

SECURITIES AND EXCHANGE COMMISSION

DRAFT GUIDELINES ON NOMINEES

1. Introduction

The Securities and Exchange Commission (Commission) is mandated by the Securities Industry Act, 2016 to formulate principles for the guidance of the securities industry. Pursuant to this, the Commission hereby publishes these Guidelines on Nominees in Ghana in accordance with section 209 of the Act.

2. Purpose

In the register of owners of financial instruments, the nominee is entered instead of the beneficial owner. An important reason for regulating nominee activity by law is to ensure that the Commission and other relevant regulatory authorities shall have access to information on beneficial owners of securities registered in Ghana in line with best international standards. The information on beneficial owners is needed for example in combating money laundering, insider trading, market manipulation and oversight of investment firms and other entities under supervision.

3. General

- a) No person shall carry on a business as a nominee unless that person holds a valid licence issued by the Commission.
- b) A nominee shall be a company incorporated under the Companies Act, 1963 (Act 179), or an external company with a branch office in Ghana as its established place of business.
- c) The external company must provide documentation from the home country's supervisory Authority showing that the applicant is subject to supervision by that Authority.

4. License to operate a nominee account

- a) A person who intends to hold securities on behalf of its clients shall apply to the Commission for a licence to hold the securities in a nominee account.
- b) Application for a licence to provide the services of a nominee shall be made in a form prescribed by the Commission.

5. Criteria for Licencing

- a) A nominee must meet the minimum capital requirement as prescribed by the Commission.
- b) A nominee shall meet any other requirements that may be prescribed by the Commission.
- c) A nominee shall be a company operating in the financial, corporate and management services.
- d) No person shall be appointed as a director or executive officer of a nominee unless that person has satisfied Regulation 3 of the Securities and Exchange Commission Regulations, 2003 (LI 1728).
- e) A chief executive officer of a nominee shall satisfy Regulation 4 of (LI 1728) and shall have experience in the management and supervision of staff involved in the keeping of records of securities or any other services in the securities industry.
- f) Except in the case of external companies, at least majority of the directors (or board members) must be ordinarily resident in Ghana with a proven local address.
- g) In the case of an external company, the local manager (s) must have authority to act on behalf of the company.
- h) Directors of external companies must be of good standing and be fit and proper persons. They shall provide an attestation from the regulator in whose jurisdiction they reside or perform their duties as directors.

6. Clients approval

A client's securities shall not be registered and kept in a nominee account without prior written consent of the client. The nominee is obliged to inform the client of any legal effects of registering and holding the securities in a nominee account.

Where there is more than one level of nominee registration, i.e., where the nominee's client is not the beneficial owner of the securities, the nominee will need to ensure that a legal basis exists requiring "clients at each level" to submit the identity of their respective clients at the nominee's request.

7. Information on clients

- a) The nominee shall obtain comprehensive information on clients requesting nominee registration of securities and that information shall be available to the Commission at any time upon request. The nominee shall maintain this information for seven (7) years after termination of the business relationship.

The information shall include the following:

- i. full name or name of client;
- ii. personal identification number of client or unique identity code of the client;
- iii. permanent address;
- iv. nationality or, if a legal person, country of incorporation; and
- v. the number of securities / classes being tendered.

The nominee shall put in place adequate Know Your Client (KYC) or customer due diligence procedures to identify and verify clients at the time of establishing the business relationship and on a continuing basis after establishing the business relationship.

- b) The nominee shall inform the client of the obligation to provide information to the Commission under these Guidelines.

8. Record keeping of clients transactions

A nominee holding securities in a nominee account shall keep record of the securities of each individual client. The record shall include the names and telephone numbers of clients associated with the securities registered in the nominee account as well as the number of securities covered by each nominee registration agreement. The records should be kept in such a way that it leaves no one in doubt as to the beneficial owner of the securities.

9. Identification of securities registered in Nominee accounts

The registrar of securities shall identify securities registered in nominee accounts separately in its records, so that there is no doubt as to which securities are held in nominee accounts.

10. Protection of Beneficial Owners in case of insolvency

In the event that a nominee's estate is subjected to bankruptcy proceedings or a moratorium is granted on its debts, or the nominee is wound up or comparable measures are taken, the client may, on the basis of the record provided, withdraw its securities from the nominee account, provided that their ownership is not in dispute. All securities held in the nominee account shall be insulated from any bankruptcy, insolvency and liquidation or other court proceedings.

Irrespective of the financial or legal situation of the nominee, beneficial owners should at any time be able to claim and retrieve their assets without prejudice to their property rights as long as their claims are legally valid. The client must have co – proprietary rights in the pool of assets by the nominee and also has contractual rights against the nominee.

11. Clients' rights

Clients' rights against the nominee are contractual in nature and are governed by the terms and conditions in the nominee services agreement. Clients of nominees enjoy all the rights associated with share ownership. Clients have the right to receive all the information concerning shareholders' meetings from the nominee.

12. Rights attached to nominee accounts

- a) The rights attached to the nominee account shall be:
 - i. rights provided in these Guidelines; and
 - ii. rights provided in the client's agreement.
- b) Voting rights at shareholders' meetings are not attached to nominee accounts except expressly given in writing by the client.

13. Permission to accept payments and other rights

- a) A nominee is permitted to accept payments including rights to dividends or other payments on behalf of its clients from individual issuers of securities.
- b) The nominee is required to keep these payments separate from its other assets.
- c) The nominee is also permitted to exercise rights to new shares in the event of an increase in share capital.

14. Supervision and provision of information on business and clients

The Commission reserves the right to demand from a nominee the disclosure of the identity of the clients registered as beneficial owners of securities held in a nominee account including any persons connected to the securities. A nominee shall provide the Commission with the information required.

15. Revocation and suspension of Licence

- a) Revocation and suspension shall be carried out in accordance with Section 122 of the Securities Industry Act, (2016).
- b) The Commission may revoke the licence of a nominee on the following additional grounds:
 - i. if the nominee breaches the provisions of the Guidelines of the Commission concerning information on nominee accounts; and
 - ii. if nominee commits gross violations of the legal provisions to which its activities are subject;
- c) Before any revocation, the nominee may be given a reasonable period to rectify the situation if rectification is possible in the estimation of the Commission.
- d) Where the licence of a nominee is revoked, the Commission must ensure that the nominee account is transferred to another nominee, which shall only be operated as a nominee account. The account shall only be operated after the clients have entered into a new agreement with the new nominee.
- e) The new nominee shall communicate with the old nominee and require him to make any representations and supply any information about the operation of the nominee account.

16. Segregation of Securities

The nominee shall put in place internal control systems that segregate the nominee's own securities from the securities of clients.

A nominee shall not encumber any of the assets belonging to beneficial owners unless or otherwise expressly agreed in writing

17. Execution of client's instructions and the allocation of securities

- a) The nominee shall put in place internal control systems to ensure that:
 - i) all beneficial owners are treated fairly, equally and impartially; in the execution of clients instructions and allocation of securities
 - (ii) any possible conflicts of interest between the nominee and the client is avoided.
- b) mechanisms to protect the investor from misconduct such as misallocation of securities or front running are in place.
- c) clients are not deprived of all shareholder benefits as required by law.

18. Client communication

The nominee shall communicate to clients, the status of securities held by them. Such communication may be done quarterly or as frequently as agreed with the client.

19. Protection of privacy interest of beneficial owners

- a. The nominee shall put in place proper internal control systems that protect information on the clients including their names, addresses and securities position.
- b. A person shall not during or after a relationship with a nominee disclose directly or indirectly to a third party any information related to the nominee's client and beneficial owners without prior written consent of the client and beneficial owners .
- c. The duty of confidentiality imposed under these Guidelines shall not apply to the provision of information on clients and beneficial owners to the Commission.

20. Data Storage

The nominee shall put in place efficient backup systems to ensure safety of client data. The nominee shall maintain proper records containing detailed holdings of each client. Adequate data storage requirements shall be adopted by the nominee so that no hindrances are created in identifying the beneficial owners of securities.

21. Other duties of a nominee

A nominee is obliged to perform the following duties in addition to other duties stated in these Guidelines and in the nominee services agreement.

- i. Maintain at all times, a register containing the identity of clients connected with the securities registered in a nominee account and the number of securities held by each client.
- ii. Exercise the rights arising from securities in the nominee account and be liable for the obligations arising from such securities.
- iii. Accept payment on client behalf from issuers of securities.

- iv. Follow the instructions of the client where the nominee's services agreement requires the client's voting instructions at AGMs in the exercise of voting rights and other rights arising from a security

22. Nominee Services Agreement

The application to be submitted by the client should be accompanied by a nominee service agreement between the client and the nominee. The nominee service agreement between the client and nominee shall include:

- i. purpose of the nominee account;
- ii. duties of the nominee;
- iii. instructions on the keeping of custody of the securities;
- iv. statement of notification of every transaction;
- v. keeping of records of every transaction;
- vi. fees charged by the nominee for services provided;
- vii. execution of instructions to prevent conflict of interest;
- viii. voting at annual shareholder meetings;
- ix. indemnity clause;
- x. criteria under which amendment of the agreement can be carried out; and
- xi. termination of the agreement;

23. Reporting Obligations

a) A nominee shall submit to the Commission:

- i. quarterly returns containing information specified by the Commission which shall reach the Commission not later than 21 days after the end of the quarter; and
- ii. annual reports containing the audited annual financial statements and other information to be specified by the Commission not later than 90 days after the end of the financial year to which the annual report relates.
- iii. any other information required from time to time by the Commission

24. Sanctions for Non- Compliance

In the event of a breach of any requirement stipulated in these Guidelines by a Nominee, the Commission may take the following action(s) in addition to sanctions specified under Section 209 of the Securities Industry Act 2016:

- i. remove any Executive Officer who is responsible for the breach,
- ii. take any other action as it deems necessary to maintain integrity in the nominee business.

Prior to any action or sanction to be imposed by the Commission, the nominee and/or its officer(s) shall be given a fair hearing and in accordance with due process of law.

25. Review

These guidelines may be reviewed from time to time by the Commission.

DEFINITION OF TERMS

Nominee registration: The registration of securities owned by another person in the name of a nominee.

Beneficial owner: The person who receives the financial benefit from or bears the financial risk of securities and grants authorization to the nominee to act in its own name and be registered as the beneficial owner .

Client: A person on whose behalf a transaction is executed.

External Company: An external company has the same meaning as under Act 179.

Nominee account: A type of account in which the investor holds his/her securities in the name of a different entity.