly, a principle of sound corporate governance is disclosure and transparency in the areas of a company's financial and operating results, company objectives, major share ownership and voting rights, related party transactions, foreseeable risk factors, governance structures and policies. (OECD, 2004). Principle V of the OECD, 2004 recommends that the corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.

Additionally, principal 28 of the Nigerian Code of Corporate Governance 2018 requires companies to provide full and comprehensive disclosures of all matters material to investors and stakeholders, and of matters set out in the Code and ensure proper monitoring of its implementation which engenders good corporate governance practice.

Secondly, the above information from FBNH Plc appears to satisfy the compliance requirement under Nigeria company laws (Companies and Allied Matters Act 2020-CAMA) for the disclosure of persons with significant control (PSC). The specific requirements for such disclosures are found in sections 119-120 of CAMA, which includes the relevant types of notices and period of notices required to be given to regulators.

Thirdly, the precise nature of the disclosure in compliance with the requirements of CAMA is very significant. Section 120 (1) provides that a person who is a substantial shareholder in a public company shall give notice in writing to the company stating his name, address and full particulars of the shares held by him or his nominees (naming the nominee) by virtue of which he is a substantial shareholder.

Section 120 (2) defines a person who is a substantial shareholder in a public company as someone who holds by himself or by his nominee, shares in the company which entitle him to exercise at least 5% of the unrestricted voting rights at any general meeting of the company.

In the above matter APT Securities and Funds Limited, on behalf of their Clients Mr Otedola, his nominee and in fulfilment of the requirement of section 120(1), gave notice to FBNH Plc of the substantial acquisition including details of the acquisition and the significance of the acquisition to the capital structure of the company, which in turn made Mr Otedola a PSC with FBH Plc.

Fourthly, by the provisions of section 119 (2) of CAMA FBNH Plc is required to inform the Corporate Affairs Commission (on form CAC PSC02) about the PSC over the company, while the Commission under section 119(3) shall enter the information received from the company in a register maintained for that purpose. Additionally, the company shall enter against the name of the member in the register of members the information received.

Many National company laws in other jurisdiction have similar provisions, especially for the treatment of significant interest in shares of public companies.

Finally, I hope this was useful learning for students preparing for ICSAN qualifying examinations, company secretaries and practitioners of corporate governance.

Feel free to leave a comment!

*We hope you found this helpful? If you need professional assistance in this regard, you may reach out to us on +2349019995610 or send an email to [info@sebassociates.com](mailto:info@sebassociates.com)*